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 Sdhu

WHATCOM COUNTY COUNCIL

COMBINED AGENDA PACKET FOR JULY 9, 2019

INCLUDES INFORMATION FOR THE FOLLOWING MEETINGS:

SPECIAL COMMITTEE OF THE WHOLE (9:30 A.M.)

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

CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE (1:30 P.M.)

SPECIAL COMMITTEE OF THE WHOLE (3 P.M.) (ESTIMATED TIME – MEETING MAY BEGIN EARLIER/LATER THAT 3 P.M.)

COUNCIL (7 P.M.)

UPCOMING MEETINGS AND EVENTS:

<u>JULY 16, 2019</u> 10:30 A.M. – SURFACE WATER WORK SESSION GARDEN LEVEL CONFERENCE ROOM, 322 N. COMMERCIAL STREET

> JULY 23, 2019 REGULAR COUNCIL AND COMMITTEE MEETINGS COUNCIL CHAMBERS, 311 GRAND AVENUE

JULY 30, 2019 10 A.M. - HEALTH BOARD COUNCIL CHAMBERS, 311 GRAND AVENUE

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

COMMITTEE AGENDAS

SPECIAL COMMITTEE OF THE WHOLE 9:30 a.m. Tuesday, July 9, 2019 Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

Committee Discussion

1. <u>AB2019-387</u>

Discussion of Cascadia Law Group's recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments **Pages 1 - 47**

Other Business

Adjournment

FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE Members: Tyler Byrd, Carol Frazey, Satpal Sidhu 11 a.m. Tuesday, July 9, 2019 Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

County Executive's Report

Special Presentation

- 1. <u>AB2019-359</u> Presentation of the Bellingham Whatcom County Tourism Countywide Wayfinding Project Page 48
 - Page 48
- <u>AB2019-390</u> Presentaton by Don Goldberg, Port of Bellingham, regarding affordable housing issues
 Pages 49 52

Committee Discussion and Recommendation to Council

- 1. <u>AB2019-369</u> Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services for a long-term working capital advance in an amount of up to \$300,000 <u>Pages 53 - 59</u>
- <u>AB2019-372</u> Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services, Developmental Disabilities Administration for a coordinated and comprehensive program of services for persons with developmental disabilities, in the amount of \$3,678,521

Pages 60 - 87

- 3. AB2019-381 Request authorization for the County Executive to enter into an Interlocal agreement between Whatcom County and Skagit County for participation in the Youth Marijuana Prevention and Education Program, in the amount of \$28,000 Pages 88 - 98
- 4. AB2019-382 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Children, Youth and Families to outline general terms and conditions of agreements between the agencies

Pages 99 - 113

5. AB2019-313 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Lummi Nation for repair of the Lummi (Red) River Levee (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Pages 114 - 126

- 6. AB2019-385 Resolution authorizing an application to the Brian Abbott Fish Barrier Removal Board for North Fork Road/Kenney Creek fish passage project, CRP No. 919007 Pages 127 - 132
- 7. AB2019-370 Request authorization for the County Executive to award Bid #19-39 and enter into a subsequent contract between Whatcom County and Lake Union Drydock Company for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$555,219 Pages 133 - 134

Committee Discussion

1. AB2019-371 Discussion/presentation by Rob Ney, Facilities Management, on the state of capital facilties and long-term capital facilities planning Page 135

Other Business

Adjournment

CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE Members: Barry Buchanan, Tyler Byrd, Carol Frazey 1:30 p.m. Tuesday, July 9, 2019 **Council Chambers, 311 Grand Avenue**

Call To Order

Roll Call

Special Presentation

1. AB2019-243

Presentation of the Incarceration Prevention and Reduction Task Force 2019 Annual Report

Pages 136 - 166

Committee Discussion

1. <u>AB2019-388</u> Discussion regarding a proposed ordinance amending Whatcom County Code 2.46.020 and 2.46.030 to revise the Whatcom County Incarceration Prevention and Reduction Task Force purpose and function (ordinance scheduled for introduction this evening)

<u> Pages 167 - 171</u>

Other Business

<u>Adjournment</u>

SPECIAL COMMITTEE OF THE WHOLE 3:00 p.m. (estimated time- may begin earlier or later than 3:00) Tuesday, July 9, 2019 Council Chambers, 311 Grand Avenue

Call To Order

Roll Call

Committee Discussion

1. <u>AB2019-387</u> Discussion of Cascadia Law Group's recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments <u>Pages 1 - 47</u>

Other Business

Adjournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING 7 p.m. Tuesday, July 9, 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.	<u>MIN2019-045</u>	Draft Special Committee of the Whole AM for June 18, 2019 Pages 172 - 174
2.	<u>MIN2019-046</u>	Draft Special Committee of the Whole PM for June 18, 2019 Pages 175 - 178
3.	MIN2019-047	Draft County Council for June 18, 2019 Pages 179 - 189

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. <u>AB2019-316</u> Ordinance amending WCC Chapters 20.51 and 20.71 pertaining to tree removal permit procedures, and Chapter 23.10 updating the referenced Critical Areas Ordinance in the Shoreline Management Program

Pages 190 - 201

 <u>AB2019-339</u> Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point UGA, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

Pages 202 - 206

<u>AB2019-340</u> Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities
 <u>Pages 207 - 215</u>

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 Council Finance and Administrative Services Committee)

- 1. <u>AB2019-369</u> Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services for a long-term working capital advance in an amount of up to \$300,000 <u>Pages 53 - 59</u>
- 2. <u>AB2019-372</u> Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services, Developmental Disabilities Administration for a coordinated and comprehensive program of services for persons with developmental disabilities, in the amount of \$3,678,521

Pages 60 - 87

- 3. <u>AB2019-381</u> Request authorization for the County Executive to enter into an Interlocal agreement between Whatcom County and Skagit County for participation in the Youth Marijuana Prevention and Education Program, in the amount of \$28,000 Pages 88 - 98
- 4. <u>AB2019-382</u> Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Children, Youth and Families to outline general terms and conditions of agreements between the agencies

Pages 99 - 113

5. <u>AB2019-313</u> Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Lummi Nation for repair of the Lummi (Red) River Levee (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Pages 114 - 126

- 6. <u>AB2019-385</u> Resolution authorizing an application to the Brian Abbott Fish Barrier Removal Board for North Fork Road/Kenney Creek fish passage project, CRP No. 919007 <u>Pages 127 - 132</u>
- 7. <u>AB2019-370</u> Request authorization for the County Executive to award Bid #19-39 and enter into a subsequent contract between Whatcom County and Lake Union Drydock Company for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$555,219
 Pages 133 134

(No Committee Assignment)

8. <u>AB2019-021</u> 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 216 – 236

9. <u>AB2019-167</u> Ordinance granting Glenhaven Lakes Club Inc. 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 237 - 288**

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

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

- 1. <u>AB2019-374</u> Request confirmation of County Executive's appointment of Josh Peterson to the Behavioral Health Advisory Committee Pages 289 - 292
- AB2019-375 Request confirmation of the County Executive's appointment of Marshall Gartenlaub to the Northwest Senior Services Board
 Pages 293 - 299

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 his time.

- 1. <u>AB2019-366</u> Ordinance granting Comcast Cable Communications Management, LLC, a nonexclusive franchise for the provision of cable services **Pages 300 - 359**
- 2. <u>AB2019-368</u> Ordinance granting WaveDivision I, LLC, a non-exclusive franchise for the provision of cable services

Pages 360 - 403

- 3. <u>AB2019-376</u> Ordinance amending the project budget for the Agate Heights/Estate Bay Lane Storm Water Improvements Fund, request no. 3 <u>Pages 404 - 409</u>
- 4. <u>AB2019-377</u> Ordinance amending Whatcom County Code Chapter 16.30 entitled "Lake Whatcom Stormwater Utility Funding Mechanism"

<u> Pages 410 - 420</u>

- <u>AB2019-378</u> Ordinance amending the 2019 Whatcom County Budget, request no. 9, in the amount of \$282,122
 <u>Pages 421 - 433</u>
- <u>AB2019-383</u> Ordinance amending Whatcom County Code 11.32 to protect Lake Samish water quality
 Pages 434 – 439

7. <u>AB2019-389</u> Ordinance amending Whatcom County Code 2.46.020 and 2.46.030 to revise the Whatcom County Incarceration Prevention and Reduction Task Force purpose and function

Pages 440 - 444

- AB2019-380 Resolution amending the 2019 Flood Control Zone District and Subzones Budget, request no. 4, in the amount of \$218,000
 Pages 445 - 450
- 9. <u>AB2019-379</u> Resolution vacating Safsten Road <u>Pages 451 - 472</u>

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

ADJOURN



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-387

File ID:	AB2019-387	Version:	1	Status:	Agenda Ready
File Created:	07/02/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
First Assigned Agenda Date:	to: Council Special Cor 07/09/2019	nmittee of the N Next Mtg. Da		Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Discussion of Cascadia Law Group's recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion of Cascadia Law Group's recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Potential Code Amendments, Potential Policy and CP Amendments

Final Action: Enactment Date: Enactment #:

SUBSTITUTE EXHIBIT A

Whatcom County

² Fossil Fuel Industrial Uses

³ Potential Code Amendments | Prepared by: Cascadia Law Group and BERK Consulting, Inc.

Overview

4

This document excerpts sections of the Whatcom County Code and proposes potential code changes to
 address the Comprehensive Plan Cherry Point Policy 2CC-16 and to respond to Resolution 2019-004.

- Policy 2CC-16: The County shall undertake a study to be completed if possible by December of
 2017 to examine existing County laws, including those related to public health, safety,
 development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop
 recommendations for legal ways the County may choose to limit the negative impacts on public
 safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum
 gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March
 1, 2017.
- To provide clear guidance to current and future county councils on the County's legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code.
- The County should consider any legal advice freely submitted to the County by legal experts on
 behalf of a variety of stakeholder interests, and make that advice publicly available.
- Based on the above study, develop proposed Comprehensive Plan amendments and associated
 code and rule amendments for Council consideration as soon as possible.
- Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the
 County Administration should provide the County Council written notice of all known pre application correspondence or permit application submittals and notices, federal, state, or local
- 24 that involve activity with the potential to expand the export of fossil fuels from Cherry Point.
- 25

- ²⁶ The following table identifies major code amendment topics developed by the County Council in
- 27 Resolution 2019-004. The following sections provide preliminary draft code language.

28 Exhibit 1. Potential Fossil-Fuel Code Changes – Outline and Change Location

Code Outline Topic	Location in Code Changes
1. Prohibit New Fossil Fuel Refineries	20.66.200 Prohibited uses.
	20.68.200 Prohibited uses.
2. Retain Existing Refineries as an Outright Permitted Use with Limits	20.68.050 Permitted uses.
3. Conditional Use Permit Threshold for Expansions	20.68.150 Conditional uses.
of Existing Refineries	20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment
4. Conditional Use Permit Criteria and Analysis of Greenhouse Gas Impacts of Expansions of Existing Refineries	20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment
5. Prohibit Crude Oil and Coal Export Facilities	20.66.200 Prohibited uses.
	20.68.100 Accessory uses.
	20.68.200 Prohibited uses.
6. Renewable Fuel Production and Blending Facilities as an Outright Permitted Use	20.68.050 Permitted uses.
7. Prohibit New Docks and Piers	20.74.055 Prohibited uses.
	23.100.170 Cherry Point management area.
8. Prohibit Crude Oil Transshipment Facilities	20.66.200 Prohibited uses.
	20.68.200 Prohibited uses.
9. Prohibit Coal Transshipment Facilities	20.66.200 Prohibited uses.
	20.68.200 Prohibited uses.
10. Pipelines	Not addressed per White Paper.
11. Small Oil Storage and Distribution Facilities	See definitions – not included in defined uses that are prohibited (fossil fuel refinery and fossil fuel transshipment facility).
	Chapter 20.97 DEFINITIONS

Code Outline Topic	Location in (Code Changes
12. Change of Use Provisions	20.74.110	Change of Use
13. SEPA Threshold Determination	16.08.160	Substantive authority.
14. Scrubbing the Existing Code	20.88.200	Procedure.
	22.05.020	Project permit processing table.
15. Consistency with Countywide Planning Policies	See separate	e policy evaluation document.
16. Procedural Due Process, GMA and Shoreline WAC provisions	Co-timed po planned.	licy and code amendments
17. Severability Clause	Will go into	the ordinance draft.
18. Insurance Provisions	Addressed in conditions.	permit procedures, criteria, and

30 Changes by Code Chapter

31 CHAPTER 2.11 HEARING EXAMINER

32 2.11.205 Recommended decisions

33 Add new subsection F:

34 2.11.205 Recommended decisions.

In accordance with the provisions of Chapter 22.05 WCC, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

- A. Major project permits, including major project permit applications for mitigation banks proposed in accordance with the
 provisions of Chapter 16.16 WCC;
- 39 B. Planned unit developments;
- 40 C. Development agreements, as authorized in Chapter 36.70B RCW;
- 41 D. Such other permits as may be required from the county along with subsection A or B of this section for a given project.

Where the hearing examiner would normally make a final decision to approve or deny an accompanying permit, the decision shall instead be in the form of a recommendation and accompany the hearing examiner's recommendation on the major

44 project permit or planned unit development to the county council for final approval;

- 45 E. Proposed rates and charges or special assessments for lake management districts.
- 46 F. Fossil fuel refinery expansions or fossil fuel transshipment facilities expansions in the Cherry Point Industrial District that
 47 require a conditional use permit.
- 48 Discussion/Notes: Addresses desired permit process for fossil fuel refinery expansions
 49 above threshold to be reviewed by the Hearing Examiner for Conditional Use Permit
 50 recommendations and ultimately County Council for approval.

51 CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

52 16.08.160 Substantive authority.

- A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Whatcom
 County.
- 55 B. The county may attach conditions to a permit or approval for a proposal so long as:
- 56 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in
 57 environmental documents prepared pursuant to this chapter; and
- 58 2. Such conditions are in writing; and
- 59 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- 4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal aresufficient to mitigate the identified impacts; and
- 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or otherdecision document.
- 64 C. The county may deny a permit or approval for a proposal on the basis of SEPA so long as:
- 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that

- 66 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 67 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient
 68 to mitigate the identified impact; and
- 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in thedecision document.
- D. The county designates and adopts by reference the following policies as the basis for the county's exercise of SEPA
 authority pursuant to this section:
- The county shall use all practicable means, consistent with other essential considerations of state policy, to improve
 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
- a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing
 surroundings;
- c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or
 other undesirable and unintended consequences;
- 80 d. Preserve important historic, cultural, and natural aspects of our national heritage;
- e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- f. Achieve a balance between population and resource use which will permit high standards of living and a wide
 sharing of life's amenities; and
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletableresources.
- 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that
 each person has a responsibility to contribute to the preservation and enhancement of the environment.
- 3. The county adopts by reference the policies in the following county documents:
- 89 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 90 Whatcom County Shoreline Management Program
- 91 Whatcom County Subdivision Ordinance
- 92 Whatcom County Solid Waste Management Plan
- 93 Whatcom County Critical Areas Ordinance
- All official land use controls adopted by Whatcom County.

P5 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether these regulations
 provide sufficient impact mitigation, the County shall consult orally or in writing with the responsible federal, state or
 other agency with jurisdiction and environmental expertise and may expressly defer to that agency. The County shall
 base or condition its project decision on compliance with these other existing regulations, rules, laws, or adopted
 enforceable plans. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to
 address a particular impact of a project.

- 102 <u>F. Specific Environmental Policies</u>
- 103 <u>1. Air Quality and Climate:</u>

104

105

a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life. Mitigation of criteria pollutant impacts will normally be the subject of air permits required by the

106	Northwest Clean Air Agency (NWCAA) and no further mitigation by the County shall be required. However,
107	where a project being reviewed by the County generates nuisance impacts or odors or climate impacts not
108	addressed through the regulations of NWCAA, the County may require mitigation under SEPA
109	b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows
110	and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,
111	dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global
112	phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that
113	major projects authorized by the County address climate impacts. Mitigation may be achieved through the
114	provisions contained in County land use and development regulations or through the State Environmental Policy
115	Act where land use code provisions do not address mitigation of climate impacts. Mitigation may be required for
116	the direct climate emissions of major projects (as defined under this code), the emissions from transportation
117	within the boundaries of Whatcom County generated by major projects as well as the upstream emissions
118	generated through production of raw materials processed in local facilities such as crude oil feedstocks or other
119	fuels used in production or energy generation at facilities. Climate impacts shall be assessed using the most current
120	version of the GREET Model developed by Argon National Laboratories or, where feedstocks are from Canada,
121	using the latest version of the GH Genius model developed by Canadian agencies for quantification of upstream
122	emissions from production of feedstocks produced in Canada. Climate impacts may be offset for major projects
123	through either code requirements or, if not addressed thought code requirements, through mitigation projects that
124	provide real, additional and quantifiable greenhouse gas mitigation. Such mitigation must not be required by any
125	other regulatory mechanism and there shall be no double counting of emission reductions where identified as
126	mitigation of climate impacts for a major project.
127	c. It is the County's policy to minimize or prevent adverse air quality impacts. Federal, state, regional, and county
128	regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts. If the
129	decisionmaker makes a written finding that the applicable federal, state, regional, and/or County regulations did
130	not anticipate or are inadequate to address the particular impact(s) of the project, the decisionmaker may condition
131	the proposal to mitigate its adverse impacts or, if impacts cannot be mitigated, may deny a project under the
132	provisions of the State Environmental Policy Act.
133	2. Plants and Animals:
134	a. Many species of birds, mammals, fish, and other classes of animals and plants living in both rural and urban
135	environments and are of ecological, educational, and economic value. Fish and wildlife populations are threatened
136	by habitat loss and by the reduction of habitat diversity.
137	b. It is the County's policy to minimize or prevent the loss of fish and wildlife habitat that have substantial
138	ecological, educational, and economic value. A high priority shall also be given to meeting the needs of state and
139	federal threatened, endangered, and sensitive species of both plants and animals. Special consideration shall be
140	given to anadromous fisheries and marine mammals.
141	c. It is the County's policy to ensure consistency with federal and state laws regarding treaty rights, clean water
142	rights (both water quality and water quantity), and endangered species protection. The decisionmaker may
143	condition or deny the project to mitigate its adverse impacts if the decisionmaker finds that a proposed project
144	would reduce or damage rare, uncommon, unique or exceptional plant or wildlife habitat, designated wildlife
145	corridors, or habitat diversity for plants or animals species of substantial educational, ecological, or economic
146	value, or interfere with treaty rights, clean water rights, or endangered species protection.
1 47	Discussion (Nator, If amondments are made to the Comprehensive Plan policies that the
147	Discussion/Notes: If amendments are made to the Comprehensive Plan policies then the
148	County will in effect update policies under the County's SEPA substantive authority.

149 CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

150 20.66.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not
 limited to the following, which are listed here for purposes of clarity:

- 153 .201 Reserved.
- 154 .202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.

- 155 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
- manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
 products derived thereof, and primary metal industries.
- 158 .204 In the Cherry Point District the following uses are prohibited: new fossil fuel refinery, new fossil fuel transshipment or facility unless permitted as a part of an existing refinery modification otherwise permitted under this code.
- 160 Discussion/Notes: Prohibit fossil fuel related industries in the LII District; already
- prohibited in the Bellingham UGA. It does not appear that such uses exist in the LII zone;
- 162 thus, we have only addressed the prohibition of fossil fuel refinery and fossil fuel
- 163 transshipment facility unless part of an existing refinery (e.g. transshipment).

164 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

165 20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of 166 Chapter 20.80 WCC, Supplementary Requirements, and Chapter 20.84 WCC, Variances, Conditional Uses, Administrative 167 Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom 168 County Shoreline Management Program- and implementing regulations. The purpose of the SIC numbers listed within this 169 chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies, except that some of 170 those SIC number uses and "other activities similar in nature" may be precluded by or do not otherwise meet the 171 where a state of the WCC or the county Comprehensive Plan-may preclude certain. Uses that are not expressly 172 permitted uses to occur in particular subareas. Please refer to the policies of the herein are not permitted if they are precluded 173 elsewhere in the code or in the Comprehensive Plan and any applicable subarea plan-to determine the appropriateness of a 174 and use activity listed below.). 175

.051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,
 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

(1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodateanimals intended for processing within 24 hours.

(2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered
 by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.

- (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:
- 183 (a) State waste discharge permit (Chapter 173-216 WAC);
- (b) Industrial stormwater permit general permit (Chapter 173-226 WAC);
- 185 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).
- .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and
 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.
- .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
 prefabricated wood products; wooden containers and cooperage.
- 190 .054 The following are permitted uses except as otherwise prohibited:
- (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board millproducts.
- 193 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;
- synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,
- 195 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.

196	(3) Refining and storage of	petroleum and asphalt.fossil fuels, limited as follows:

197	(a) fossil fuel refineries, existing legally as of March 1, 2017, together with allowed expansions below the thresholds in WCC
198	<u>20.68.800.</u>

- (b) fossil fuel transshipment facilities existing legally as of March 1, 2017, together with allowed expansions below the
 thresholds in WCC 20.68.800.
- Discussion/Notes: Allow existing legal fossil fuel uses with minor expansions. March 1,
 2017 date is in Comprehensive Plan policies.
- 203 (4) The manufacture and processing of rubber and plastic products.
- 204 (5) Leather tanning and finishing.
- (6) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
 mineral products.
- (7) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting,
 refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture
 of miscellaneous metal products.
- 210 (8) Storage of asphalt in the Heavy Impact Industrial Zone excluding the Cherry Point Industrial District.
- 211 Discussion/Notes: Retained from (3) above in case of construction related businesses.
- 212 (9) The refining, storage, blending, and manufacture of renewable fuels.
- Discussion/Notes: Renewable Fuel Production and Blending Facilities Could be an Outright
 Permitted Use.
- 215 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
 216 fixtures, structural metal and stamping.
- .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
 materials handling equipment; machine tools and dies; and special and general industrial equipment.
- 219 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.
- .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
 railroad equipment, bicycles and motorcycles.
- 222 .059 Bulk commodity storage facilities, and truck, rail, vessel and pipeline transshipment terminals and facilities in existence
 223 as of March 1, 2017. New fossil fuel storage and transshipment facilities other than those existing as of March 1, 2017 are
 224 expressly prohibited unless permitted under the provisions for expansions of existing facilities provided for in WCC
 225 20.68.800.
- .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
 (Chapter 20.14 WCC) or water sources.
- 229 .061 Heavy construction contractors.

.062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
 noncommercial uses, excluding state education facilities and correction facilities.

.063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
shall contain no indoor plumbing but may be served with electrical power for lighting.

98

- .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
- the Heavy Impact Industrial District in the Bellingham UGA.
- 238 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.
- 239 .066 Marijuana production or processing facility.
- 240 .081 Freight railroad switching yards and terminals.
- 241 .082 Marine port facilities.
- 242 .085 Type I solid waste handling facilities.
- 243 .086 Type II solid waste handling facilities.

244 20.68.100 Accessory uses.

- 245 .101 Employee recreation facilities and play areas.
- .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
 district.
- 248 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 251 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.
- .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.
- .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
 purpose of serving the child care needs of employees whose place of employment lies within this zone district.
- 256 .108 Electric vehicle rapid charging stations and battery exchange facilities.
- 257 .109 Fossil Fuel transshipment facilities that are a necessary part of providing raw materials to, and serving, a permitted
 258 expansion of an existing fossil fuel refinery. The volume of any storage associated with such permitted fossil fuels
 259 transshipment facilities shall be limited to the current ratio of refining capacity to storage capacity at the existing fossil fuel
 260 refinery.
- 261 Discussion/Notes: Per code outline: Prohibit coal and crude oil transshipment, except 262 where necessary to supply raw materials to permitted refining operations. Using broader 263 category of fossil fuels.
- 264 20.68.130 Administrative approval uses.
- .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
 (Exh. A), 2006).
- 268 20.68.150 Conditional uses.
- 269 The following uses require a conditional use permit in the HII Zoning District.
- 270 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:
- (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner thatallowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

- 273 (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to
- protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal
- action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval
- which might have been proposed.
- 277 .153 Expansion of existing legal fossil fuel refinery operations and the primary manufacturing of products thereof or
 278 expansion of existing legal fossil fuels transshipment facilities when proposed in excess of expansion thresholds determined
- 279 consistent with WCC 20.68.800 and subject to the conditional use permit criteria below in addition to WCC 20.84.220:
- 280 (1) The CUP approval criteria listed under WCC 20.84.220 are met;
- 281 (2) Within shorelines, County approval shall be contingent upon Department of Ecology approval of a shoreline CUP;
- 282 (3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated sources, types,
- volumes and final disposition of substances transferred in bulk at the facility. The permit shall be limited exclusively to those
 types and volumes of materials or products as documented and approved.
- 285 (4) Insurance requirements meet the provisions of WCC Section 22.05.125.
- (5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and
 Chapter 16.24 WCC, Commute Trip Reduction.
- 288 (6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to
 289 address risks created by expansions.
- (7) Prior to occupancy and/or operation of the expanded facility, the State Department of Ecology shall certify to the county
 that the facility has been constructed consistent with any applicable state requirements, including but not limited to water
 rights and use, and that plans for stormwater and wastewater releases have been approved.
- 293 (8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for
 294 any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the County building official that
 295 the project applicant has met any federal permitting needs, including properly addressing tribal treaty rights or the provisions
 296 of the Magnuson Amendment through state and federal permitting decisions;
- 297 (9) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and
- 298 (10) Demonstration that the proposal will retain or add living-wage jobs or contribute to the Whatcom County economy.
- Discussion/Notes: Addresses Conditional Use Permit for Expansions of Existing Refineries
 above Threshold in WCC 20.68.800.
- 301 .154 Treatment and storage facilities for hazardous wastes subject to the following:
- 302 (1) The eight criteria for a conditional use listed under WCC 20.84.200.
- 303 (2) The most current state siting criteria under Chapter 173-303 WAC.
- (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,
 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those
 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.
- 307 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County
 308 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from
 309 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10
 310 percent of the total local hazardous waste stream.
- (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has beenconstructed consistent with state requirements.
- (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to

- the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit
- restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,
- following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be
- 318 documented by county staff.
- (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of
- all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county
- 321 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and
- 322 inspection reporting procedures.
- 323 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an 324 inspection by a qualified and independent inspection agency satisfactory to the county.
- (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public healthand safety, the permit may be revoked by the approving body following a public hearing.
- 327 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.
- 328 .157 Trailheads with parking areas for more than 30 vehicles.
- 329 .158 Athletic fields.
- 330 .180 Major passenger intermodal terminals.
- 331 .187 Type III solid waste handling facilities; provided, that:
- (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site
- will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at
- least three feet in elevation higher than the floodway elevation;
- 335 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
- 336 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 337 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 338 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 339 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 340 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 341 (f) This 1,500-foot buffer does not apply to:
- (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 344 (ii) Inert landfills;
- 345 (3) Inert landfills shall be located at least 500 feet from the following:
- 346 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 347 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 348 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 349 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 350 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 351 (f) This 500-foot buffer does not apply to:

- (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
 the property line 100 feet or the standard zoning district setback, whichever is greater;
- (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any

356 county or state road right-of-way;

(5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
is shown to be intermittent and easily delayed until emergency conditions have passed;

- (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid
 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state
 and federal regulations concerning solid waste facilities and sites;
- (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and theclosure plan includes:
- (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
 activity, with seeding to be accomplished annually but no later than September 30th; and
- 367 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
 368 covered through the financial assurance for post-closure activities;

(8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
 of WCC 20.80.300 (Landscaping);

(9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
 delineated wellhead protection area;

373 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving

- turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
 the boundary of the airport property;
- (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary toprotect the value and enjoyment of existing adjacent uses.
- .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
 processed as a major development project pursuant to Chapter 20.88 WCC.

382 20.68.200 Prohibited uses.

- All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not
 limited to the following, which are listed here for purposes of clarity:
- 385 .201 Reserved.
- 386 .202 Adult businesses.
- .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
 products derived thereof; and primary metal industries.

390	.204 Fossil fuel refineries and the primary manufacturing of products thereof, new, after March	1.2017.

- 391 .205. Fossil fuels transshipment facilities, including bulk storage or transfer facilities for fossil fuels, new, after March 1,
 392 2017.
- 393 Discussion/Notes: Prohibit New Fossil Fuel Refineries. Prohibit Crude Oil and Coal Export

13₁₂

394 Facilities – made broader to Fossil Fuel transshipment.

395_(Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 2016-011 § 1 (Exh. L), 2016; Ord. 99-078, 1999; Ord. 99-070 § 2, 1999; Ord. 91-396075, 1991).

397 20.68.250 Minimum lot size.

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).

400 20.68.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility
development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the
frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).

404 20.68.350 Building setbacks.

405 Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).

406 20.68.400 Height limitations.

No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200
shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.

409 20.68.450 Lot coverage.

410 The maximum building or structural coverage shall not exceed 60 percent of the lot size.

411 20.68.500 Open space.

412 Repealed by Ord. 97-057. (Ord. 96-046, 1996).

413 20.68.550 Buffer area.

.551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

- 418 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
 419 structures shall be established consistent with the following options:
- (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum
 setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security
 roads, parking, or open space.
- (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the
 district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the
 setback(s) may be used for security roads, parking, or open space.
- (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to
 the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be
 situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.
- (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban
 Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be
 increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.
- (5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not
 contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and

- 434 security or protective uses.
- .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

437 .554 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so
438 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
439 2019; Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999; Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996; Ord. 89-117,
440 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

- 441 20.68.600 Sign regulations.
- 442 Sign regulations shall be administered pursuant to WCC 20.80.400.
- 20.68.650 Development criteria.
- 444 (Ord. 96-056 Att. A § A1, 1996).
- 445 20.68.651 Landscaping.
- 446 Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

447 20.68.652 Off-street parking and loading.

- Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must
 be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on
 public rights-of-way.
- 451 20.68.653 Drainage.
- All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
- project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §
 A2, 1996; Ord. 94-022, 1994).

455 20.68.654 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of
Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).

458 20.68.655 Access.

459 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).

460 20.68.656 Maintenance.

The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be responsible for assuring the care and maintenance of any natural growth, where appropriate.

463 20.68.657 Enclosure.

All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature, including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).

466 20.68.700 Performance standards.

467 20.68.701 Pollution control and nuisance abatement.

Each industry is required to continuously employ the best pollution control and nuisance abatement technology when
 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or
 regulations provide for the level of technology to be employed, the appropriate standards shall apply.

471 20.68.702 Heat, light and glare.

All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

474 20.68.703 Ground vibration.

475 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is
 476 discernible without instruments, at or beyond the property line for the use concerned.

477 20.68.704 Odors.

No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in
such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe
upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

481 20.68.705 Noise.

No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91 075, 1991).

484 20.68.706 Toxic gases and fumes.

- Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control
 Authority standards. (Ord. 91-075, 1991).
- 487 20.68.707 Liquid pollutants.
- 488 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

489 20.68.708 Appearance.

New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so
as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such
uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).

493 20.68.709 Marijuana odor.

For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a
concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon
the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to
capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or
surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh.
A, 2015).

20.68.800. EXPANSION THRESHOLDS FOR EXISTING FOSSIL FUEL REFINERIES OR FOSSIL FUEL TRANSSHIPMENT

502 .801. Limits on Refinery Capacity Expansions:

503 (1) Expansions of existing refinery production shall be permitted up to a percentage limit defined as a rolling five-year

- average of the combined regional population growth of the states of Washington and Oregon and the Province of British
- 505 Columbia as determined by their respective published government forecasts for the five years immediately preceding the date
 506 of a completed application for any necessary County permits.
- 507 (2) Storage tank capacity increases at existing refineries or transshipment facilities shall be limited to the ratio of storage to

508	refining capacity currently existing at the facilities as of March 1, 2017. See WCC 20.97.160.5 for applicable definitions.
509	(3) The capacity of a refinery or process unit is a measure of its current actual throughput averaged over the latest 3-year
	reporting period prior to the date of a completed application for any necessary County permits. The data used to calculate the
510	
511	current actual throughput average shall be obtained from official government reports from the refinery to federal or state
512	agencies regarding production of the refinery or a particular process unit to be expanded.
513	(4) Expansions of existing refineries above that threshold in subsections (1) through (3) above shall require a conditional use
514	permit consistent with the criteria of 20.68.150, Conditional Uses, and major project permits subject to Chapter 20.88.
515	(5) Expansions below the threshold are permissible with approval of amendments to a master site plan approved consistent
516	with WCC 20.74.060 and consistent with applicable project permits per Chapter 22.05.
510	with wee 20.74.000 and consistent with applicable project permits per enapter 22.05.
517	(6) Incidental increases in refinery production or throughput related to normal safety or process improvements that do not
518	exceed 1% of throughput for the prior 3-year period as calculated under subsection (3) shall not require new major projects
519	permits or conditional use permit approval and shall not trigger greenhouse gas mitigation requirements until they
520	cumulatively exceed 1% of refinery throughput.
	.082. Environmental Review and Greenhouse Gas Mitigation
521	
522	(1) State Environmental Policy Act (SEPA) review of all refinery capacity expansions shall be required.
523	(2) Greenhouse gas emission analysis required:
524	(a) For the first expansion requiring County land use permits after the date of this ordinance, a baseline calculation
525	of existing facility emissions of greenhouse gases shall be provided for the 3-year period identified in WCC
526	20.68.801(3). See facility emissions definition in WCC 20.97.124.1 for the scope and geography of the analysis.
527	Calculation of baseline greenhouse gas emissions shall follow the methodology used for greenhouse gas reporting to
528	the State of Washington.
529	(b) Facility emissions, defined in WCC 20.97.124.1, shall be quantified for each expansion of refining and storage
530	capacity in the application for land use or construction permits and in SEPA documents analyzing the impacts of an
531	expanded facility.
532	(c) The emissions analysis shall identify how mitigation will offset greenhouse gas emissions generated.
533	(d) Calculations of the baseline facility emissions and the projected increases shall be consistent with rules and
534	methods adopted by the State of Washington Department of Ecology.
535	(e) Emissions generated upstream of the refinery facility for production and transport of raw materials used for
536	refinery expansions shall be quantified using the latest version of the GREET Model developed by Argon National
537	Laboratories or, for raw materials produced in Canada, the latest version of the GH Genius model developed by
538	Canadian national agencies may be used.
539	(f) The County may condition the permit to ensure appropriate mitigation and may require periodic monitoring of
540	greenhouse gas reduction measure effectiveness. Greenhouse gas mitigation proposed by the permit applicant shall
541	be additional, real and quantifiable and shall not be required under any other regulatory mechanism.
542	(3) Local mitigation of facility emissions above 1% over existing emissions shall be required for greenhouse gases.
5.42	(a) The applicant shall identify least each on offect prejects including the type and sytem identify and expected
543	(a) The applicant shall identify local carbon offset projects including the type and extent, duration, and expected
544	greenhouse gas reductions, to the satisfaction of the County's SEPA Responsible Official. Greenhouse gas
545	mitigation proposed by the applicant shall be additional, real and quantifiable and shall not be required under any
546	other regulatory mechanism.
-	
547	(b) The County may, upon request by the Applicant, approve a fee in-lieu of providing a local mitigation project.
548	The County shall use collected fees in-lieu of mitigation for local greenhouse gas mitigation projects that are
549	additional, real and quantifiable and not required under any other regulatory mechanism. The in-lieu fee shall be set
550	at \$60 per ton of carbon, based on the following document: US Environmental Protection Agency, Technical Update
551	of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (May 2013, Revised
-	

17₁₆

552 August 2016).

553 (c) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause 554 duplication through local greenhouse gas mitigation, the County may defer to the national or state program.

555 .083 Non-Capacity Improvements

- 556 (1) Expansions of existing fossil fuel refineries for non-capacity purposes is permitted. Examples of non-capacity
 557 improvements include, but are not limited to:
- 558 (a) accessory buildings,
- 559 (b) office space,
- 560 (c) parking lots,
- 561 (d) radio communications facilities,
- 562 (e) regular equipment maintenance and replacement,
- 563 (f) safety upgrades,
- 564 (g) security buildings,
- 565 (h) storage buildings, and
- 566 (i) other similar structures or activities.
- 567 (2) This allowance does not include improvements that would expand the capacity of the refinery or the transshipment
 568 facility above the conditional use permit thresholds in subsection .081 or non-capacity improvements that would cause a net
 569 increase in or greenhouse gas emissions above subsection .082.

570 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

571 20.74.010 Purpose.

The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban
Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of
development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to
preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Exh. A § 57, 1998).

- ₅₇₆ 20.74.020 Applicability.
- 577 This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

578 20.74.030 Permitted uses.

- 579 (1) Primary permitted uses:
- (a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy
 Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.
- (b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the LightImpact Industrial District, Chapter 20.66 WCC.
- (2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related
 professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point
 Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

587 20.74.040 Accessory uses.

Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-083 Exh. A § 57, 1998).

590 20.74.050 Conditional uses.

Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98083 Exh. A § 57, 1998).

593 20.74.055 Prohibited uses.

- 594Prohibited uses shall be the same as those prohibited in the Heavy Impact Industrial District, Chapter 20.68 WCC and the
following:595following:
- 596 (1) New piers, docks, or wharves.

597 20.74.060 Master site plan requirements.

(1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including
 SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for
 applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a
 planned unit development.

(2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under commonownership if the common ownership is less than 160 acres.

(3) Each planning block shall include one lot of not less than 40 acres in size to be designated as the site for a port or major
 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
 shall be waived.

607 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.

608 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,

short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject

to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site

611 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private 612 facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation

613 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

- 614 20.74.070 Minimum lot size and parcelization.
- The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be permitted as follows:
- 617 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent618 with the master site plan requirements in this chapter.
- (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC
 consistent with the master site plan requirements of this chapter.
- (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the mastersite plan requirements of this chapter.
- (4) When the administrator finds that the lot(s) will be developed with a use(s) that is consistent with the intent of the districtand will not interfere with the development of the primary large uses intended by the Comprehensive Plan.
- (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083
 Exh. A § 57, 1998).

627 20.74.080 Design standards.

Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site

design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,

630 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,

631 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

632 20.74.090 Traffic demand management.

RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least 12
continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

- 637 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by638 December 1, 2011.
- 639 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the
- requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

641 20.74.100 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

644 20.74.110 Change of Use

- A permit is required to document a change of use, even where no alterations are planned or required by the code. This shall
 be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:
- 647 (1) Applicable building and construction codes are met per Title 15;
- 648 (2) Consistency with the requirements of the CP Industrial District, Chapter 20.74; and
- 649 (3) Transportation concurrency requirements are met per Chapter 20.78.
- Discussion/Notes: Change of Use Provisions. Focus is on consistency with the CP district
 where this permit applies.
- 652 CHAPTER 20.88 MAJOR PROJECT PERMITS

653 20.88.100 Major project permits.

654 .110 All major developments shall, prior to any construction, obtain a major project permit.

.120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost

(estimated construction cost exclusive \$5,000,000 of land value)

Size

retail

75,000 square feet

office or industrial (gross leasable floor space)	200,000 square feet
residential	300 dwelling units
motel/hotel	200 units
Number of Employees	250
SEPA Review	An EIS is required

657

- In addition the zoning administrator may make an administrative determination after receiving a recommendation from the
 technical review committee that any project be considered a major development, if in the opinion of the administration it is of
 a nature that council review would be appropriate.
- 661 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
- with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The <u>hearing</u>
 <u>examiner's</u> recommendation <u>and county council's decision</u> shall determine the adequacy of a major project permit application
- based on the following criteria:
- (1) Will comply with the development standards and performance standards of the zone in which the proposed major
 development will be located; provided where a proposed major development has obtained a variance from the development
 and performance standards, standards as varied shall be applied to that project for the purposes of this act.
- (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards forthe issuance of a conditional use permit for the zone in which the project is located.
- 670 (3) Will be consistent with applicable laws and regulations.
- (3) Will be consistent with applicable federal, state and local laws and regulations, including but not limited to state aquatics
- 672 land lease management programs, federal treaty rights review, endangered species protections, and the protection of
- 673 archeological and sensitive cultural resources. This shall be ensured by making County approvals contingent upon receipt of
- all other necessary federal, state and local laws and regulations. Site preparation and construction permits shall not be issued
 until certification by the County that all such federal, state and local approvals have been received.
- (4) Will not substantially interfere with the operation of existing uses.
- (5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as
 roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for
 such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the
 appropriate agency or division thereof.
- (6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and
 will not impose uncompensated costs on other property owned.
- 683 (7) Will be appropriately responsive to any EIS prepared for the project.
- (8) Will obtain, if required, a state aquatic lands lease, and all other necessary permits and authorizations, including federal
 determinations that the project will not interfere with treaty fishing rights of tribal nations; the limits set forth in the
 "Magnuson Amendment" under 33 U.S.C. § 476(b) (2004); Section 10 of the Rivers and Harbors Act (for structures in or
 over navigable waters of the U.S.); the Coastal Zone Management Act (including any state Department of Ecology shoreline
 conditional use or variance approval); the Clean Air Act; and/or under the Clean Water Act, including but not limited to a

4 1₂₀

- federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification, prior to
 issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project
 permit.
- .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent
 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural
 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with
 the policies for environmental protection set forth in the Comprehensive Plan.
- 696 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major
- 697 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC
- and provide relief from the specific standards and requirements thereof.

699 20.88.200 Procedure.

.205 If a major project permit is determined to be required, an application shall be completed and filed along with the
 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as
 part of the application for a major project permit. The master plan document shall include all elements required per the
 department's administrative manual.

.210 Development Standards. The master plan may propose standards that will control development of the possible future
uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks,
frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards
that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed
standards. If the proposed design standards will apply to property located partially or totally within an urban growth area,
concurrence of the affected city will be required.

.215 Procedures. Master plan review shall be conducted under current review procedures. Other land use reviews may be
 conducted concurrently with the master plan review.

- (a) Any modifications, additions or changes to an approved master plan are subject to the following:
- 713 (i) Minor changes shall be reviewed for compliance and compatibility with the approved master planmajor project
 714 permit.
- 715 (<u>1)</u> A determination is made by the director. <u>The director is authorized to consult a technical committee at his/her discretion.</u>
- 717
 718
 718
 719
 720
 720
 721
 721
 722
 723
 724
 725
 726
 727
 728
 739
 749
 740
 741
 741
 742
 742
 743
 744
 744
 744
 744
 744
 745
 745
 745
 746
 746
 747
 748
 748
 749
 749
 740
 741
 741
 742
 744
 744
 744
 744
 745
 745
 746
 746
 747
 746
 748
 748
 749
 749
 740
 740
 741
 741
 742
 741
 742
 742
 742
 742
 742
 742
 742
 744
 744
 745
 745
 746
 746
 747
 748
 748
 749
 749
 749
 740
 740
 740
 740
 741
 741
 742
 741
 742
 742
 742
 742
 742
 742
 742
 744
 744
 744
 744
 744
 745
 745
 746
 746
 746
 746
 747
 748
 748
 748
 749
 749
 749
 740
 740
 740
 740
 740
 740
- (ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in
 the unified fee schedule.
- (iii) Master plans<u>Major project permits</u> may include, as a condition of their approval, a requirement for periodic
 progress reports and mandatory updates on a predetermined interval.
- 727 .220 through .265 *Reserved*.
- .270 WhereExcept in the CP zone, where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.
- .275 Major project permits: WhereExcept in the CP zone, where an applicant has applied for a planned unit development or a development agreement, that project shall be exempt from the requirement to obtain a major project permit.
- 732 .280 Major Project Permits in the CP zone: where a project in the CP zone requires a major project permit, the major project

733 734	permit shall be concurrently processed with other required land use permits including but not limited to: Cherry Point master site plan, conditional use permit, planned unit development, or development agreement.
735 736	Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and desired review process.
737	CHAPTER 20.97 DEFINITIONS
738 739 740	Discussion/Notes: Definitions added are based on a review of federal (US Energy, US Census, Code of the Federal Register), County Ordinance NO. 2018-007, Resolution 2019-004 and examples addressed in the White Paper.
741	20.97.124.1 Facility Emissions.
742 743	"Facility Emissions" are greenhouse gas emissions associated with fossil fuel refineries or fossil fuels transshipment facilities including but not limited to:
744 745	(1) the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy Industrial area, and
746	(2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area.
747	(3) the upstream emissions generated by the production and transport of raw products to the facility.
748	20.97.160.2 Fossil Fuels.
749	"Fossil fuels" include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils. All contain carbon and
750	were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.
751	20.97.160.3 Fossil Fuels Transshipment Facilities.
752	"Fossil Fuel Transshipment Facility" is the process of off-loading a container of fossil fuel materials, refined or unrefined,
753 754	refinery feedstocks, products or by products, from one transportation facility and loading it onto another transportation facility for the purposes of transporting such products into or out of Whatcom County.
755	20.97.160.4 Fossil Fuel Refinery.
756	A "Fossil Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not
757 758	limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of
759	fossil fuels or by products.
760	20.97.160.5 Fossil Fuel Refinery Capacity.
761	"Fossil Fuel Refinery Capacity" means the extent of refinery production capacity in relation to storage capacity. "Storage
762 763	Capacity" is defined as total volume of all tanks at a facility and "Refining Capacity" is defined as the current actual throughput averaged over the latest 3-year reporting period prior to the date of a completed application for any necessary
764	County permits obtained from official government reports from the refinery to federal or state agencies regarding production
765	of the refinery or a particular process unit to be expanded.
766	20.97.160.6 Fossil Fuel, Unrefined.
767 768	"Unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats excluding those
769	that are the byproduct of refinery processes in the Cherry Point UGA; and condensate.

23₂₂

770	20.97. 350.1 Renewable Biomass
771	"Renewable biomass" includes but is not limited to the following:
772	(1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated.
773	(2) Planted trees and tree residue from a tree plantation located on non-federal land.
774	(3) Animal waste material and animal byproducts.
775	(4) Slash and pre-commercial thinnings from non-federal forestland.
776 777	(5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from within 200 feet of buildings and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.
778	(6) Algae.
779	(7) Separated yard waste or food waste, including recycled cooking and trap grease.
780 781	(8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport. 20.97.350.2 Renewable Fuel
782 783	"Renewable Fuel" means liquid fuels produced from renewable biomass. Denatured ethanol and similar fuel additives with
784 785 786	less than 5 percent fossil fuel content, or biodiesel/renewable diesel with less than 5 percent fossil fuel content are considered renewable fuels. Renewable fuels shall not include products produced from palm oil or other feedstocks that cannot be proven to reduce greenhouse gases utilizing accepted methods of the Washington State Department of Ecology or US EPA.
787	20.97.434.1 Technical committee.
788 789 790	"Technical committee" or "technical review committee" means the designated representatives of the Whatcom County Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and the Whatcom County Health Department Director.
791	CHAPTER 22.05 PROJECT PERMIT PROCEDURES
792	22.05.020 Project permit processing table.

(1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or
administrative actions. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040
through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in
the table.

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre- Application Required (see 22.05.040)	Determination of Complete- ness Required (see 22.05.050)	Application Required	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line Adjustment	21.03							Administrator	Hearing Examiner
Building Permit	15.04	(f)						Administrator	Hearing Examiner (i)
Natural Resource Assessment	Title 16							Administrator	Hearing Examiner

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre- Application Required (see 22.05.040)	Determination of Complete- ness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Change of Use, Cherry Point Industrial District	Chapter 20.74							<u>Administrator</u>	<mark>Hearing</mark> Examiner
Commercial Site Plan Review								Administrator	Hearing Examiner
Exempt Land Division	21.03							Administrator	Hearing Examiner
Floodplain Development Permit	Title 17							Administrator	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80							Administrator	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97.220							Administrator	Hearing Examiner
Nonconforming Use	20.83							Administrator	Hearing Examiner
Removal of Development Moratorium	20.80.738(3)								
Shoreline Exemption	23.60	(a)						Administrator	Hearing Examiner
Zoning Interpretation	22.20							Administrator	Hearing Examiner
Type II Applicatio	ons (Administrat	ive Decision w	vith Public Notic	e; No Public I	Hearing)				
Administrative Use	20.84.235							Administrator	Hearing Examiner
Lot Consolidation Relief	20.83.070							Administrator	Hearing Examiner
Reasonable Use (b)	16.16							Administrator	Hearing Examiner
Shoreline Substantial (c)	23.60	(a)						Administrator (d)	Shorelines Hearings Board (h)
Shoreline Conditional Use (c)	23.60	(a)						Administrator (d)	Hearing Examiner
Short Subdivision	21.04							Administrator	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	20.84.200						Hearing Examiner	Hearing Examiner	Superior Court

25₂₄

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre- Application Required (see 22.05.040)	Determination of Complete- ness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Floodplain Development Variance	Title 17						Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05						Hearing Examiner	Hearing Examiner (g)	Superior Court
Binding Site Plan	21.07						Hearing Examiner	Hearing Examiner (g)	Superior Court
Reasonable Use (e)	16.16						Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)						Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Substantial	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Variance	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Zoning or Critical Areas Ordinance Variance	20.84.100 or 16.16.270						Hearing Examiner	Hearing Examiner	Superior Court
Type IV Applicati	ons (County Cou	uncil Decision	with Public Not	ice and Public	Hearing)				
CP Industrial District Conditional Use Permit for Fossil Fuel Refinery Expansion	<u>20.68. 150,</u> <u>20.84.200</u>						Hearing Examiner	County Council	Superior Court
Development Agreement	2.11.205						Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88						Hearing Examiner	County Council	Superior Court
Planned Unit Development	20.85						Hearing Examiner	County Council	Superior Court

797

798 Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

799 800 Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and desired review process.

801 22.05.110 Final decisions - Type I, II, and III applications

802 (1) The director or designee's final decision on all Type I or II applications shall be in the form of a written determination or
 803 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
 804 comply with all applicable codes.

(2) The hearing examiner's final decision on all Type III applications per WCC 22.05.020 or appeals per WCC 22.05.160(1)
shall either grant or deny the application or appeal.

(a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the
 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives
 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives
 of Whatcom County.

- 811 (b) <u>Requirements:</u>
- 812 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure
 813 compliance with the conditions, modifications and restrictions.
- 814 (ii) Fossil Fuel Refinery or Fossil Fuels Transshipment Facilities: The applicant shall provide insurance consistent
 815 with Section 22.05.125.

(c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony
and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions
based on the record to support the decision.

- (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as
 provided herein.
- (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018032 § 1 (Exh. A)).

22.05.120 Recommended Recommendations and final decisions to county council. Type IV applications

826 (1) For Type IV applications per WCC 22.05.020 the hearing examiner's recommendations to the county council may be to
827 grant, grant with conditions or deny an application. The hearing examiner's recommendation may include conditions,
828 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the
829 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and
830 objectives of Whatcom County.

(2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.

- (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and
 Chapter 42.36 RCW.
- 837 (4) For planned unit developments and major project permits the following shall apply:
- (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

(b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar daysfollowing the conclusion of the open record hearing.

(c) The county council shall conduct the following within the specified time frames, except as provided in subsection
(4)(c)(iii) of this section:

41 26

- (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
 calendar days after receiving the hearing examiner's recommendation.
- 846 (ii) Issue a final written decision within 21 calendar days of the public meeting.
- (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
 written findings that a specified amount of additional time is needed to process a specific application or project
 type, per RCW 36.70B.080(1).
- (5) The county council's final written decision may include conditions when the project is approved and shall state thefindings of fact upon which the decision is based.
- 853 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance
 854 with the conditions, modifications and restrictions.
- 855 (b) Fossil Fuel Refinery or Fossil Fuels Transshipment Facilities: The applicant shall provide insurance consistent with
 856 Section 22.05.125.
- (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by
 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code. applicable state
 laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management master
 program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the
 county code, and the county's adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).
- 862 22.05.125 Proof of insurance for hazards created in the County
- 863 At the time of application for an expansion of refinery capacity, the applicant shall provide proof of insurance to cover loss or
- 864 damages to the County and to County residents from any fire, explosion, spill or other incident from operations of the
- refinery or from transport of raw materials or finished products within the boundaries of Whatcom County. The required
 policies shall contain the following Coverage Terms:
- 867 (1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional
 868 Insured and shall be provided complete copies of applicable insurance policies and endorsements.
- 869 (2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third-party bodily injury, property
 870 damage or environmental remediation and restoration expenses resulting from pollution conditions commencing on or after
 871 the Permit effective date, either:
- 872 (a) emanating from and beyond the boundaries of a Permitted Facility, or
- 873 (b) arising from products, materials or waste during transportation to or from a Permitted Facility.
- 874 (3) Policy Limits: Policy limits shall be no less than \$50 million for each Loss / total for all Losses. The required limits may
 875 be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.
- 876 (4) Policy Deductibles: The Insurer shall be liable for the payment of amounts within any deductible or self-insured retention
 877 amount applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer.
- 878 (5) Cancellation Notice: Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable
- 879 interest in and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon
- written notice and only after the expiration of 60 days after a copy of such written notice is received by the County as
 evidenced by the return receipt.
- 882 (6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.
- 883 (7) Primary to Other Insurance: The Policy shall provide primary coverage regardless of any other applicable insurance.
- 884 (8) Choice of Law and Forum: The Policy shall provide that the laws of the State of Washington shall apply in the event of

885 886	any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any term, condition, definition or provision of the Policy.
887 888 889	(9) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating from A.M. Best of "A" (Excellent) with a minimum Financial Size Category of XIV and a "Stable" or stronger Outlook, or the equivalent from another major financial rating agency.
890	(10) Definitions: For the purposes of this section, terms are defined as follows:
891 892	(a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any fixed conveyances such as pipelines and terminal distribution systems.
893	(b) Loss shall include:
894	(i) monetary awards or settlements of compensatory damages;
895	(ii) where allowable by law, punitive, exemplary, or multiple damages; and
896	(iii) civil fines, penalties, or assessments.
897	(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid,
898 899	liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors, soot, fumes, acids, alkalis, or other chemicals.
900	(d) Transportation shall include movement by any vehicle or mode of transit including automobile, railway or
901	watercraft, including loading, temporary placement during transit prior to final delivery, or unloading, of products,
902	materials or waste, either:
903	(i) intended for delivery to a Permitted Facility, or
904	(ii) being sent from a Permitted Facility.
905	CHAPTER 23.100 SHORELINE USE POLICIES AND REGULATIONS
906	23.100.170 Cherry Point management area.
907	A. Policies.
908	1. Purpose and Intent.
909 910 911 912	a. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This section identifies policies and regulations for water-dependent industrial activities that apply in addition to specific other elements of this program as referenced herein.
913 914 915	b. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point management area as providing herring spawning habitat and other key habitat characteristics that warrant special consideration due to their importance to regional fisheries and other elements of the aquatic environment.
916 917	c. Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require marine access for marine cargo transfer, including oil and other materials. For this reason, water,
918 919 920	i. Water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.
921 922	d. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic
923	lands within the Cherry Point management area. The development of such a plan could provide a forum and
924	process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future

29₂₈

925	amendments to this program as appropriate.
0.24	ii. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations with
926	
927	limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance
928	with the Shoreline Master Program and other applicable land use designation.
929	iii. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing
930	three piers in operation or approved as of January 1, 1998, taking into account the need to:
931 932	 Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point Herring stock and Southern Resident Killer Whales;
933 934	• Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance per WCC 23.40;
935	• Encourage the continued agency use of best available science;
936	• Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry
937	Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry
938	Point Aquatic Reserve designation and Management Plan;
939	• Recognize federal actions upholding treaty rights;
940	 Protect traditional commercial and tribal fishing; and
941	• Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil
942	or fuel spills.
943	d. Whatcom County should ensure that shoreline developments demonstrate conformance with the State of
944	Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.
0.15	
945	e. All development that is to be located within the Cherry Point management area, as defined in Chapter 23.110
946	WCC, shall be subject to the policies and regulations found in this section, and shall not be subject to the policies
947	and regulations found in WCC 23.100.010 through 23.100.160, nor Chapter 23.90 WCC, unless otherwise
948	referenced in this section. The policies and regulations found in this section are applicable only within the
949	geographic boundaries of the Cherry Point management area and do not apply elsewhere in the county. In the event
950	that the provisions of this section conflict with other applicable referenced provisions of this program, the policies
951	and regulations that are most protective of shoreline resources shall prevail.
952	Discussion/Notes: Above amendments are similar to those in the Comprehensive Plan
953	policy changes.
954	2. Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be
955	allowed in the Cherry Point management area. Industry within the major port/industrial urban growth area, as designated
956	in the County Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.
957	3. Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking and other
957 958	accessory facilities are encouraged.
959	4. Public Access.
960	a. Where appropriate, industrial and port development within the Cherry Point management area should provide
961	public beach and shoreline access in a manner that does not cause interference with facility operations or present
962	hazards to life and property. This may be accomplished through individual action or by joint, coordinated action
963	with other developers and landowners, for example, by setting aside a common public access area.
964	b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities
	including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.
965	meruung out not minicu to craoonig, sman crait faunching, suir fishing, pichicking, cianning, and deach Walking.
966	c. Public access within the Cherry Point management area should be consistent with the Whatcom County Parks
967	and Recreation Open Space Plan.
	······································

- 5. Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological resources in the
 Cherry Point management area, consideration of probable effects of all development proposals on shoreline ecological
 functions and processes should be assessed with the other long-term statewide interests. New port development that
 requires dredge and fill should not be permitted in the Cherry Point management area due to potential adverse effects on
 ecological functions, including fish and shellfish habitat and geohydraulic processes.
- 6. Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the scenic characterof the area and to ensure visual compatibility with adjacent nonindustrial zoned properties.
- 7. Site Development. All development should be constructed and operated in a manner that, while permitting waterdependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates the
 following:
- a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water
 quality, fish and wildlife habitat, and other natural site conditions;
- b. Adequate temporary and permanent management measures to control erosion and sediment impacts duringconstruction and operation; and
- 982 c. Adequate stormwater management facilities.
- 983 Discussion/Notes: Be consistent with Comprehensive Plan Policies. Prohibit New Docks and
 984 Piers.
- 985 B. Regulations.
- 986 1. Allowed Use.
- a. Water-dependent industrial and port uses are allowed within the Cherry Point management area; provided, that
 specific findings are made in a shoreline substantial development permit or conditional use permit that:
- 989 i. Policies for optimum implementation of the statewide interest have been achieved through protection of990 shoreline ecological functions and processes;
- ii. The long-term statewide benefits of the development have been considered with the potential adverse impactson ecological functions; and
- iii. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated in the proposal.
- 995 b. <u>Fuel Uses:</u>

996	i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of
997	March 1, 2017 are permitted shoreline uses. Expansions of existing legal fossil fuel refineries below
998	thresholds of the zoning code at WCC 20.68.800 are subject to review as shoreline substantial development
999	permits. Expansions of existing legal fossil fuel refineries above thresholds at WCC 20.68.800 require a
1000	shoreline conditional use permit.
1001	ii. Fossil fuels transshipment facilities as a primary use are prohibited. Those that are a necessary part of
1002	providing raw materials to, and serving, a permitted expansion of an existing fossil fuel refinery shall
1003	require either shoreline substantial development permit or a shoreline conditional use permit dependent on
1004	the level of expansion as identified in subsection b.i.
1005	iii. Refining, storage, blending, and manufacture of renewable fuels is allowed as a shoreline substantial
1006	development permit.
1007	c. Water-related and water-enjoyment uses are allowed only as part of public access and public recreation
1008	development, subject to the findings in subsection (B)(1)(a) of this section.
1009	ed. Accessory development, which does not require a shoreline location in order to carry out its support functions,
1007	shall be sited away from the land/water interface and landward of the principal use. Accessory development shall
1010	shan be shey away nom the fang/water micrace and fangward of the difficidat use. Accessory development shan

31₃₀

- observe critical area buffers in Chapter 16.16 WCC. Accessory development includes, but is not limited to,
 parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land
 transport development.
- 1014de.Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that1015are located and designed to minimize shoreline alteration are permitted.
- 1016 ef. Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are
 1017 prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have
 1018 been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.
- 1019 Discussion/Notes: Consistency with Zoning Code changes.
- 1020 2. Public Access.
- a. Public access shall be provided in accordance with WCC 23.90.080 unless it is demonstrated that public access
 poses significant interference with facility operations or hazards to life or property.
- b. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access
 may be provided in accordance with WCC 23.90.080 at a location not directly adjacent to the water such as a
 viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include
 interpretive centers and displays that explain maritime history and industry; provided, that visual access to the
 water is also provided.
- 1028 c. As an alternative to on-site public access facilities, public access may be provided in accordance with a public
 1029 access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.
- Critical Areas. In addition to meeting the provisions of WCC 23.90.030, Ecological protection and critical areas,
 development and alteration shall not be located or expanded within critical areas designated pursuant to Chapter 16.16
 WCC except where the site is approved for water-dependent use, and the following are met:
- a. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with
 WCC 23.90.030.
- b. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall
 demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade
 the existing water quality within the wetland.
- c. The minimum required setback from the OHWM for all industrial and port facilities, including development
 components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs
 and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such
 setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.
- 1042d. Development and alteration other than recreation development for public and quasi-public shoreline access is1043prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations1044in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations1045of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained1046subject to the provisions of WCC 23.50.070.
- 1047 4. Location and Design.
- 1048 a. Piers.

i. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the movement of material and cargo from land to water and water to land. The length of piers shall not extend
 beyond that which is necessary to accommodate the draft of the vessels intending to use the facility. Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one pier, in addition to those in operation as of January 1, 1998.

ii. Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlifehabitats.

1056 iii. Piers shall be designed to minimize impacts on steep shoreline bluffs.

1057 iv. All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials 1058 that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other 1059 structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or 1060 pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated 1061 wood is allowed for maintenance purposes where use of a different material such as steel or concrete would 1062 result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 1063 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction 1064 provisions of this section. 1065

- 1066 v. All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.
- vi. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers,
 except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means
 nonportable storage in fixed tanks. Secondary containment shall be provided for portable containers.
- vii. All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other
 properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and
 approved for compliance with U.S. Coast Guard regulations.
- b. Dredging.
- i. Dredging to accommodate water access to, or construction of, new development is prohibited. New
 development shall be located and designed to avoid the need for dredging. Dredging for existing development
 shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and
 wildlife habitats.
- 1078 ii. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations
 1079 in WCC 23.90.120(B)(4) and (5), Dredging.
- iii. Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C ofthis title.
- c. Landfill is prohibited, except for the minimum necessary to access piers or other structures that provide access to
 the water. Pier design should accommodate the connection between the pier and uplands by employing a pile supported structure to the point of intersection with stable upland soils. Limited landfill may be allowed for pier
 access that does not extend further toward the OHWM than existing topography.
- 1086 d. Excavation/Stabilization.
- 1087i. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other1088structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration1089will adversely affect the existing littoral drift process. New development shall avoid, rather than modify, feeder1090bluffs.
- 1091 ii. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
- e. Shore defense works shall be regulated in accordance with WCC 23.100.130, Shoreline stabilization, and be consistent with the conservancy and aquatic shoreline area regulations of that section.
- 1094 5. Adjacent Use.
- 1095a. New or expanded port or industrial development adjacent to properties which are zoned for nonindustrial1096purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare;1097and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual1098screen.
- b. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for nonport or
 nonindustrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent

ა 3₂

- hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to,
 limits on height of structure, limits on light levels of fixtures, light shields and screening.
- c. The minimum setback from side property lines which intersect the OHWM for industrial and port development
 shall be 60 feet; provided, that:
- i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard houses, power vaults or transformers; and
- ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management
 area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
- 1109d. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but1110may be used for public access or outdoor recreation.
- 1111 6. Oil and Hazardous Materials.
- a. Release of oil or hazardous materials on shorelines is prohibited.
- 1113b. A management plan shall be developed for new permitted or conditionally permitted development for the safe1114handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic1115waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may1116occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill1117management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this1118section.
- 1119 c. Necessary spill containment facilities associated with existing development may be permitted within shoreline 1120 jurisdiction where there are no feasible alternatives.
- 7. Recreational Development. All recreational development shall comply with the policies and regulations of WCC
 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.
- 1123 8. Archaeological, Historic and Cultural Resource Management. All development associated with archaeological,
- historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070. (Ord. 2014-051 §§ 5, 6; Ord. 2009-13 § 1 (Exh. 1)).

1126 CHAPTER 23.110 DEFINITIONS

1127Discussion/Notes: Definitions added are based on a review of federal (US Energy, US1128Census, Code of the Federal Register), County Ordinance NO. 2018-007, and examples1129addressed in the White Paper.

1130 23.110.060 F definitions.

- 27. "Fossil fuels" include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils. All contain carbon and 1131 were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels. 1132 28. "Fossil Fuel Transshipment Facility" is the process of off-loading a container of fossil fuel materials, refined or 1133 unrefined, refinery feedstocks, products or by products from one transportation facility and loading it onto another 1134 1135 transportation facility for the purposes of transporting such products into or out of Whatcom County. 29. "Fossil Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not 1136 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, 1137 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of 1138 fossil fuels or by products. 1139
- 1140 Discussion/Notes: Consistency with Zoning Code changes.

1141 23.110.090 I definitions.

1142 4. "Industrial development" means facilities for processing, manufacturing, and storage of finished or semi-finished goods, including but not limited to oil, metal or mineral product refining, power generating facilities, including hydropower, ship 1143 building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of 1144 fuels, commercial storage and repair of fishing gear, warehousing, construction contractors' offices and material/equipment 1145 1146 storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of 1147 raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an 1148 agricultural use. This definition excludes fossil fuel refineries. 1149

1150 Discussion/Notes: Consistency with Zoning Code changes.

1151 23.110.150 O definitions.

2. "Oil" means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to,
 crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. <u>See Fossil Fuels.</u>

1154 Discussion/Notes: Consistency with Zoning Code changes.

1155 23.110.160 P definitions.

1156 10. "Port development" means public or private facilities for transfer of cargo or passengers from water-borne craft to land and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil fuels transshipment facilities.

1163 Discussion/Notes: Consistency with Zoning Code changes.

1164 23.110.180 R definitions.

- 1165 <u>6. "Renewable biomass" includes but is not limited to the following:</u>
- 1166 (1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated.
- 1167 (2) Planted trees and tree residue from a tree plantation located on non-federal land.
- 1168 (3) Animal waste material and animal byproducts.
- 1169 (4) Slash and pre-commercial thinnings from non-federal forestland.
- 1170 (5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from within 200 feet of buildings
 1171 and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.
- 1172 (<u>6) Algae.</u>
- 1173 (7) Separated yard waste or food waste, including recycled cooking and trap grease.
- 1174 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to
 1175 customary feedstock production and transport.

1176 7. "Renewable Fuel" means liquid fuels produced from renewable biomass. Denatured ethanol and similar fuel additives
 1177 with less than 5 percent fossil fuel content, or biodiesel/renewable diesel with less than 5 percent fossil fuel content are
 1178 considered renewable fuels. Renewable fuels shall not include products produced from palm oil or other feedstocks that
 1179 cannot be proven to reduce greenhouse gases utilizing accepted methods of the Washington State Department of Ecology or
 1180 US EPA.

35₃₄

1181

36RAFT June 11, 2019; Updated June 18, 2019 Whatcom County | Fossil Fuel – Potential Code Amendments

1 Whatcom County

₂ Fossil Fuel Policies and Potential Amendments

3 Policy Evaluation | Prepared by: Cascadia Law Group and BERK Consulting, Inc.

4 Countywide Planning Policies

5 E. NON-CITY URBAN GROWTH AREAS

3. Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of
existing large scale industrial land uses. Additional large scale development shall be encouraged
consistent with the ability to provide needed services and consistent with protecting critical areas along
with other environmental protection considerations. The Cherry Point industrial area is an important and
appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its
location near the Canadian border, and its contribution to the County's goal of providing family wage
jobs.

- 13 Evaluation Policy E.3: No specific change required. Even if fossil-fuel refinement and
- 14 related fossil-fuel industries are limited with policy and code changes, a wide range of
- 15 industrial uses are still allowed in upland industrially zoned areas in Cherry Point. In-water
- 16 shipping is limited to existing facilities per the State of Washington Department of
- 17 Natural Resources (DNR) Cherry Point Aquatic Reserve Management Plan.

18 I. ECONOMIC DEVELOPMENT AND EMPLOYMENT

19 2. New business development and expansion of existing businesses are key factors in providing "family 20 wage" jobs and a strong tax base. Economic development that pays family wage rates should be 21 encouraged. Industrial land designations must be sufficient to permit the concentration of industry in 22 appropriate locations beyond 20 years. In order to attract new industry and provide for expansion of 23 existing industries, the county and the cities will designate land supply of sufficient size and diversity to 24 provide a range of suitable locations for industrial development. The designation of this land shall be 25 established in a way that preserves natural resource based industries and critical areas.

3. To provide sufficient land supply for industrial growth and development, industrial designations must not only include lands suitable for development, but also lands suitably zoned to provide adequate buffers. It is also important that these lands and buffers be conserved with appropriate land use and zoning provisions to ensure that they will be available for future use.

4. Encourage business location, retention, and expansion according to city and county comprehensive
plans in order to meet current and future demand for diverse business and industry. Work with funding
agencies and the private sector to facilitate extension of adequate sewer, water, telecommunications and
road access to existing commercial and industrial-zoned properties, creating shovel-ready sites. Cities
and county may utilize the "Quick Sites" economic development program through OTED, which links

- strategic elements of planning, zoning, environmental review, and permitting with the business-sitingeffort.
- Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our
 access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the
 international border.
- 40 Evaluation, Policies 1.2, 1.3, 1.4 and 1.11: The proposed policy and code changes continue 41 to allow development of non-fossil-fuel industries, and review criteria for expansion of 42 existing uses relies on implementing existing critical area regulations and other state and 43 federal requirements, e.g. Cherry Point Aquatic Reserve Management Plan, Magnuson Act.
- 10. The cities and county agree to set policies for approving proposals to authorize siting of Major
 Industrial Developments for large or resource-based industries outside of Urban Growth Areas (as per
 RCW 36.70A.365). The master planning process for specific manufacturing, industrial, or commercial
 businesses shall address infrastructure, buffers, environmental protection, sprawl, resource lands, critical
 areas, and land supply.
- 49 Evaluation 1.10: The code changes provide more explicit master plan process review 50 criteria that implement this policy. The new code changes are designed to support 51 environmental protection and critical areas.

52 Comprehensive Plan

53 LAND USE ELEMENT

Policy 2D-6: Review and update the Whatcom County Shoreline Management Program in accordance
with the schedule in the Shoreline Management Act (RCW 90.58.080). Updates should improve the
integration of the Shoreline Program with Growth Management and with the Cherry Point Aquatic
Reserve Management Plan in order to provide predictability and consistency in regulation, and eliminate

- 58 regulatory redundancy.
- Evaluation, 2D-6: This policy supports proposed amendments to the SMP to address
 Cherry Point Aquatic Reserve Management Plan.

Policy 2J-4: Protect culturally and spiritually significant places from nonessential development that is
viewed as incompatible by the affected community.

- 63 Evaluation, 2J-4: Per the Comprehensive Plan, the "Lummi Nation and Western
- 64 Washington University have identified an ancestral village dating back over 3,000 years
- 65 ago in this area. The Cherry Point UGA contains sites of primary archeological and
- 66 cultural significance." Policy 2CC-3 calls for Archeological review in Cherry Point. There
- 67 are no implementing review criteria in the master site plan regarding avoiding impacts to 68 cultural resources.
- Policy 2L-2: Retain and periodically review the adopted Subarea Plans (Lummi Island, Cherry Point Ferndale, Urban Fringe, Birch Bay Community Plan, Foothills, and Point Roberts).

- Evaluation, Policy 2L-2: This subarea plan is in the process of being repealed. Planning
 Commission staff report:
- 73 <u>http://www.co.whatcom.wa.us/DocumentCenter/View/35465/Cherry-Point-Packet</u>
- 74 Listed in March 2019 public participation plan for docket in 2019.
- 75 <u>https://www.whatcomcounty.us/DocumentCenter/View/40344/pln2019-00009-draft-</u>
 76 <u>ppp-March-2019</u>
- 77 Major Industrial Urban Growth Area / Port Industrial
- 78 Cherry Point Text
- 79 The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The
- 80 land has long been planned and designated by Whatcom County for industrial development and is
- 81 currently the site of three major industrial facilities including two oil refineries and an aluminum smelter.
- 82 Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands.
- A fourth large tract of undeveloped land constituting approximately 1,500 acres is designated for an industrial development
- 84 industrial development.
- 85 Because of the special characteristics of Cherry Point, including deep water port access, rail access, and
- 86 proximity to Canada, this area has regional significance for the siting of large industrial or related
- 87 facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet
- 88 constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry
- 89 Point Refinery in 1971.
- 90 Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual
- 91 and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. The
- 92 Lummi Nation and Western Washington University have identified an ancestral village dating back over
- 93 3,000 years ago in this area. The Cherry Point UGA contains sites of primary archeological and cultural
- 94 significance.
- 95 Since the designation of this area for industrial development years ago, newer scientific study of the 96 shoreline ecology has identified Cherry Point's unique function as part of the Fraser River/Georgia Strait 97 and greater Salish Sea ecosystem and the associated Cherry Point Aquatic Reserve has been designated 98 by the state Department of Natural Resources to recognize the ecological importance of the aquatic
- 99 lands in this area.
 - 100 Since adoption of earlier versions of this Comprehensive Plan, governments have increased their
 - 101 recognition of the observed and projected effects that fossil fuel extraction, transportation and use have 102 on human health and the environment.
 - Evaluation: The background conditions are generally the same today. The proposed policy/code changes do not require a consistency amendment. However, the Preliminary Draft Text Changes dated January 15, 2019 (to the second paragraph) are compatible.
 - Because of the special characteristics of Cherry Point, including deep water port
 access, rail access, and proximity to Canada, this area has regional significance
 for the siting of large industrial or related facilities. General Petroleum constructed
 the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the
 Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the

111	Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA,
112	which provide significant employment, have produced and shipped refined fossil
113	fuels and other products for decades.

114 Environmental – Text

115 The Cherry Point shoreline has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington 116 117 State. This herring stock has supported important commercial fisheries in the past and provides forage for 118 salmonids and other important marine species. In 2000, 2010, and 2017 the State Lands Commissioner 119 ordered the Cherry Point tidelands and bedlands withdrawn from the state's general leasing program 120 and designated them as the "Cherry Point Aquatic Reserve." The following DNR Use Authorizations are 121 exempted from withdrawal: Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), and 20-010521 (Birch Bay Water and Sewer 122 123 District). In December 2010, the DNR recognized the need to "protect the significant environmental 124 resource of aquatic lands at Cherry Point" (CPAR Management Plan p. 1), and completed the Cherry 125 Point Environmental Aquatic Reserve Management Plan to ensure long-term environmental protection of 126 the Aquatic Reserve. The Reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. 127

128

Evaluation: Allow for existing in-water facilities consistent with DNR Management Plan.

129 ... Much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff

130 processes proceed without interference. Existing shoreline and upland stream and wetland functions and

values are of continuing importance to the recovery and protection of species identified in the Aquatic
 Reserve Management Plan. The area includes undeveloped intertidal wetlands with importance to

133 juvenile salmon and other species. Existing industries can serve the Aquatic Reserve's objectives so long as

134 they are managed according to the Plan and so long as the lessees actively work to further goals for the

135 Reserve (CPAR MP p. 2).

136

Evaluation: Allow for existing industrial facilities consistent with DNR Management Plan.

137 ...Whatcom County does not enforce the Magnuson Amendment through the local permitting process.

138 However, the County does encourage federal agencies to enforce the Magnuson Amendment. Therefore,

139 the County will strive to make appropriate federal agencies aware of applications for development

140 permits submitted to the County that may be subject to federal agency review under the Magnuson

141 Amendment before issuing local permits when possible (see Policy 2CC-15).

142	Policy 2CC-15 addresses this text. Language like the Policy could be implemented in
143	master site plan criteria:
144	Policy 2CC-15: Whatcom County will encourage federal agencies, including t

Policy 2CC-15: Whatcom County will encourage federal agencies, including the
 U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson
 Amendment (33 USC Sec. 476). To accomplish this the County will make
 appropriate federal agencies aware of applications for development permits
 submitted to the County that staff thinks may be subject to federal agency review
 under the Magnuson Amendment.

- 150 Cherry Point UGA Features: Port Access Text
- 151 The marine waters off Cherry Point provide deepwater access for shipping. Deepwater access for
- 152 shipping was a major siting consideration for the three major industries currently located at Cherry Point.
- 153 Evaluation: Allow for existing in-water facilities consistent with DNR Management Plan.
- 154 Cherry Point UGA Features: Proximity to Canada, Alaska and Foreign Ports Text

Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada 155 and because of its shorter travel distance than other regional port facilities for shipping to and from 156 157 Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for 158 commercial or industrial production with emphasis on major sustainable clean energy manufacturing or 159 production (see Policy 2CC-3). The Cherry Point industrial area benefits from proximity to Canada, as 160 161 trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting 162 to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. 163 164 Compared to other port facilities in Washington and Canada, Cherry Point is not constrained by 165 extensive upland development or vessel draft limitations.

- Evaluation: Proposed policy and code amendments continue to allow for port uses. Existing fossil fuel industrial can continue; growth of existing facilities could occur based on growth
- in demand in the facility service area.
- 169 Cherry Point: Use Compatibility and Land Use Designation Text

170 The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom 171 County and the region and the economic welfare of the county is strongly tied to the health of these 172 industries and their ability to flourish and expand as opportunities present themselves. These industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential 173 174 uses that could affect their ability to expand, at the same time, the expansion of these industries needs to 175 be done in ways that do not significantly impact the ecology of the Salish Sea or encourage expanded 176 transshipment of unrefined fossil fuels. The best means for protecting these industries from incompatible adjoining uses and to assure their continued regulatory conformity is to maintain the industrial land use 177 178 designation of these lands and adjoining properties currently designated for industrial development. The 179 Cherry Point industrial lands have been designated for industrial development and as a direct result of 180 the industrial designation, incompatible and inappropriate residential development has been curtailed.

181 Evaluation: Proposed code changes are meant to avoid ecological impacts and without
 182 expanded transshipment of unrefined fossil fuels.

183 Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location,
 184 characteristics and its significant contribution to the overall industrial land supply and Whatcom County's
 185 tax base.

Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area to accommodate major
 users that need to be located away from concentrated urban residential areas and that can manage

- their activities in such a way that they do not conflict with the goals of the Aquatic Reserve ManagementPlan.
- 190 Policy 2CC-2: Encourage developments in the Cherry Point UGA to maintain and operate under
- 191 management plans consistent with the Aquatic Reserve Management Plan.
- 192 Evaluation Policy 2CC-1 and 2CC-2: Proposed policy and code amendments are
- 193 compatible with this policy. Proposed code amendments address the DNR Aquatic Reserve194 Management Plan.
- Policy 2CC-3: Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:
- 197 Clean and reduced carbon emitting technology;
- 198 Avoidance of estuaries and near shore wetlands;
- 199 Archeological review;
- Water recycling technology to minimize water use; and
- 201 Enhance existing and future industries.
- Evaluation: Existing industries may continue and supporting facilities may be enhanced.
 Future industries that meet allowed uses and master site plan criteria are allowed.
 Environmental and archaeological review is required; review criteria in these respects are enhanced.

Policy: 2CC-4: Assure that Cherry Point's unique features of large parcelization, port access, and
 pipeline, vehicular and rail transportation availability are maintained and protected from incompatible
 development.

209Evaluation: Proposed policy and code amendments are compatible with this policy. The210amendments do not affect parcelization. Port access is allowed to existing sites per the211DNR Cherry Point Aquatic Reserve Management Plan. Proposed amendments do not

212 change the range of supporting transportation and utility services or their plans.

Policy: 2CC-5: Require the master planning of each large parcel in advance of any development or
 subdivision at Cherry Point.

Evaluation: The proposed code amendments update master site plan and major project
 permit review criteria.

Policy: 2CC-6: Require the designation and site plan for a major user (generally 40 acres or more)
before the development of accessory or supporting uses to assure that accessory or supporting uses are
compatible with and will not interfere with the major industrial user.

- 220 Evaluation: The proposed code amendments address accessory/supporting uses for
- 221 existing facilities designed to ensure that existing fossil fuel terminal facilities can maintain 222 and enhance their current businesses.

Policy: 2CC-7: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

- 225 Evaluation: No change to the major user or planning area is proposed.
- Policy 2CC-8: Permit support activities, warehousing, shipping, machine repair and service, educational
- services, food service and conveniences, to locate on a parcel only after the completion of a master plan,and the identification and site plan approval for the major user.
- Evaluation: Policies or code amendments would not change the need for a master plan or major user standards.
- 231 Policy 2CC-9: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- 233 to preclude urbanism near "smokestack" industries;

• to preserve county government tax base.

Evaluation: The proposed policy and code changes do not change the County's approach
to incorporation of Birch Bay or the exclusion of Cherry Point from incorporation.

Policy 2CC-10: Continue to work with service providers that serve Cherry Point to ensure the delivery of
 services and to allow it to develop to its fullest potential.

- Evaluation: The proposed policy and code changes do not change the delivery of
 transportation or utility services.
- Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:
- Honor any existing vested rights or other legally enforceable agreements for an additional dock/pier;
- Update the Whatcom County Shoreline Master Program to conform with this policy;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry
- 247 Point tidelands and bedlands from the general leasing program and the species recovery goals of the
- 248 Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- 250 Protect traditional commercial and tribal fishing; and
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil
 or fuel spills.
- 253 Evaluation: The proposed policy and code changes fulfill this policy.
- The County had proposed a change to the first bullet in January 15, 2019 amendments as follows:
- 256 Honor any existing vested rights or other legally enforceable agreements for an
- 257 additional dock/pier; Act conservatively in land use matters at Cherry Point to prevent
- 258 <u>further harm to habitat important to the Cherry Point Herring stock and Southern Resident</u>
- 259 <u>Killer Whales;</u>

- This policy change is consistent with the purpose and intent of the fossil-fuel policy/code changes and could be carried forward.
- 262 Since the SMP amendments are being crafted now, the second bullet can be changed. It 263 would support the County's duty to fulfill the State policy in RCW 90.58.020 for 264 shorelines of statewide significance. Suggest changing bullet 2 as follows:
- Update the Optimally implement the Whatcom County Shoreline Master Program to
 conform with this policy fulfill the Shoreline Management Act's shorelines of statewide
 significance policy to preserve natural character, result in long-term over short-term
 benefit, and protect the resources and ecology of the shoreline;
- Policy 2CC-12: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more fulltime employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.
- Evaluation: The proposed policy and code changes do not change the County's approach
 to Traffic Demand Management.
- Policy 2CC-13: Work with the Cherry Point industries to maximize public access to the Cherry Point
 beaches without compromising industrial security.
- 278 Evaluation: The proposed policy and code changes do not change the County's approach279 to shoreline public access.
- Policy 2CC-14: Cooperate with the DNR and existing industries to monitor the effects of industrial
 activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.
- 282 Evaluation: The proposed policy and code changes do not change the County's approach

Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). To accomplish this the County will make appropriate federal agencies aware of applications for development permits submitted to the County that staff thinks may be subject to federal agency review under the Magnuson Amendment.

288 Evaluation: The proposed code changes implement this policy.

Policy 2CC-16: The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017.

- 295 To provide clear guidance to current and future county councils on the County's legal rights,
- responsibilities and limitations regarding interpretation and application of project evaluation under
 Section 20.88.130 (Major Projects Permits) of the Whatcom County Code.

- The County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.
- Based on the above study, develop proposed Comprehensive Plan amendments and associated code
 and rule amendments for Council consideration as soon as possible.
- Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County
- 303 Administration should provide the County Council written notice of all known pre-application
- 304 correspondence or permit application submittals and notices, federal, state, or local that involve activity
 305 with the potential to expand the export of fossil fuels from Cherry Point.
- Evaluation: Once the policy and code amendments are adopted this policy could be eliminated. Alternatively, it could be amended to match the January 15, 2019 policy language below but would exclude "radioactive substance" since that is not a focus of the fossil fuel related policy/code changes. It could be its own policy topic.
- 2CC-16: The County <u>will, through its adopted SEPA policies and applicable permitting processes</u>, shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to seek to limit the negative impacts on public safety, transportation, the economy, and environment from <u>new fossil fuel facilities</u>, including new or expanded crude oil, coal, liquefied petroleum gases, natural gas, and <u>radioactive substance</u> exports from <u>facilities within</u> the
- 316 Inductive a petroleum gases, natural gas, and <u>radioactive substance</u> exports from <u>racilities within</u> me
 317 Cherry Point UGA above levels in existence as of March 1, 2017.
 318 To provide clear guidance to current and future county councils on the County's legal rights,
- 319responsibilities and limitations regarding interpretation and application of project evaluation320under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code. The County321should consider any legal advice freely submitted to the County by legal experts on behalf of a322variety of stakeholder interests, and make that advice publicly available.
- Based on the above study, develop proposed Comprehensive Plan amendments and associated
 code and rule amendments for Council consideration as soon as possible.
- Until the above mentioned amendments are implemented, t <u>T</u>he Prosecuting Attorney and/or the
 County Administration should provide the County Council written notice of all known preapplication
 correspondence or permit application submittals and notices, federal, state, or local that involve
 activity with the potential to expand the export of fossil fuels from Cherry Point "Fossil Fuel
 <u>Refinery or Fossil Fuel Transshipment Facilities,</u>" as defined in the Whatcom County Code (Chapter
 <u>20.97).</u>¹

Policy 2CC-17: Policy 2CC-16 shall not limit existing operations or maintenance of existing facilities as of March 1, 2017.

- Evaluation: The policy and code amendments reinforce allowing existing uses and their maintenance. The shaded language was proposed in January 15, 2019, otherwise the other adjustments are based on the latest policy/code amendment direction:
- Amend this policy: Policy 2CC-16 shall not limit <u>Allow</u> existing operations or maintenance of existing <u>fossil-fuel related</u> facilities <u>operating at levels</u> as of March 1, 2017<u>with</u>

¹ The reference to a definition in the Whatcom County Code could be removed to avoid a policy with a code reference. A definition could be added to the Comprehensive Plan if thought necessary. Typically, the code is more detailed.

338 limited expansions subject to environmental review, greenhouse gas emission mitigation,
 339 and conformance with Policies 2CC-3 and -11.

- 340 Other
- 341 Add a new policy on renewable fuels: <u>Support industries that create or use renewable fuels.</u>
- 342 Essential Public Facilities

Goal 2WW: Utilize the established siting criteria for essential public facilities.

- 344 Policy 2WW-4 State and regional highways in unincorporated Whatcom County that have been
- designated as essential state or regional transportation facilities are I-5, State Route 539 (the Guide
- Meridian), State Route 546/9 (Badger from the Guide to Sumas), and State Route 20 to eastern
- 347 Washington. Other transportation facilities in unincorporated Whatcom County that have been
- 348 designated as essential public facilities are Amtrak Cascades passenger rail service, the Burlington
- 349 Northern Santa Fe railroad tracks, and the Cherry Point marine port facilities. Such facilities in the City of
- 350 Bellingham include Fairhaven Station (intercity passenger rail terminal), Bellingham Cruise Terminal
- 351 (Alaska Ferry), and the Port of Bellingham (marine port). Additionally, State Route 543 (the truck route at
- 352 the Blaine border) is an essential public facility located within the city limits of Blaine.
- 353 Widening of existing state highways or railroad tracks (including construction of sidings) and siting new
- 354 state highways or railroad tracks should be planned in the Washington Highway System Plan, Amtrak
- 355 Cascades Plan and the Freight Rail Plan. The state will invite the Regional Transportation Planning
- 356 Organization and the County to participate in planning studies, review design plans, and provide
- 357 comments when siting new or expanded state highways or railroad tracks.
- Highways and railroad tracks that qualify as essential public facilities should be sited in accordance withall of the following principles. These facilities should be located:
- In a manner that minimizes or mitigates noise impacts to surrounding residential areas.
- Outside of the Lake Whatcom Watershed, unless there are no viable alternatives.
- In a manner that allows continued fish passage beyond the road or railroad tracks or restores blocked
 passage.
- In a manner that avoids or mitigates wetland impacts.
- In a manner that minimizes impacts of additional impervious surfaces by treating stormwater runoff.
- In a manner that encourages a vibrant economy by facilitating the efficient movement of people and
 freight.
- 368 In a manner that accommodates pedestrians, bicycles, and transit.
- 369 Major passenger intermodal terminals should be located in General Commercial, Airport Operations,
- 370 Urban Residential-Medium Density or industrial zones.
- 371 Freight railroad switching yards and terminals should be located in industrial zones.
- 372 Marine port facilities should be located within the Heavy Impact Industrial zone of the Cherry Point
- 373 Major/Port Industrial Urban Growth Area.

- Evaluation: Amend final sentence to address that the Port facilities are limited to existing
 ones by the DNR Cherry Point Aquatic Reserve Management Plan. While fossil-fuel
 terminals are restricted in the County's proposed policies and code, other uses are not.
- Proposed Amendment language: Marine port facilities should be located within the Heavy
 Impact Industrial zone of the Cherry Point Major/Port Industrial Urban Growth Area.
 Allow existing facilities and limited expansions consistent with the State of Washington
 Department of Natural Resource Cherry Point Aquatic Reserve Management Plan.
- Policy 2YY-2: County regulations will not preclude the siting of essential public facilities in designated
 zoning districts.
- 383Evaluation: Per RCW 36.70A.200 and RCW 47.06.140, and policy 2WW-4, marine384port facilities and services that are related solely to marine activities affecting
- 385 international and interstate trade are essential public facilities. The port facilities at Cherry
- 386 Point can continue and limitations on expansion are based on DNR Cherry Point Aquatic
- 387 Reserve Management Plan. Proposed policy and code changes limit fossil fuel terminals
- 388 but allow for their continuation and limited expansion. A wide range of other allowed uses 389 is still possible, if consistent with environmental regulations.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-359

Agenda Date:	07/09/2019	Next Mtg. Da	ite:	Hearing	Date:		
First Assigned to: Council Finance and Administrative Services Committee							
Department:	County Executive's Office	File Type:	Presentation				
File Created:	06/11/2019	Entered by:	THelms@co.whatcom.wa.us				
File ID:	AB2019-359	Version:	1	Status:	Agenda Ready		

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

<u>TITLE FOR AGENDA ITEM:</u>

Presentation of the Bellingham Whatcom County Tourism Countywide Wayfinding Project

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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: AB2019-390

File Created: Department:	07/03/2019 Council Office	Entered by: File Type:	Presentation			
First Assigned to:Council Finance and Administrative Services CommitteeAgenda Date:07/09/2019Next Mtg. Date:Hearing Date:						

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

TITLE FOR AGENDA ITEM:

Presentaton by Don Goldberg, Port of Bellingham, regarding affordable housing issues

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Presentaton by Don Goldberg, Port of Bellingham, regarding affordable housing issues

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Action:

Sent To:

Attachments: BAC Housing Recommendations for Whatcom County

Final Action: Enactment Date: Enactment #: To: Whatcom County Council; City of Bellingham, Small Cities Caucus From: Whatcom County Business & Commerce Advisory Committee

BP

Bob Pritchett President & CEO, Faithlife President, BAC Committee

Clark Campbell President & CEO, Gearaid Vice President, BAC Committee

Subject: The Affordable Housing Crisis in Whatcom County Date: June 6, 2019

The Whatcom County Business and Commerce Advisory Committee (BAC) was created to inform the Whatcom County Council about challenges to growth that firms and the business community are currently facing and to make suggestions on how to improve and mitigate these foreseen obstacles. After a survey of issues among Committee members, we found that most members reported worker housing (or lack thereof) is a primary obstacle to their business growth and retention in Whatcom County. The BAC has therefore identified and recommends to County Council that the worker housing **crisis** be a top priority for elected leaders in order to maintain our current quality of life, improve business conditions, and encourage development in Whatcom County.

The issue in brief:

Our collective group has recognized that the lack of workers housing and affordable housing is a top impediment to recruiting, retaining, and developing a skilled workforce in Whatcom County. Worker housing is therefore not just a social problem - it is an economic problem. If Whatcom County can increase its supply of housing for all incomes then firms will be able to obtain more workers and increase the number of jobs. Given the magnitude of Whatcom County's housing shortage, we believe that the issue should be treated as and referred to as a *crisis* by Whatcom County Council and city governments. **During crises, normal procedures and processes do not apply.**

We draw on Challenge Seattle's definitions of affordability in order to provide goals for Whatcom County. To be considered affordable a household must spend no more than 30% of their gross monthly income on housing costs. Monthly housing costs can include rent and utilities for renter households and mortgage, insurance, taxes, and utilities for owner households. <u>In particular, we are interested in increasing the supply of low to middle income housing across the income spectrum. In Whatcom County the median household income is \$56,419.</u>

Low income: earns <60% of Whatcom County's median household income (<\$33,851) Middle income: earns 60-120% of Whatcom County's median household income (\$33,851 -\$67,703)

High income: earns >120% of Whatcom County's median household income (>\$67,703)

31% of Whatcom County does <u>not</u> make \$615 per week (approximately \$30-32,000 per year), the minimum required to afford a one bedroom rental unit in Bellingham (COB 2018). This socioeconomic segment is most likely to carry a large housing-cost burden (over 30% of their income) and is at the highest risk for homelessness.

We urge the County Council and city governments in Whatcom County to adopt a **Temporary Housing Crisis Plan** as soon as possible. Every day that passes more individuals and families move to our county and businesses contemplate leaving Whatcom County. We do not need more studies and reports to tell us what we already know. Adopting a **crisis plan** will allow us to house our current residents, make plans for new residents, and keep businesses in Whatcom County. This is also an opportunity for Whatcom County to be a leader and innovator and has the potential to provide

Below we list and describe our recommendations to Whatcom County and its municipal cities in order to increase the supply of housing. Our recommendations also apply to commercial development, as this industry faces similar obstacles.

1

Recommendation #1: Publicly declare a Housing Crisis

<u>Recommendation #2</u>: Replace current zoning rules, codes, procedures with a temporary Housing Crisis Plan

BAC recommends that the County Council move to immediately develop a **Temporary Housing Crisis Plan**, developed by an independent group representing many perspectives to develop the plan and better align the plan with community priorities, of which worker and affordable and homelessness were at the top of the list. We believe that a temporary plan will save time and resources, as well as avoid special interest groups and debates on every single code. The process and the codes must be simplified as soon as possible. In particular, we recommend simplifying the code and process for land use permitting (design review, planned permits, Infill Toolkit, etc.) residential multifamily, Urban Villages, and the Infill Toolkit.

Currently there is a significant disconnect between the current rule book and worker/affordable housing needs. Tools that deter building include but are not limited to height limits, density limits, commercial requirements, parking requirements, neighborhood approval and more could be waived or modified in order to increase certainty, shorten the process, reduce costs, and allow for more densification and increase affordability. We also therefore recommend that the cities, including Bellingham, Blaine, Ferndale, Lynden, Nooksack, Sumas, and Everson, adopt identical incentives and permit approval processes to make this a county-wide urban development and workforce attraction initiative.

Recommendation #3: Provide infrastructure and resources to increase housing availability

BAC recommends that the County Council support increasing resources and infrastructure in order to reduce building and housing costs. This can be done by developing publicly owned wetland mitigation banks, publicly owned water rights, and provide new and/or improved infrastructure (roads, bridges, electric, sewer, water, stormwater) with the use of Local Improvement Districts (LID) that connects to the remaining buildable lands in Whatcom County.

Recommendation #4: Reduce government fees for housing development

The fees that various government agencies impose on developers and builders increase the cost of building and makes affordable housing projects less attractive to investors. While we understand that these fees often funds other government services and cover the costs of planning and so on. However, in the short to medium term, while in a crisis situation, it does not make sense to knowingly increase the cost of building housing if the primary goal is to increase supply as fast as possible.

Recommendation #5: Provide incentives for hitting affordable housing and workforce targets

We also recommend that the County Council and city governments continue to develop more attractive incentives for building affordable housing or worker housing. Other counties and cities offer reduced turnaround times, reduced fees, and a streamlined permitting process for green builds and affordable housing.

Recommendation #6: Annex additional outlying areas

As the City of Bellingham is currently in the process of annexing the Alderwood district, we recommend that Whatcom County Council and other city governments continue to annex additional land. Some landowners in the Lake Padden and North Bellingham area have tried to have their areas annexed in the past, but were unsuccessful despite already having city utilities and numerous parcels in potential growth areas. Annexing land addresses Whatcom County's lack of buildable lands. This is especially important given that of the 1.9 million acres in Whatcom County, 1.2 million acres are public land, and the County has a goal of having 100,000 acres of active agriculture land. That only leaves approximately 600,000 acres total for residential, commercial, and industrial

2

development and much of the remaining land is either in critical areas or not currently serviced by our infrastructure and/or utilities.

Finally, we recommend that Whatcom County should maintain Housing Crisis designation and continue processing recommendations 2-6 until the following goals are reached.

Population growth in Whatcom County has been running approximately 1.45-1.85% per year. To keep pace with current net inflow we should be targeting approximately 3300-4200 housing units per year. In order to maximize benefit to businesses in terms of access to workers, ideally, 40% or more of these units would be located within the Bellingham UGA, preferably in neighborhoods close to major transit lines.

Given the lag in new housing starts since the 2008 recession, BAC recommends that crisis protocols remain in place until the following goals be achieved:

- 1. At least 10,000 new housing starts have been completed (2500-3400 per year for the next 3-4 years), which is approximately a 4% increase in the current available capacity.
- 2. The average rental vacancy rates returns to 4+%.
- 3. The average available housing supply is 6+ months.
- 4. The rent / own split target is set to 50/50 between rental and purchase units.
- 5. That permitting, zoning, incentives will be such that 65+% of all new investment and development will create capacity in affordable housing (not exceeding 30% of incomes).



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-369

File ID:	AB2019-369	Version:	1	Status:	Agenda Ready
File Created:	06/19/2019	Entered by:	JThomson@co.whatcom.wa.us	5	
Department:	Health Department	File Type:	Agreement		
First Assigned t Agenda Date:	o: Council Finance and 07/09/2019	d Administrative Next Mtg. Da	e Services Committee ate:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services for a long-term working capital advance in an amount of up to \$300,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments.

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Action:

Sent To:

Attachments: Memo to County Executive, DSHS Working Advance Long-Term Payable Agreement

Final Action: Enactment Date: Enactment #: WHATCOM COUNTY Health Department



Regina A. Delahunt, Director Greg Stern, M.D., Health Officer

MEMORANDUM

TO:	Jack Louws, County Executive
FROM:	Regina A. Delahunt, Director
RE:	Washington State Department of Social and Health Services (DSHS) – Working Advance Long-Term Payable Agreement
DATE:	June 18, 2019

Enclosed is one (1) original of an agreement between Whatcom County and Washington State Department of Social and Health Services for your review and signature.

Background and Purpose

DSHS provides Whatcom County with an advance in funding to help manage cash for DSHS-funded programs. This type of arrangement has been in place for many years and this agreement continues the arrangement for an additional year.

Funding Amount and Source

The current balance of the long term working capital advance is \$104,758 and Whatcom County is authorized to draw up to \$300,000, if needed. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	85 Health
Division/Program: (i.e. Dept. Division and Program)	8550 Health / 851000 Administration
Contract or Grant Administrator:	Kathleen Roy
Contractor's / Agency Name:	Washington State Department of Social and Health Services
Is this a New Contract? If not, is this an Amendment or Renewal Yes ⊠ No □ If Amendment or Renewal, (per WCC	•
Does contract require Council Approval? Yes 🖾 No 🗔 Already approved? Council Approved Date:	If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)
Is this a grant agreement? Yes \bowtie No \square If yes, grantor agency contract num	nber(s):1963-56892 CFDA#:
Is this contract grant funded? Yes No No If yes, Whatcom County grant cont	ract number(s):
Is this contract the result of a RFP or Bid process? Yes □ No ⊠ If yes, RFP and Bid number(s):	Contract Cost Center:
Is this agreement excluded from E-Verify? No □ Yes ⊠	If no, include Attachment D Contractor Declaration form.
any prior amendments): Varies And professional 10% of contract 1. Exercising 2. Contract is approved b 3. Bid or awa 4. Equipment 5. Contract is systems ar proprietary	 Contract for Commercial off the shelf items (COTS). Work related subcontract less than \$25,000. Public Works - Local Agency/Federally Funded FHWA. at required for; all property leases, contracts or bid awards exceeding \$40,000, at service contract amendments that have an increase greater than \$10,000 or amount, whichever is greater, except when: an option contained in a contract previously approved by the council. for design, construction, r-o-w acquisition, prof. services, or other capital costs by council in a capital budget appropriation ordinance. rd is for supplies. t is included in Exhibit "B" of the Budget Ordinance for manufacturer's technical support and hardware maintenance of electronic had/or technical support and software maintenance from the developer of software currently used by Whatcom County.
Summary of Scope: This agreement provides for a working capital adva Services to help manage county cash flow due to delays in payment by [
Term of Contract: 1 Year	Expiration Date: 06/30/2020
Contract Routing: 1. Prepared by: JT	Date: 06/10/2019
2. Health Budget Approval: KR	Date: 06/18/2019
2. Attorney signoff: RB	Date: 06/12/2019
3. AS Finance reviewed: M Caldwell	Date: 6/18/19
4. IT reviewed (if IT related):	Date:
5. Contractor signed:	Date:
6. Submitted to Exec.:	Date:
7. Council approved (if necessary):	Date:
8. Executive signed:	Date:
9. Original to Council:	Date:

别利	DEPARTMENT OF SOCIAL CHEALTH SERVICES
× \uu v u	Conversion and Conversion

COUNTY

DSHS Agreement Number

1963-56892

PROGRAM AGREEMENT

Working Advance Long-Term Payable

This Program Agreement is by a	nd between the S	tate of Washingto	n Departme	ent of	Administr	ation or Division	
Social and Health Services (DSH	ty identified below	identified below, and is issued in			nt Number		
conjunction with a County and D							
which is incorporated by reference	ce.				County A	greement Number	
DOUG ADMINISTRATION							
DSHS ADMINISTRATION	DSHS DIVISION		DSHS INDEX	NUMBER	DSHS CO	NTRACT CODE	
Facilities, Finance and	Financial Service	es	1241		8030CS	-63	
Analytics Administration							
DSHS CONTACT NAME AND TITLE		DSHS CONTACT AD	DRESS				
Mariana Cabala		DO D. 459.49					
Mariann Schols		PO Box 45842					
Manager, Finance			04 5040				
DSHS CONTACT TELEPHONE		Olympia WA 985 NTACT FAX	004-5842		ONTACT E-	MAII	
(360)902-8170	(360)664				ij@dshs.w		
COUNTY NAME		JNTY ADDRESS		- Scholl	j@u3113.w	a.gov	
Whatcom County	509	Girard Street					
	Bel	lingham WA 982	25-4005				
COUNTY CONTACT NAME							
Kathless Day							
Kathleen Roy COUNTY CONTACT TELEPHONE		CONTACT FAX					
(360) 778-6007	CONTACT FAX			co.whatc			
IS THE COUNTY A SUBRECIPIENT FOR	IS PROGRAM	CE	DA NUMBERS		011.144.43		
AGREEMENT?							
No							
PROGRAM AGREEMENT START DATE 07/01/2019	BREEMENT END DA	TE MA					
T	An exection of a second second				nual Review		
The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive						a exclusive	
understanding between the parties superseding and merging all previous agreements, writings, and communications, oral							
or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DSHS only							
upon signature by DSHS.							
COUNTY SIGNATURE(S)		PRINTED NAME		-(S)		DATE(S) SIGNED	
						Ditt E(0) DIGITED	
Regua A Dela							
Alqua A lela		Reama	Regina A. Delahunt			61919	
18	Regina	t. ocici			11/17		
DSHS SIGNATURE						DATE SIGNED	
DSHS SIGNATURE		PRINTED NAME	AND TITLE			DATE SIGNED	

WHATCOM COUNTY

JACK LOUWS County Executive

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this _____day of _____, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

)))

)

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires:_____

APPROVED AS TO FORM

12-19

Royce Buckingham, Deputy Prosecuting Attorney

Date

1. Definitions

- a. "Commingle" is the act of mixing the funds and/or Long-Term Payables for one program with the funds of another program.
- b. "Documentation of Funds form" (DOF) is a form provided to the County each year by DSHS on which the County records qualifying previous year expenditures from which DSHS can appraise and evaluate the amount of the existing Long-Term Payable or appropriate adjustments.
- c. "Long-Term Payable" means funds provided by DSHS to the County in anticipation of specific client services provided by the County. The County shall not be allowed to retain any overage of the Long-Term Payable funds if the County does not actually provide the anticipated services during the given timeframe. Long-Term Payable funds are to be reconciled by April 30 of each year and any funds not fully utilized shall be refunded to DSHS by **May 31** of each year.

2. Purpose

- a. It is the purpose of this Agreement to specify the procedure by which DSHS will assess and, if necessary, adjust the Long-Term Payable it provides to the County.
- b. Funds to support contracts for the following DSHS programs may be included in a Long-Term Payable: Developmental Disabilities Administration (DDA) and/or Aging and Long-Term Support Administration (ALTSA).

3. Statement of Work

- a. County Responsibilities
 - (1) The County shall submit to DSHS, on forms provided by DSHS and by a date determined by DSHS, a completed Documentation of Funds form (DOF) from which DSHS shall assess whether or not an adjustment to the amount of the Long-Term Payable provided to the County is warranted.
 - (2) The County shall exclude all amounts related to its Prepaid Inpatient Health Plan expenditures from its DOF.
 - (3) The County shall repay to DSHS all of the Long-Term Payable funds received from DSHS that exceed the amount that DSHS determines is warranted. Repayment requirements shall be based upon DSHS assessment of the most recent annual DOF submitted by the County to DSHS. Any Long-Term Payable funds not fully utilized by the County, as determined by DSHS through the DOF process, shall be refunded to DSHS by May 31 of each year.
 - (4) The County shall only utilize Long-Term Payable funds for the DSHS program or service for which the funds were originally designated. Long-Term Payable funds may not be commingled between or among programs or services.
 - (5) Any interest the County earns on the Long-Term Payable funds shall only be utilized for the DSHS programs or services for which the funds were originally designated. Long-Term Payable interest shall not be used for programs or services unrelated to the client services anticipated by this Agreement.
 - (6) The County shall record the Long-Term Payables in its financial records.

- b. DSHS Responsibilities
 - (1) DSHS shall assess the DOF submitted by the County to determine if, during the term of this Agreement, any adjustment to the original two month Long-Term Payable provided to the County is warranted.
 - (2) Adjustment may include DSHS request for repayment by County of any Long-Term Payable amounts previously paid to County that are in excess of the amount currently warranted.

4. Termination

In the event that this Agreement, or a program contract listed in 2.b. above, is terminated prior to completion, DSHS shall take all available steps to recover any Long-Term Payable determined to be an overpayment and the County shall fully cooperate during the recovery process.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-372

File ID: File Created:	AB2019-372 06/21/2019	Version: Entered bv:	1 JThomson@co.whatcom.wa.us	Status:	Agenda Ready	
Department:	Health Department	File Type:	Agreement	5		
First Assigned to: Council Finance and Administrative Services Committee						
Agenda Date:	07/09/2019	Next Mtg. Da	te:	Hearing	Date:	

Primary Contact Email: <u>JLLee@co.whatcom.wa.us <mailto:JLLee@co.whatcom.wa.us></u>

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services, Developmental Disabilities Administration for a coordinated and comprehensive program of services for persons with developmental disabilities, in the amount of \$3,678,521

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:		
Attachment	s: Memo to County Executive, DSHS DE	0A Interlocal Agreement			

Final Action: Enactment Date: Enactment #: WHATCOM COUNTY Health Department



Regina A. Delahunt, Director Greg Stern, M.D., Health Officer

MEMORANDUM

TO:	Jack Louws, County Executive
FROM:	Regina A. Delahunt, Director
RE:	Washington State Department of Social and Health Services – Developmental Disabilities Administration Contract
DATE:	June 14, 2019

Enclosed is one (1) original of a contract between Whatcom County and the Department of Social and Health Services for your review and signature.

Background and Purpose

This contract provides funding for adult employment and community inclusion services, child development services for infants and toddlers, and community information, education and training related to developmental disabilities.

Funding Amount and Source

This contract includes \$3,678,521 in funding for the first year of the 2019 – 2021 biennium; this is a \$119,306 increase from the 2018 – 2019 contract. Council approval is required per RCW 39.34.030 for agreements between public agencies.

Please contact Jessica Lee at extension #6047 if you have any questions regarding this agreement.

Encl.



1500 North State Street Bellingham, WA 98225-4551 360.778.6100 | FAX 360.778.6101 www.whatcomcounty.us/healt

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	85 Health				
Division/Program: (i.e. Dept. Division and Program)	8550 Human Services / 855050 Developmental Disabilities				
Contract or Grant Administrator:	Jessica Lee				
Contractor's / Agency Name:	WA State DSHS DDA				
Is this a New Contract? If not, is this an Amendment or Renew Yes \boxtimes No \square If Amendment or Renewal, (per WC	val to an Existing Contract? Yes No Yes No Yes Ves Ves Ves Ves Ves Ves Ves Ves Ves V				
Does contract require Council Approval? Yes ⊠ No □ Already approved? Council Approved Date:	If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)				
Is this a grant agreement? Yes \boxtimes No \square If yes, grantor agency contract n	umber(s):1963-56994 CFDA#:				
Is this contract grant funded? Yes □ No ⊠ If yes, Whatcom County grant contract number(s):					
Is this contract the result of a RFP or Bid process? Yes \Box No 🖾 If yes, RFP and Bid number(s):	Contract Cost Center: 673800 / 673300				
Is this agreement excluded from E-Verify? No Yes [If no, include Attachment D Contractor Declaration form.				
If YES, indicate exclusion(s) below: Professional services agreement for certified/licensed professional. Contract work is for less than \$100,000. Contract work is for less than 120 days. Interlocal Agreement (between Governments). If YES, indicate exclusion(s) below: Contract or Commercial off the shelf items (COTS). Public Work related subcontract less than \$25,000. Public Works - Local Agency/Federally Funded FHWA.					
any prior amendments): and profession \$ 3,678,521 10% of contration This Amendment Amount: 2. Contration \$	oval required for; all property leases, contracts or bid awards exceeding \$40,000 , onal service contract amendments that have an increase greater than \$10,000 or act amount, whichever is greater, except when : ng an option contained in a contract previously approved by the council. t is for design, construction, r-o-w acquisition, prof. services, or other capital costs ad by council in a capital budget appropriation ordinance. ward is for supplies. ent is included in Exhibit "B" of the Budget Ordinance t is for manufacturer's technical support and hardware maintenance of electronic and/or technical support and software maintenance from the developer of ary software currently used by Whatcom County.				
	nty to fund services for children and adults with developmental disabilities.				
Term of Contract: 1 Year	Expiration Date: 06/30/2020				
Contract Routing: 1. Prepared by: JT	Date:6/14/19				
2. Health Budget Approval KR	Date 6/17/19				
3. Attorney signoff:	R. p. Date: 6-18-19				
4. AS Finance reviewed:	Date: 6/2.0/19				
5. IT reviewed (if IT related):	Date:				
6. Contractor signed:	Date:				
7. Submitted to Exec.:	Date:				
8. Council approved (if necessary):	Date:				
9. Executive signed:	Date:				
10. Original to Council:	Date:				

333						1	DSHS Agreement Number	
<u></u>	COUNTY				_			
Department of Social	000111				· / ·	1963-56994		
AIIII & Health Services	i	PROGRAM AGREEMENT						
Transforming lives		DD	A County Sei	vices				
This Drogram Agreement is	by and boty						Administration or Division	
This Program Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the County identified below, and is issued in					Agreement Number			
conjunction with a County and DSHS Agreement On General Terms and Conditions,								
which is incorporated by refe	erence.						County Agreement Number	
DSHS ADMINISTRATION	DSHS	DIVISION		DSHS INDEX NUMBER		ER [DSHS CONTRACT CODE	
Developmental Disabilities	Divisi Disab		velopmental	omental 1241			1769CS-63	
DSHS CONTACT NAME AND TITL			DSHS CONTACT AD	DRESS				
Joseph Carter			1700 East Cherry	/ Street				
Business Manager			Suite 200					
DSHS CONTACT TELEPHONE		DSHS C	Seattle, WA Clic	k nere to			CONTACT E-MAIL	
(206)568-5715			20-3334	3334 cartejf			@dshs.wa.gov	
COUNTY NAME		C	OUNTY ADDRESS					
Whatcom County			09 Girard Street					
Whatcom County DDA Cour COUNTY FEDERAL EMPLOYER I			Bellingham, WA 98	gham, WA 98225-4005				
NUMBER	DENTRIORIT							
		J	essica Lee					
COUNTY CONTACT TELEPHONE (360) 778-6047			Y CONTACT FAX 778-6001				Y CONTACT E-MAIL whatcomcounty.us	
IS THE COUNTY A SUBRECIPIEN	IT FOR PURP				CFDA NUN		atoomoounty.uo	
AGREEMENT?								
No								
PROGRAM AGREEMENT START DATE PROGRAM A 07/01/2019 06/30/2020			AGREEMENT END DA 0	Seement end date MAXIMUM PROGRAM			AM AGREEMENT AMOUNT	
EXHIBITS. The following Ex	chibits are a	ttached:		Security			Exhibit B – Budget and	
By their signatures below th	o parties ar	ree to th	Spending Plan	ions of t	ais County	Progra	am Agreement and all	
By their signatures below, the parties agree to the terms and conditions of this County Program Agreement and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the								
subject matter of this Progra	m Agreeme	nt shall k	be deemed to exist					
that they are authorized to sign this Program Agreement. COUNTY SIGNATURE(S) DATE(S) SIGNED COUNTY SIGNATURE(S) PRINTED NAME(S) AND TITLE(S) DATE(S) SIGNED								
Regia A Deland			Regina	Regina A. Delahunt Director			4/18/19	
Direct				or				
DSHS SIGNATURE				PRINTED NAME AND TITLE			DATE SIGNED	
			Melissa Dieber	Melissa Diebert, Contract Specialist				
			1					

DEPARTMENT APPROVAL

acar

Anne Deacon, Human Services Manager

Regina Delahunt, Director

Date Date

WHATCOM COUNTY

JACK LOUWS County Executive

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this _____day of _____, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires: _____

APPROVED AS TO FORM

)

Royce Buckingham, Deputy Prosecuting Attorney

- **1. Definitions Specific to Program Agreement:** The words and phrases listed below, as used in this Program Agreement, shall each have the following definitions:
 - a. "Acuity Level" means the level of an individual's abilities and needs as determined through the DDA assessment.
 - b. "AWA" means ALTSA Web Access also referred to as the CMIS.
 - c. "Additional Consumer Services" refers to indirect Client service types as follows:
 - (1) "Community Information and Education": Activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.
 - (2) "Training": To increase the job related skills and knowledge of staff, providers, volunteers, or interning students in the provision of services to people with developmental disabilities. Also to enhance program related skills of board or advisory board members.
 - (3) "Other Activities" reserved for special projects and demonstrations categorized into the following types:
 - (a) Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search".
 - (b) Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
 - (c) "Partnership Project": Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21).
 - d. "BARS" means DDA Budget and Accounting Reporting System.
 - e. "Client" means a person with a developmental disability as defined in chapter <u>388-823</u> WAC who is currently eligible and active with the Developmental Disabilities Administration or is an identified PASRR Client.
 - f. "County" is the political subdivision of the state of Washington and the county or counties entering into this Program Agreement.
 - g. "Consumer Support" refers to direct Client service types as follows:
 - (1) "Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion. These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Employment or Group Supported Employment) for working age individuals who have received nine months of employment support.

- (2) "Child Development Services" or "CDS": Birth to three services are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development. Services may include specialized instruction, speech-language pathology, occupational therapy, physical therapy, assistive technology, and vision services. Services are provided in natural environments to the maximum extent appropriate.
- (3) "Individual Supported Employment" or "IE": services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities, and promote career development. These are individualized services necessary to help persons with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job.
- (4) "Individualized Technical Assistance" or "ITA": services are a part of an individual's pathway to individual employment. This service provides assessment and consultation to the employment provider to identify and address existing barriers to employment. This is in addition to supports received through supported employment services for individuals who have not yet achieved their employment goal.
- (5) "Group Supported Employment" or "GSE": services are a part of an individual's pathway to integrated jobs in typical community employment. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting. The service outcome is sustained paid employment leading to further career development in integrated employment at or above minimum wage. Examples include enclaves, mobile crews, and other business models employing small groups of workers with disabilities in integrated employment in community settings.
- h. "CRM" means the DDA Case Resource Manager.
- i. "CSA" means County Service Authorization.
- j. "DD" means developmental disabilities.
- k. "DDA" means the Developmental Disabilities Administration within DSHS.
- I. "DDA Region" means the DDA Regional office.
- m. "DVR" means the Division of Vocational Rehabilitation,
- n. "General Terms and Conditions" means the contractual provisions contained within that agreement, which govern the contractual relationship between DSHS and the county.
- o. "HCBS" means the Medicaid Home and Community Based Services.
- p. "PASRR" means Preadmission Screening and Resident Review.
- q. "PCSP" means Person Centered Service Plan, a document that authorizes and identifies the DDA paid services to meet a Client's assessed needs. Formerly referred to as the Individual Support Plan.
- r. "Quality Assurance" means an adherence to all Program Agreement requirements, including DDA Policy 6.13, *Employment/Day Program Provider Qualifications,* County Guidelines and the Criteria for Evaluation, as well as a focus on reasonably expected levels of performance, quality, and practice.

- s. "Quality Improvement" means a focus on activities to improve performance above minimum standards and reasonably expected levels of performance, quality and practice.
- t. "Service Provider" is a qualified Client service vendor who is contracted to provide Employment and Day Program services.
- u. "Subcontractor" is the service provider contracted by the County to provide services,
- 2. **Purpose:** This Program Agreement is entered into between DDA and the County in accordance with chapter 71A.14 RCW. Its purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disabilities.
- 3. Client Eligibility: Client eligibility and service referral are the responsibility of DDA under chapter 388-823 WAC (Eligibility) and chapter 388-825 WAC (Service Rules). Only persons referred by DDA shall be eligible for direct Client services under this Program Agreement. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. Direct Client services provided without authorization are not reimbursable under this Program Agreement.

4. Credentials and Minimum Requirements:

- a. Administration of the developmental disabilities County program cannot be subcontracted.
- b. Qualified DD Program Coordinator: A qualified DD program coordinator has a minimum of five years training and experience in the administration and/or the delivery of developmental disabilities services to a community. For a county where the coordinator administers more than one program area (e.g. Chemical Dependency, Mental Health, Developmental Disabilities), training and experience in administration and/or a related Human or Social service may be considered.
- c. Administration Responsibility: The County must demonstrate the ability to administer the program agreement including contract oversight and monitoring, community outreach and education activities, and regular communication with the DDA region and contracted providers.
- d. Fiscal Responsibility: The County must demonstrate the ability to safeguard public funds including maintaining books, records, documents and other materials relevant to the provision of goods and services.
- e. Sufficient Policies and Procedures for Establishment and Maintenance of adequate internal control systems: The County will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail such that operations can continue should staffing change or absences occur.
- f. Background/Criminal History Check: A background/criminal history clearance is required every three years for all employees (including DD program County staff), subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS Clients, in accordance with RCW 43.43.830-845, RCW 74.15.030, and chapter 388 WAC. If the entity reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in chapter <u>74.34</u> RCW, then DDA shall deny payment for any subsequent services rendered by the disqualified individual provider. The DSHS Background Check Central Unit (BCCU) must be utilized to obtain background clearance.
- g. Qualified Advisory Board Members: A Developmental Disabilities advisory board shall include members knowledgeable about developmental disabilities. No board member shall have a contract with the County to provide Training, Community Information Activities, and Consumer Support as

Page 4

defined in this Program Agreement, and shall not be a board member, officer, or employee of an agency subcontracting with the County to provide such services.

- h. Qualified Service Providers: The County assures that all service providers meet qualifications as outlined in the DDA Policy 6.13, *Program Provider Qualifications*.
- i. Home and Community Based Waiver Services Assignment of Medicaid Billing Rights: The County assures that each subcontractor has agreed to assign to DDA its Medicaid billing rights for services to DDA Clients eligible under Title XIX programs in this Program Agreement. Written documentation shall be available to DSHS on request.
- j. Reporting Abuse and Neglect: The County staff and its subcontractors who are mandated reporters under RCW 74.34.020(13) must comply with reporting requirements described in RCW 74.34.035, .040 and chapter 26.44 RCW. If the County is notified by DSHS that a subcontractor staff member is cited or on the registry for a substantiated finding, then that associated staff will be prohibited from providing services under this Program Agreement.
- k. Counties who provide Child Development Services (birth to three early intervention services), must provide those services under the regulations implementing the Individuals with Disabilities Education Act (IDEA), Part C, and Washington State's Early Support for Infant and Toddler Federally Approved Plan.
- I. The County staff who perform on-site evaluations of subcontractor work sites will promptly report to DSHS per DDA Policy 5.13, *Protection from Abuse: Mandatory Reporting,* if:
 - (1) They have reasonable cause to believe that abandonment, abuse, financial exploitation or neglect (as defined in RCW 74.34.020) of a person who has a developmental disability (as defined in RCW 71A.10.020) has occurred, and,
 - (2) If they have reason to suspect that sexual or physical assault of such a person has occurred, they shall also immediately report to the appropriate law enforcement agency.
- m. Contractors are specifically authorized to have data storage on portable devices or media in accordance with the Data Security Requirements.
- n. Order of Precedence: In the event of any inconsistency in this Program Agreement and any attached exhibits, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
 - (1) County Program Agreement;
 - (2) Attached Exhibits.
- 5. Duty to Disclose: Under 42 CFR §455.104, the Administration must obtain certain disclosures and complete required screenings to ensure the State does not pay federal funds to excluded person or entities. The County is required to provide disclosures from managing employees, specifically the persons in the positions of Developmental Disabilities Director and Fiscal/Budget Director, i.e. the person who authorizes expenditures. A completed Medicaid Provider Disclosure Statement, DSHS Form 27-094, should be submitted to the Administration to complete the required screenings. Disclosures must be provided at contract renewal and within thirty-five (35) days whenever there is a change in the staff holding these management positions [42 CFR 455.104 (c)(1)].
- 6. Statement of Work: The County shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. Working collaboratively and

sharing information as needed for service coordination, the parties shall administer DD services within the county as set forth below:

- a. The DDA region shall:
 - (1) Review subcontractors and shall immediately notify the County of any concerns with the subcontractors identified by the County;
 - (2) Inform and include the County in the discharge planning of individuals leaving institutions and returning to the community who will need program funding;
 - (3) Inform the County of individuals who have had their waiver status changed;
 - (4) Work with the County when referring individuals for services;
 - (5) Inform Clients of service changes through Planned Action Notice(s);
 - (6) Work with the Contractor to document planned services in the Individual's Support Plan including notification of assessment dates;
 - (7) Work with the Contractor when terminating services;
 - (8) Work with the Contractor on Spending Plan adjustments; and
 - (9) Work with the Contractor in participating in on-site evaluation of direct service providers.
- b. The County shall:
 - (1) Work with the DDA Region when individuals are referred for services;
 - (2) Work with the DDA Region to document planned services in the Individual's Support Plan;
 - (3) Assist with informing the DDA Region of any potential service level changes not documented in the individual's DD Assessment prior to any changes;
 - (4) Work with the DDA Region regarding service termination;
 - (5) Work with the DDA Region on Spending Plan adjustments;
 - (6) Inform the DDA Region of new providers to be included on the CMIS system;
 - (7) Notify the DDA Region of any intent to terminate a subcontractor who is serving a DDA referral;
 - (8) Provide a copy of each subcontractor's contract upon written request from the DDA Region; and
 - (9) Notify and work with the DDA Region when performing on-site evaluations of direct service providers.
- c. Compliance with BARS Policies: The County shall take any necessary and reasonable steps to comply with BARS Policies.
- d. The County shall comply with the following referenced documents found at DDA Internet site <u>https://www.dshs.wa.gov/dda/county-best-practices</u> under "County Best Practices":

- (1) DDA Policy 4.11, County Services for Working Age Adults;
- (2) Chapter WAC 388-850, chapter 388-828 WAC, WAC 388-845-0001, 0030, 0210, 0215, 0220, 0600-0610, 1030-1040, 1400-1410, 2100, 2110;
- (3) Criteria for Evaluation;
- (4) DDA Guiding Values;
- (5) County Guide to Achieve DDA's Guiding Values;
- (6) DDA Guidelines for Community Assessments within Employment and Vocational Programs; and
- (7) <u>Disability Rights Washington (formerly Washington Protection and Advocacy System) Access</u> <u>Agreement</u>.
- e. The County shall develop and submit a comprehensive plan for the County DD Services as required by WAC 388-850-020.
- f. Conveyance of The Estimated Number of People to be Served and Targeted Outcomes: The County shall submit the Service Information Forms (SIF's) (provided by DDA at Internet site <u>https://www.dshs.wa.gov/dda/county-best-practices</u>) to indicate the estimated number of people to be served, targeted outcomes, and identified goal(s) that focus on quality improvement within the categories of Training, Community Information, Direct Client Services, and Other Activities within 30 days of execution of the Program Agreement. Once approved, the SIF outcomes may be modified only by mutual agreement of the County and the DDA Region.
- g. Solicitation for Qualified Employment and Day Program Service Providers: Requests for Applications (RFAs), Requests for Information (RFI's) and/or Requests for Proposals (RFPs), Requests for Qualifications (RFQ's) for direct services, excluding Child Development, will be open continuous enrollment.
- h. Qualified Providers: A qualified provider must be a county or an individual or agency contracted with a county or DDA.
- i. Technical Assistance: DDA contracts with Technical Assistance providers that may be utilized by Counties with prior written approval.
- j. Subcontractors: The County will pass on all applicable contractual requirements that are between DDA and the County to the subcontractor. The County shall immediately notify the DDA Region of the County's intent to terminate a subcontractor who is serving a DDA referral. Individuals or agencies contracted with a county or DDA may not subcontract for Employment or Community Inclusion services.
- k. The County shall provide or contract with qualified Employment and Day Program Service Providers for consumer support services that include the following program outcomes:
 - (1) Monthly Community Inclusion service support hours will be based on the Client's CI service level per WAC 388-828-9310 for all Clients who began receiving CI services July 1, 2011 and forward.
 - (a) To ensure health and safety, promote positive image and relationships in the community, increase competence and individualized skill-building, and achieve other expected benefits of CI, services will occur individually or in a group of no more than two (2) or three (3)

individuals with similar interests and needs.

- (b) CI services will focus on activities that are typically experienced by the general public. Support to participate in segregated activities and/or specialized activities will not be reimbursed.
- (c) A Client receiving CI services will not receive employment support simultaneously.
- (d) A Client receiving CI services may at any time choose to leave Community Inclusion to pursue work and receive employment support.
- (2) Clients in an employment program will be supported to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828.
- (3) The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.
- (4) All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.
- (5) Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.
- (6) All Clients will be contacted by their service provider according to Client need and at least once per month.
- (7) If Clients in Individual Employment or Group Supported Employment, have not obtained paid employment at minimum wage or better within **six (6) months**, the County will assure the following steps are taken:
 - (a) Review the progress toward employment goals;
 - (b) Provide evidence of consultation with the Client/guardian; and
 - (c) Develop additional strategies with the Client/guardian, county staff, employment support staff, case manager, and others identified by the Client. Strategies may include providing technical assistance, changing to a new provider, and/or providing additional resources as needed to support the individual's pursuit of employment. The additional strategies will be documented for each Client and kept in the Client's file(s).
- (8) If after twelve (12) months the Client remains unemployed, an additional review will be conducted. The provider will address steps outlined in the previous six month progress report in the next six month progress report. The Client may request to participate in Community Inclusion activities or the Client may choose to remain in an employment program. When requesting to participate in CI, the Client shall communicate directly with his or her DDA Case Manager. The DDA Case Manager is responsible for authorizing CI services.

- (9) For Individual Employment where the service provider is also the Client's employer, long term funding will remain available to the service provider employer for six months after the employee DDA Client's date of hire. At the end of the six month period, if the DDA Client continues to need support on the job, another service provider who is not the employer of record must provide the support unless the County or DDA issues prior written approval for the service provider to continue to provide long-term supports if needed. If the County or DDA approves the continuation of long-term supports where the service provider is also the Client's employer, the County or DDA will regularly monitor these positions to assure fading efforts occur when appropriate and any potential conflict of interest is addressed.
- (10) Individual Employment staff hours must be attributed to the "Individual Employment and Billable Activity Phase(s)".
- (11) For Group Supported Employment (GSE), Clients must have paid work. The total number of direct service staff hours provided to the group should be equal to or greater than the group's collective amount of individual support monthly base hours. If the direct service staff hours are less than the collective amount, then the provider will be reimbursed only for the number of hours staff actually provided. (a) The collective group's individual hours should be the minimum staff hours delivered to support the group.
 - (a) A GSE client must be on-site/at work at least their base individual hours as a minimum per month. If a client is not on-site/at work for all of their base hours, the county should verify that the provider delivered the collective group's individual hours to the group (what was the number of staff hours provided to the group during the month? If it was less than the collective group's total the provider can only bill for the staff hours that were provided).
 - (b) A GSE agency may not bill for a GSE client who does not receive services during an entire service month.
 - (c) A GSE agency must have a record of which staff is supporting which clients on any given day.
 - (d) A GSE agency must have supportive documentation that provides clear evidence of support helping with specific activities as identified in the client plan to move a client on their pathway towards their employment goal(s).
 - (e) Running a GSE service is a part of the business operation and not billable to individuals (contract procurement, contract maintenance, or administration functions associated with GSE).
 - (f) Individual time in the community working towards the individual employment goal, separate from the group time, must include phase information (refer to Employment Phases and Billable Activities - see Phases 1 – 4 for element / activity description).
- (12) Employment and day services must adhere to the Home and Community Based settings (HCBS) requirements of 42CFR 441 530(a)(1), including that:
 - (a) The setting is integrated in the greater community and supports individuals to have full access to the greater community;
 - (b) Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

- (c) The setting provides opportunities to seek employment and work in competitive integrated settings; and
- (d) The setting facilitates individual choice regarding services and supports, and who provides them.
- I. Quality Assurance and Service Evaluation: The County shall develop and have available an evaluation system to review services. The evaluation system must have both a Quality Assurance and a Quality Improvement component, and both must include objective measures. The objective measures at a minimum will include performance indicators, by acuity, that include the number of new jobs; job loss and reasons for job loss; the percentage employed earning minimum wage or better; and the average number of hours worked. The County's service evaluation system shall serve as the method by which current providers demonstrate that they continue to be qualified providers. A copy of such evaluation system shall be provided upon request to DDA for review and approval.
- m. On-Site Evaluation: The County shall evaluate and review services delivered to reasonably assure compliance and quality. The County shall conduct at least one on-site visit to each subcontractor during the biennium. The County shall maintain written documentation of all evaluations, recommendations and corrective action plans for each subcontractor. Copies of such documentation will be provided to the DDA upon request.
- n. The County shall work with local developmental disability advisory groups to plan for and coordinate services.
- o. The County shall participate in regularly scheduled meetings between County DD staff and DDA staff to remain updated and current including ACHS and Regional Meetings.
- p. AWA Data System: The County shall use the AWA data system for all billing requests, service provider address and phone number maintenance, evaluation dates and to provide employment outcome information.
 - (1) Monthly provide all data described in the Billing Instructions and in the Employment Outcomes Instructions, which is hereby incorporated by reference.
 - (2) Assure the integrity of data submitted to the State. When data is submitted and rejected due to errors or an error is later identified, the County will correct and resubmit the data within thirty (30) days.

7. Consideration:

a. Fees:

- (1) Approval of fees is the responsibility of the DDA. The DDA Region reserves the right to approve fees/rates for the services being provided. The County will submit a fee/rate schedule with the initial Program Agreement. The County will submit updated fee/rate schedules to the DDA Regional Employment Specialist for approval as changes occur. The rate schedule will include the following information:
 - (a) County(s) name;
 - (b) Time period for which the schedule is applicable; and
 - (c) Each contracted direct service (IE, GSE, CI, ITA, CDS) and its associated rate.

- (2) Fee Limitations: The DDA will set limitations on the Hourly Rate for each direct service. Hourly rates must be divisible by four. The current rates are as follows:
 - (a) Employment services.
 - i. Individual Employment services will not exceed \$75.00/hour.
 - ii. Group Supported Employment services will not exceed \$65.00/hour.
 - (b) Community Inclusion services will not exceed an hourly rate of \$35.00.
 - (c) Child Development services will not exceed a monthly rate of \$500.00.
- b. Budget and Spending Plan, attached as Exhibit B:
 - (1) Budget amount listed in Exhibit B: The County may not exceed the state only revenue dollar amount or the total revenue dollar amount indicated on the Program Budget Agreement included in Exhibit B. The waiver revenue dollar amount may be exceeded to accommodate Clients moving from state-only employment and day services to waiver employment and day services.
 - (2) Spending Plan: DDA will provide the initial Spending Plan. Funding shall be distributed under planned expenditures as well as allocated under State and Medicaid shall function as a line item budget for expenditures under this agreement. The planned expenditures for Consumer Support are based on Client numbers as well as planned additional consumer services expenditures. The spending plan may only be modified by mutual agreement of the parties in writing and shall not require a program agreement.
 - (a) Funds Designated for Additional Consumer Services: If a County provides Community Information and Education services under additional consumer services, then activities must include outreach efforts to federally recognized local tribes.
 - (b) Funds Designated for Adult Day Care Consumers: Funds designated for Adult Day Care Consumers are available to Clients who were served between December 1996 and December 2003 in Adult Day Health agencies and were subsequently determined ineligible for Level II or III services (Adult Day Health). Level II and III services are licensed rehabilitation and skilled nursing services along with socialization. Level I services (Adult Day Care) are supervised day programs where frail and disabled adults can participate in social, educational, and recreational programs without the need for skilled nursing. These Clients may be referred to services defined in the statement of work, or to an Adult Day Care service other than Level II or III. If a Client no longer needs and wants services, the funds are available for other Clients who are not part of the group of original Clients identified between December 1996 and 2003. An Adult Day Care service shall only be provided by Adult Day Care agencies certified by the local Area Agency on Aging. Adult Day Care service is not a waiver approved service.
- c. Program Agreement Amendments: A County can request an amendment at any time. An amendment for additional client(s) may be supported when clients exceed the number used to develop the contract. An amendment for additional service hours authorized may be supported when county provides evidence. An amendment request for expenditures exceeding contract total due to hourly rates paid to service provider may not be supported as the county is responsible to manage contract and rates paid to their providers.
- d. Exemptions: The DDA Assistant Secretary may approve in writing an exemption to a specific

program agreement requirement.

8. Billing and Payment:

- a. Program Agreement Budget: DSHS shall pay the County all allowable costs, which are defined by DDA as cost incurred by the program for:
 - (1) Administration: Costs of the County Human Services Department or similar county office, responsible for administration of the Developmental Disabilities Program. Allowable costs include personnel and overhead costs directly related to the administration and coordination of the program, including such activities as program planning, budgeting, contracting, monitoring, and evaluation. Also included are departmental and county indirect and/or direct administrative costs, to the extent that such costs are appropriately allocated to the program using an established methodology consistent with grants management guidelines. For a County whose designated coordinator manages multiple programs, the County must be able to provide evidence of the time the coordinator spent working on the Developmental Disabilities program.
 - (2) Additional Consumer Services:
 - (a) Training:
 - i. Staff Training: Costs incurred by the program for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or interning students in the provision of developmental disabilities services.
 - ii. Board Training: Costs incurred by the program for planned, structured activities designed to provide, improve, or enhance program-related skills of board and advisory committee members.
 - (b) Community Information and Education: to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.
 - (c) Other Activities.
 - i. Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search."
 - ii. Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
 - iii. Partnership project: Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21).
 - (3) Consumer Support.
 - (a) Adult Day Care services are available to Clients who were served between December 1996

Page 12

and December 2003 in Adult Day Health agencies and were subsequently determined ineligible for Level II or III services (Adult Day Health). Level II and III services are licensed rehabilitation and skilled nursing services along with socialization. Level I services (Adult Day Care) are supervised day programs where frail and disabled adults can participate in social, educational, and recreational programs without the need for skilled nursing.

- (b) Community Inclusion services are individualized services provided in typical integrated community settings for individuals in retirement. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion (per the <u>Community Inclusion Billable Activities</u>). These services may be authorized instead of employment support (Individual Employment or Group Supported Employment) for working age individuals who have received nine (9) months of employment support.
- (c) Child Development Services are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development. Services may include specialized instruction, speech-language pathology, occupational therapy, physical therapy, assistive technology, and vision services. Services are provided in natural environments to the maximum extent appropriate.
- (d) Individual Supported Employment services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities to promote career development. These are individualized services necessary to help persons with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job (per the <u>Individual Employment Phases & Billable Activities</u>)
- (e) Individualized Technical Assistance services are a part of an individual's pathway to employment. This service provides assessment and consultation to the employment provider to identify and address existing barriers to employment. This is in addition to supports received through supported employment services for individuals who have not yet achieved their employment goal.
- (f) Group Supported Employment services are a part of an individual's pathway to integrated jobs in typical community employment. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting. The service outcome is sustained paid employment leading to further career development in integrated employment at or above minimum wage. Examples include enclaves, mobile crews, and other business models employing small groups of workers with disabilities in integrated employment community settings.
- b. Reimbursement for the state Fiscal Year shall not exceed the total amount listed in **Exhibit B** to this Program Agreement. However, with a Program Agreement amendment, the parties may increase or decrease the Program Agreement amount. Counties will work with DDA HQ on amendments to the Program Agreement.
- c. Monthly Invoice with Signed Documentation: All requests for reimbursement amounts must be entered and posted into the AWA system. The Contractor may post a combined claim of all programs/services covered by this Program Agreement. DSHS shall make all payments due to the Contractor for all invoices submitted pursuant to this section within sixty (60) days following posting

of required information.

- d. Clients will be assisted in accessing DVR services per the DDA/DVR MOU. Client services shall not be reimbursed under this Program Agreement when the same services are paid for under the Rehabilitation Act of 1973 by DVR, Public Law 94-142 or any other source of public or private funding.
- e. Reimbursement of Client Services: A claim for each individual is made on the AWA system by indicating the number of service units delivered to each individual listed and the fee per unit. Units are defined as:
 - (1) An "Hour" is at least fifty (50) minutes of direct service. Partial hour to the quarter may be recorded.
 - (2) A "Day" is at least four (4) hours of direct service and will only be used in connection with Adult Day Care reimbursement.
 - (3) A "Month" represents a minimum of at least fifty (50) minutes of direct service for CDS reimbursement.
- f. Program Administration: The County will provide program administration and coordination including such activities as planning, budgeting, contracting, monitoring, evaluation and may bill for administrative costs as identified in Exhibit B. Administrative costs reimbursement will not exceed 7% of the total combined allocation for Consumer Support and Other Consumer Support services unless the Assistant Secretary of DDA approves a request for an exception under chapter 388-850 WAC. Monthly claims for administrative costs will be 1/12 of the maximum Administration amount identified in Exhibit B, or the lessor of the two.
- g. The Individual Employment Phases & Billable Activities document defines the individual Client services that DDA reimburses. That document is located on the DSHS DDA County Best Practices Web site at https://www.dshs.wa.gov/dda/county-best-practices.
- h. The Community Inclusion Billable Activities document defines the individual Client services DDA reimburses. That document is located on the DSHS DDA County Best Practices Web site at https://www.dshs.wa.gov/dda/county-best-practices.
- i. Timeliness of and Modification to Billings: All initial invoices with signed documentation must be received by the DDA Region within sixty (60) calendar days following the last day of the month in which the service is provided. Corrected invoices and documentation including re-posted billing information will be accepted throughout the fiscal year as long as they are received within sixty (60) calendar days of the associated fiscal year unless an extension is approved by the DDA Regional Administrator or designee. Payment will not be made on any invoice submitted past sixty (60) calendar days after the Program Agreement fiscal year.
- j. Recovery of Fees: If the County bills and is paid fees for services that DSHS later finds were (a) not delivered or (b) not delivered in accordance with Program Agreement standards, DSHS shall recover the fees for those services and the County shall fully cooperate during the recovery.
- k. PASRR Administration: The County may bill for administration costs as identified in Exhibit B. Monthly claims for administration cost will be based on the actual PASRR expenditures multiplied by 7%.

9. Intermediate Care Facilities for Intellectual Disabilities (ICF/ID) Agreement. If applicable per 42

CFR 483.410, the County shall assure that all county-operated or subcontracted programs serving persons living in ICF/ID facilities develop a plan and coordinate their services with the facility on behalf of the ICF/ID resident. DDA will supply to the County a list of ICF/ID residents who attend a day program.

- **10. Single State Medicaid Agency—Health Care Authority (HCA):** HCA, as the single state Medicaid Agency, has administrative authority for Title XIX coverage per 42 CFR 431.10. DSHS is the operating agency for the Home and Community Based Waivers for services for people with developmental disabilities. The County only has responsibility for services covered in this agreement.
- **11. DSHS/DRW Access Agreement:** The DRW February 27, 2001 Access Agreement with DDA is incorporated by reference. The County assures that it and its subcontractors have reviewed the Access Agreement. The agreement covers DRW's access to individuals with developmental disabilities, Clients, programs and records, outreach activities, authority to investigate allegations of abuse and neglect, and other miscellaneous matters and is binding for all providers of DDA contracted services.

Exhibit A – Data Security Requirements

- **1. Definitions**. The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
 - a. "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf).
 - b. "Authorized Users(s)" means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.
 - c. "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. For purposes of this contract, data classified as Category 4 refers to data protected by: the Health Insurance Portability and Accountability Act (HIPAA).
 - d. "Cloud" means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iCloud, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, O365, and Rackspace.
 - e. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits (256 preferred and required to be implemented by 6/30/2020) for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.
 - f. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.
 - g. "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, or Windows Phone. Mobile Devices include smart phones, most tablets, and other form factors.
 - h. "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.
 - i. "Portable Device" means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but

are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.

- j. "Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.
- k. "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.
- "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.
- m. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.
- 2. Authority. The security requirements described in this document reflect the applicable requirements of Standard 141.10 (<u>https://ocio.wa.gov/policies</u>) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: <u>https://www.dshs.wa.gov/fsa/central-contract-services/keeping-dshs-client-information-private-and-secure</u>, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.
- 3. Administrative Controls. The Contractor must have the following controls in place:
 - a. A documented security policy governing the secure use of its computer network and systems, and which defines sanctions that may be applied to Contractor staff for violating that policy.
 - b. If the Data shared under this agreement is classified as Category 4 data, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.
 - c. If Confidential Information shared under this agreement is classified as Category 4 data, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.
 - **4.** Authorization, Authentication, and Access. In order to ensure that access to the Data is limited to authorized staff, the Contractor must:

- a. Have documented policies and procedures governing access to systems with the shared Data
- b. Restrict access through administrative, physical, and technical controls to authorized staff.
- c. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action
- d. Ensure that only authorized users are capable of accessing the Data.
- e. Ensure that an employee's access to the Data is removed immediately:
 - (1) Upon suspected compromise of the user credentials.
 - (2) When their employment, or the contract under which the Data is made available to them, is terminated.
 - (3) When they no longer need access to the Data to fulfill the requirements of the contract.
- f. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information
- g. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:
 - (1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.
 - (2) That a password does not contain a user's name, logon ID, or any form of their full name.
 - (3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.
 - (4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.
- h. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:
 - (1) Ensuring mitigations applied to the system don't allow end-user modification.
 - (2) Not allowing the use of dial-up connections.
 - (3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.
 - (4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.

- (5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.
- (6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point. All Contractors must be in compliance by 6/30/2020.
- i. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:
 - (1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor
 - (2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)
 - (3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)
- j. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:
 - (1) Be a minimum of six alphanumeric characters.
 - (2) Contain at least three unique character classes (upper case, lower case, letter, number).
 - (3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.
- k. Render the device unusable after a maximum of 10 failed logon attempts.
- 5. **Protection of Data**. The Contractor agrees to store Data on one or more of the following media and protect the Data as described:
 - a. **Hard disk drives**. For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms, which provide equal or greater security, such as biometrics or smart cards.
 - b. Network server disks. For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secure Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data, as outlined below in Section 8 Data Disposition, may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

- c. **Optical discs (CDs or DVDs) in local workstation optical disc drives**. Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism
- d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. **Paper documents**. Any paper records must be protected by storing the records in a Secure Area, which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area..
- f. **Remote Access**. Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

g. Data storage on portable devices or media.

- (1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections::
 - (a) Encrypt the Data.
 - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
 - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
 - (d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
 - i. Keeping them in a Secure Area when not in use,
 - ii. Using check-in/check-out procedures when they are shared, and
 - iii. Taking frequent inventories.

(2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

h. Data stored for backup purposes.

- (1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition.
- (2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition
- i. **Cloud storage**. DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:
 - (1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:
 - (a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attest to the contact listed in the contract and keep a copy of that attestation for your records in writing that all such procedures will be uniformly followed.
 - (b) The Data will be Encrypted while within the Contractor network.
 - (c) The Data will remain Encrypted during transmission to the Cloud.
 - (d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
 - (e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor.
 - (f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on the contractor network
 - (g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.
 - (2) Data will not be stored on an Enterprise Cloud storage solution unless either:
 - (a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,
 - (b) The Cloud storage solution used is HIPAA compliant.

- (3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.
- **6. System Protection**. To prevent compromise of systems which contain DSHS Data or through which that Data passes:
 - a. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.
 - b. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.
 - c. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.
 - d. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

7. Data Segregation.

- a. DSHS category 4 data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation
 - (1) DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data.
 - (2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data.
 - (3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,
 - (4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.
 - (5) When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.
- 8. Data Disposition. When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single
Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	character data, or

	Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding
Maynetic tape	Degaussing, incinerating of crosscut shreuting

- **9.** Notification of Compromise or Potential Compromise. The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
- **10. Data shared with Subcontractors**. If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub-Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

Exhibit A

Exhibit B

Program Agreement Budget

X Original Budget Budget Revision REVENUES

Fiscal Year	Fund Source	Original	1 st Revision	2 nd Revision	3 rd Revision
2020	State only	1,962,825			
	Waiver	1,715,696			
	Total Rev.	\$3,678,521	\$	\$	\$
	Total Rev.	\$3,678,521	\$	\$	

Fund Source	Original	1 st Revision	2 nd Revision	3 rd Revision
State only				
Waiver				
Total Rev.	\$	\$	\$	\$
	State only Waiver	State only Waiver	State only Waiver	State only

	PASRR Funds	State Funds	Medicaid Funds	TOTAL
ADMINISTRATION (CMIS/AWA BARS 11)	4,073	130,118	106,460	240,651
OTHER CONSUMER SUPPORTS (CMIS/AWA Code 31, 32, 41, 92, 93, 94)		123,699	101,208	224,907
CONSUMER SUPPORT				
STATE-ONLY		9,912		9,912
Child Development		194,555	1991 - 11 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 19	194,555
MEDICAID CLIENTS	58,188	1,471,260	1,471,260	3,000,708
ROADS to COMMUNITY LIVING		1,947	5,841	7,788
TOTAL	62,261	1,931,491	1,684,769	3,678,521



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-381

File ID:	AB2019-381	Version:	1	Status:	Agenda Ready
File Created:	06/27/2019	Entered by:	JThomson@co.whatcom.wa.us	S	
Department:	Health Department	File Type:	Agreement		
First Assigned t Agenda Date:	o: Council Finance and 07/09/2019	d Administrative Next Mtg. Da	e Services Committee ate:	Hearing	Date:

Primary Contact Email: <u>APavitt@co.whatcom.wa.us <mailto:APavitt@co.whatcom.wa.us></u>

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an Interlocal agreement between Whatcom County and Skagit County for participation in the Youth Marijuana Prevention and Education Program, in the amount of \$28,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments.

HISTORY OF LEGISLATIVE FILE

Date: Acti

Acting Body:

Action:

Sent To:

Attachments: Memo to County Executive, Skagit County YMPEP Agreement

Final Action: Enactment Date: Enactment #: WHATCOM COUNTY Health Department



Regina A. Delahunt, Director Greg Stern, M.D., Health Officer

MEMORANDUM

TO:	Jack Louws, County Executive
FROM:	Regina A. Delahunt, Director
RE:	Skagit County – Youth Marijuana Prevention and Education Program Interlocal Agreement
DATE:	June 21, 2019

Enclosed are two (2) originals of an Interlocal Agreement amendment between Whatcom County and Skagit County for your review and signature.

Background and Purpose

The Whatcom County Health Department is the lead agency for the North Sound Regional Youth Marijuana Prevention and Education Program (YMPEP) serving Whatcom, Skagit, Island, San Juan, and Snohomish Counties. Whatcom County receives funding from Washington State Department of Health (DOH) to coordinate implementation of strategies aimed at reducing initiation and use of marijuana by youth (ages 12-20) in the North Sound region. The purpose of this agreement is to support Skagit County's participation in planning and implementing regional youth marijuana prevention strategies and activities.

Funding Amount and Source

Funding for this contract, in an amount not to exceed \$28,000, is provided by the Washington State Department of Health YMPEP and is included in the 2019 budget. Council approval is required per RCW 39.34.030 for agreements between public agencies.

Please contact Alyssa Pavitt at extension #6061 if you have any questions regarding this agreement.

Encl.



WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

(r					
Originating Departme			85 Health		
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855060 Substance Abuse Program			
Contract or Grant Administrator:		Alyssa Pavitt			
Contractor's / Agency	Name:		Skagit County		
ls this a New Contra Yes ⊠ No [l to an Existing Contract? 3.08.100 (a)) Original (Contract #:	Yes 🗌 No 🗌
Does contract requin Already approved?	e Council Approval? Yes Council Approved Date:	🛛 No 🗌	If No, include WCC: (Exclusions see: Whatcom Co	ounty Codes 3.06.010, 3	.08.090 and 3.08.100)
ls this a grant agreer Yes □ No [ncy contract nun	nber(s):	CFDA#:	
ls this contract grant Yes ⊠ No [County grant cont	tract number(s):	201801023	
Is this contract the re Yes No [sult of a RFP or Bid process? ☑ If yes, RFP and Bid numbe	er(s):		Contract Cost Center:	677350
Is this agreement exe	cluded from E-Verify? No) 🗌 Yes 🖂	If no, include Attachm	ent D Contractor De	eclaration form.
□ Contract work is □ Contract work is	sion(s) below: rvices agreement for certified/lic for less than \$100,000. for less than 120 days. nent (between Governments).	ensed professio	onal. Contract for Comme Work related subcon Public Works - Loca	tract less than \$25,	000.
any prior amendments \$ _28,000 This Amendment Amo \$ Total Amended Amou \$	punt:	 and professiona 10% of contract 1. Exercising 2. Contract is approved to approve the second second	al service contract amendme amount, whichever is greate an option contained in a cor for design, construction, r-o by council in a capital budget rd is for supplies. It is included in Exhibit "B" of for manufacturer's technica ad/or technical support and s	nts that have an incre er, except when: ntract previously appro- -w acquisition, prof. so t appropriation ordinal the Budget Ordinanc software maintenance Whatcom County.	ervices, or other capital costs nce. e re maintenance of electronic from the developer of
Term of Contract:	1 Year		Expiration Date:	06/30/2020	
Contract Routing:	 IT reviewed (if IT related): Contractor signed: Submitted to Exec.: 	Caldwell	/	Date: Date:	06/13/2019 06/20/2019 6/21/19 6 26 19
	 Council approved (if necessary): Executive signed: Original to Council: 			Date: Date: Date:	

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN

Whatcom County AND Skagit County Whatcom County Contract Number

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

- 1. PURPOSE: The purpose of this agreement is to plan and implement youth marijuana prevention activities outlined in the Skagit County Work Plan.
- 2. RESPONSIBILITIES:

Whatcom will:

- A. Lead and facilitate a regional strategic planning process, create a 5-year Strategic Plan for the North Sound Regional Youth Marijuana Prevention and Education Program (YMPEP), and lead implementation of the developed plan.
- B. Provide technical assistance and support to Skagit County in carrying out their YMPEP work.
- C. Include Skagit County staff in regional YMPEP communication, trainings and meetings.
- D. Provide Skagit County with templates for submitting work plan, budget (Attachment B "Compensation") and reporting.

Contractor will:

- A. Implement the following activities in Skagit County as part of the Regional Marijuana Prevention Program:
 - I. Actively engage in Regional Marijuana Prevention Program & Network:
 - a. Attend quarterly Regional Network meetings.
 - b. Participate in monthly YMPEP subcontractor phone meetings.
 - c. Attend each CPWI/DFC coalition in your county at least once during the year to share about YMPEP strategies and promote regional network.
 - d. Promote joining the Regional Network to partners in your county through: coalitions, meetings, and program emails/newsletters. Provide contacts to Regional Coordinator for Regional Network Listserv.
 - e. Join and participate in the YMPEP Practice Collaborative WA Portal.
 - f. Participate in a regional needs assessment during July August 2019.
 - II. Serve as a leader and advocate for marijuana prevention in your county:
 - a. Promote YMPEP professional development training opportunities to partners in your county.
 - b. Promote Youth Empowerment opportunities coordinated through YMPEP, including One Voice, to youth prevention clubs in your county.
 - c. Share education resources on marijuana and vaping to school and community partners in communities you serve.

- d. Partner with ESD 189 to support substance use policy updates, as relevant.
- e. Monitor state and local policies and legislation in relation to marijuana prevention. Advocate for state and/or local legislation or policies that support marijuana prevention, as relevant.

III. Locally implement statewide youth marijuana prevention campaigns:

- a. Create and submit to Whatcom, an annual local media implementation plan to include implementation of the below:
 - i. You Can Youth Prevention Campaign
 - ii. Under the Influence of...You Parent Campaign
 - iii. Know About Cannabis Adult Campaign
 - iv. Additional marijuana prevention campaigns developed by WA DOH, if relevant.
- b. Implement the approved local media campaign(s) in your county.

IV. Actively participate in regional efforts to reduce youth access to marijuana:

- a. Provide local insights, data and partnerships as an active participant of a regional Youth Access Committee. This committee will assess needs and guide development of strategies to keep marijuana out of the hands of youth, including retailer education materials and a social norms campaign.
- b. Complete data gatherings as needed with local marijuana retailers, marijuana users and/or youth during development of youth access strategies.
- c. Participate in committee development of a regional implementation plan and lead implementation in your county.

V. Attend relevant local, state, national trainings related to marijuana prevention:

- a. Create and submit an annual training plan to Whatcom for approval.
- b. Attend approved trainings.

VI. Support youth groups in your county to attend the Washington State Prevention Summit and/or Spring Youth Forum

- a. Create and submit a youth leadership support plan to Whatcom for approval.
- b. Attend approved trainings.
- B. Participate in regional and state conference calls, trainings and in-person meetings, as available.
- C. Provide meeting space on a rotation basis, as requested.
- D. Maintain accurate records of staff time dedicated to YMPEP activities.
- E. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. Contractor will use reporting form provide by Whatcom. Due dates will be no later than the 10th day of the month, following the month activities occurred.
- F. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps and deliverables agreed to with regional partners and approved by DOH.
- G. Request approval for budget adjustments that total 10% or more approval required at least 15 days prior to expending adjusted budget items.

- H. Use no more than 20% of YMPEP allocation for indirect/overhead costs.
- I. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom on at least one annual site visit at a mutually agreeable time to discuss Skagit County program process and contract oversight.
- **3.** TERM OF AGREEMENT: The start date for this grant funded project is July 1, 2019 therefore the start date of this contract has been established as of that date and shall be effective through June 30, 2020.
- 4. EXTENSION: The duration of this Agreement may be extended by mutual written consent of the parties.
- 5. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
 - 5.1 Whatcom's representative shall be:

Alyssa Pavitt, Program Specialist – <u>apavitt@co.whatcom.wa.us</u> Whatcom County Health Department 509 Girard Street Bellingham, WA 98225 (360) 778-6061

5.2 Skagit's representative shall be:

Danica Sessions, Community Health Coordinator – <u>danicas@skagit.wa.us</u> Skagit County Health Department 700 S Second, Room 301 Mount Vernon, WA 98273 (360) 416-1521

- 6. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 7. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agrees to save, indemnify, defend and hold the other party harmless from any such liability. It is further provided that no liability shall attach to Whatcom County by reason of entering into this contract except as expressly provided herein.
- 8. TERMINATION: Any party hereto may terminate this Agreement upon (30) days-notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- 9. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

- **10.** SEVERABILITY: In the event of any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.
- 11. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 12. OTHER PROVISIONS: Contractor will comply with all applicable Federal and State requirements that govern this Agreement.

DEPARTMENT APPROVAL

6/24/19 Date

Anne Deacon, Human Services Manager

Regina Delahunt, Director

Date

WHATCOM COUNTY

JACK LOUWS County Executive

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this _____day of _____, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires: _____

APPROVED AS TO FORM

Royce Buckingham, Deputy Prosecuting Attorney

DATED this _____day of ______, 2019.

BOARD OF COUNTY COMMISSIONERS SKAGIT COUNTY, WASHINGTON

Kenneth A. Dahlstedt, Chair

Lisa Janicki, Commissioner

Attest:

Ron Wesen, Commissioner

Clerk of the Board

For contracts under \$5,000: Authorization per Resolution R20030146

Recommended:

County Administrator

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director

EXHIBIT "B" (COMPENSATION)

The source of funding for this contract, in an amount not to exceed \$28,000, is the Youth Marijuana Prevention and Education Contract with the Washington State Department of Health.

Contract Budget 7/1	/2019 – 6/30/2020	
ltem	Documentation needed with invoice	Budget
Personnel	Expanded GL Report	\$15,700
Supplies, Materials, Printing	Expanded GL Report	\$333
Advertising	Expanded GL Report	\$3,000
Professional Services	Copy of sub-contracts and invoices	\$2,000
Travel & Training	For travel, training and conference expenditures, mileage will be reimbursed at the current Federal rate. Ground transportation, coach airfare and ferries will be reimbursed at cost when accompanied by receipts. Lodging and meal costs are not to exceed the U.S. General Services Administration Domestic Per Diem Rates (<u>www.gsa.gov</u>), specific to location. Reimbursement requests for allowable travel, training and membership expenses (including conference/training registration fees) must be accompanied by receipts or vendor invoices. Receipts for meals are not required. Mileage records, including the name of the staff member, date of travel, starting point and destination of travel, the number of miles traveled, the per mile reimbursement rate, and a brief description of the purpose of travel, are required for mileage reimbursement.	\$2,300
Administration	20% - Copy of approved indirect cost plan required for 20%; if not received, 10% will be the maximum allowed.	\$4,667
TOTAL		\$28,000

- 1. Budget adjustments that total ten percent (10%) or more need approval at least 15 days prior to expending adjusted budget items.
- 2. Contractor will be required to submit a spend-down plan to the County if the following budget spending guidelines are not met: 50% by January 1, 2020, 75% by April 1, 2020 and 90% by June 1, 2020. If a spend-down plan is submitted and not carried through, it will be considered in future funding decisions.
- 3. Contractor may transfer funds between budget line items with prior County approval.
- I. Invoicing
 - The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly
 invoices must be submitted by the 20th day of the month following the month of service. Invoices submitted for
 payment must include sufficient documentation to prove the validity of all costs claimed. A general ledger report of
 costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom County reserves the right
 to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not
 an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

2. The Contractor shall submit invoices to (include contract/PO #):

Attention: Business Office – <u>HL-BusinessOffice@co.whatcom.wa.us</u> Whatcom County Health Department 509 Girard Street Bellingham, WA 98225

- 3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
- 4. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. <u>Duplication of Billed Costs or Payments for Service</u>: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-382

File ID:	AB2019-382	Version:	1	Status:	Agenda Ready
File Created:	06/27/2019	Entered by:	JThomson@co.whatcom.wa.u	S	
Department:	Health Department	File Type:	Agreement		
First Assigned t Agenda Date:	to: Council Finance and 07/09/2019	d Administrativo Next Mtg. Da	e Services Committee ate:	Hearing	Date:

Primary Contact Email: <u>RDelahun@co.whatcom.wa.us <mailto:RDelahun@co.whatcom.wa.us></u>

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Children, Youth and Families to outline general terms and conditions of agreements between the agencies

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments.

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Action:

Sent To:

Attachments: Memo to County Executive, WA State DCYF General Terms & Conditions

Final Action: Enactment Date: Enactment #: WHATCOM COUNTY Health Department



Regina A. Delahunt, Director Greg Stern, M.D., Health Officer

MEMORANDUM

TO:	Jack Louws, County Executive
FROM:	Regina A. Delahunt, Director
RE:	Washington State Department of Children, Youth, and Families (DCYF) – General Terms and Conditions Agreement
DATE:	June 20, 2019

Enclosed are two (2) originals of an Interlocal Agreement between Whatcom County and Washington State Department of Children, Youth, and Families for your review and signature.

Background and Purpose

This agreement states the general terms and conditions that govern the work performed under any program agreement between DCYF and Whatcom County. Between July 1, 2018 and June 30, 2019, the former Department of Early Learning (DEL), Department of Social and Health Services (DSHS) Children's Administration (CA), Juvenile Rehabilitation (JR) and the Office of Juvenile Justice (OJJ) will merge into DCYF. Agreements outlining general terms and conditions of agreements under any of the aforementioned agencies are being replaced by the terms and conditions in this agreement.

Funding Amount and Source

There is no monetary amount stipulated in this agreement.

Differences from Previous Contract

Aside from the change in name to ensure that this agreement reflects DCYF, there are no substantive changes to this agreement. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Regina Delahunt at extension #6005 if you have any questions regarding this agreement.

Encl.



1500 North State Street Bellingham, WA 98225-4551 360.778.6100 | FAX 360.778.6101 www.whatcomcounty.us/health

WHATCOM COUNTY CONTRACT
INFORMATION SHEET

Whatcom County Contract No.

	INFORMATION	SHEET	-	
Originating Department:	Department:			
Division/Program: (i.e. Dept. Division and Program)		8510 Administration / 851000 Administration		
Contract or Grant Administrator:		Regina Delahunt		
Contractor's / Agency Name:		Washington State D	epartment of Children, Yo	uth & Families
	t, is this an Amendment or Renewa nendment or Renewal, (per WCC			Yes 🗋 No 🗖
Does contract require Council Appro Already approved? Council Approv		If No, include WCC: (Exclusions see: Whatcon	County Codes 3.06.010, 3.08.0	090 and 3.08.100)
Is this a grant agreement? Yes	If yes, grantor agency contract nun	nber(s):	CFDA#:	
Is this contract grant funded? Yes □ No □	If yes, Whatcom County grant cont	ract number(s):		
Is this contract the result of a RFP o Yes \Box No 🖂 If yes, R	r Bid process? FP and Bid number(s):		Contract Cost Center:	
Is this agreement excluded from E-V	/erify? No 🗌 Yes 🖂	If no, include Attac	hment D Contractor Decla	aration form.
If YES, indicate exclusion(s) below: Professional services agreement for certified/licensed professional. Contract work is for less than \$100,000. Contract work is for less than 120 days. Interlocal Agreement (between Governments). Contract Amount: (sum of original contract amount and any prior amendments): \$ This Amendment Amount: \$ Total Amended Amount: \$ S Total Amended Amount: \$ S). Inded FHWA. ards exceeding \$40,000, e greater than \$10,000 or d by the council. ces, or other capital costs maintenance of electronic m the developer of
Summary of Scope: This agreement specifies general terms and conditions for all contracts between Whatcom County and WA State DCYF. Term of Contract: 1 Year Expiration Date: 06/30/2020				
Contract Routing: 1. Prepared by	y: JT			6/20/2019
 Attorney sig AS Finance IT reviewed Contractor sig Submitted to 	inoff: Knt Michael Knt		Date: Date:	125119 6/26/19

THE STATE OF ANEL	AGREEI TERMS	AND CO	GENERAL	DCYF Contract No 1983-56657	umber
These General Terms and Conditions are between the state of Washington Department of Children Youth and Families (DCYF) and the County identified below. These General Terms and Conditions govern work to be performed under any Program Agreement between the parties. These General Terms and Conditions supersede and replace any previously executed General Terms and Conditions as of the start date below.					
TERM OF AGREEMEN following dates, unles			General Terms and Co	nditions shall s	start and end on the
START DATE: 07/01/20			END DATE: 06/30/202	20	
COUNTY NAME Whatcom County			DCYF INDEX NUMBER 1241		
COUNTY ADDRESS 311 Grand Ave Bellingham, WA 98225	;				
COUNTY TELEPHONE COU (360) 778-6020			COUNTY FAX		
			DCYF CONTRACTS DEPA (360) 902-8266	RTMENT TELEPHO	NE
By their signatures belo	w, the parties agree	to this Agreeme	nt on General Terms and	d Conditions.	
COUNTY SIGNATURE(S) Regna A De	last	DATE(S)	PRINTED NAME(S) AND TIT Regina A. Del Director	lahunt	TELEPHONE NUMBER (INCLUDE AREA CODE) 360-778-6005
DCYF SIGNATURE		DATE	PRINTED NAME AND TITLE		TELEPHONE NUMBER (INCLUDE AREA CODE)

WHATCOM COUNTY

JACK LOUWS **County Executive**

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this day of 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

> NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires:

APPROVED AS TO FORM

Royce Buckingham, Deputy Prosecuting Attorney

- **1. Definitions.** The words and phrases listed below, as used in the Agreement, shall each have the following definitions:
 - a. "Agreement" means this Department of Children Youth and Families (DCYF) County Agreement on General Terms and Conditions and any exhibits and other documents attached or incorporated by reference. Unless plainly inconsistent with context, the term "Agreement" includes and refers to all such agreements collectively.
 - b. "CFR" means the Code of Federal Regulations. All references in this Agreement and any Program Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation.
 - c. "Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
 - d. "County" means the political subdivision of the state of Washington named above performing services pursuant to this Agreement and any Program Agreement.
 - e. "County Representative" means an individual in the position of County Manager, County Administrator, County Executive, or other similar position which reports to the highest governing body responsible for the subject matter of the Agreement or applicable Program Agreement(s).
 - f. DCYF Contracts Administrator" means the individual in the DCYF Contracts Department with oversight authority for the Department of Children Youth and Families statewide agency contracting procedures, or their appropriate designee.
 - g. "DCYF Contracts Department" means the Department of Children Youth and Families statewide agency headquarters contracting office, or successor section or office.
 - h. "DCYF Representative" means any DCYF employee who has been delegated contractsigning authority by the DCYF Secretary or his/her designee.
 - i. "Department of Children, Youth and Families" or "DCYF" means the Washington agency devoted exclusively to serve and support Washington state's youth and their families.
 - j. "Debarment" means an action taken by a federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - k. "General Terms and Conditions" means the contractual provisions contained within this Agreement, which govern the contractual relationship between DCYF and the County, under the Program Agreements subsidiary to and incorporating therein by reference this Agreement.
 - "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, or any financial identifiers.

Page 2

- m. "Program Agreement" or "County Program Agreement" means a written agreement between DCYF and the County containing special terms and conditions, including a statement of work to be performed by the County and payment to be made by DCYF. This term may also refer to an agreement between DCYF and the County, which was transferred to DCYF by operation of law.
- n. "RCW" means the Revised Code of Washington. All references in this Agreement and any Program Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute.
- o. "Secretary" means the individual appointed by the Governor, State of Washington, as the head of DCYF, or his/her designee.
- p. "Subcontract" means a separate Agreement between the County and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the County shall perform pursuant to any Program Agreement.
- q. "USC" means the United States Code. All references in this Agreement and any Program Agreement to USC chapters or sections shall include any successor, amended, or replacement statute.
- r. "WAC" means the Washington Administrative Code. All references in this Agreement and any Program Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation.
- 2. Amendment. This Agreement, or any term or condition thereof, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
- **3. Assignment.** Except as otherwise provided herein in Section 21, the County shall not assign rights or obligations derived from this Agreement or any Program Agreement to a third party without the prior, written consent of the DCYF Contracts Administrator and the written assumption of the County's obligations by the third party.
- **4. Billing Limitations**. Unless otherwise specified in a Program Agreement, DCYF shall not pay any claims for services submitted more than twelve (12) months after the calendar month in which the services were performed.
- 5. Compliance with Applicable Law. At all times during the term of this Agreement and any Program Agreement, the County and DCYF shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

6. Confidentiality

a. The parties shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of any Program Agreement for any purpose that is not directly connected with the performance of the services contemplated there under, except:

(1) As provided by law; or,

- b. In the case of Personal Information, as provided by law or with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information. The parties shall protect and maintain all Confidential Information gained by reason of any Program Agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the parties to employ reasonable security measures, which include restricting access to the Confidential Information by:
 - (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically securing any computers, documents, or other media containing the Confidential Information.
- c. To the extent allowed by law, at the end of the Agreement term, or when no longer needed, the parties shall return Confidential Information or certify in writing the destruction of Confidential Information upon written request by the other party.
- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g., protected health information) must be destroyed through shredding, pulping, or incineration.
- e. The compromise or potential compromise of Confidential Information must be reported to the DCYF Contact designated on the Program Agreement within five (5) business days of discovery for breaches of less than 500 persons' protected data, and three (3) business days of discovery for breaches of over 500 persons' protected data. The parties must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.
- 7. County Certification Regarding Ethics. By signing this Agreement, the County certifies that the County is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement and any Program Agreement.
- 8. Debarment Certification. The County, by signature to this Agreement, certifies that the County is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any federal department or agency. The County also agrees to include the above requirement in all subcontracts into which it enters.

9. Disputes.

Both DCYF and the County ("Parties") agree to work in good faith to resolve all conflicts at the lowest level possible. However, if the Parties are not able to promptly and efficiently resolve, through direct informal contact, any dispute concerning the interpretation, application, or implementation of any section of the Agreement or applicable Program Agreement(s), either Party may reduce its description of the dispute in writing, and deliver it to the other Party for consideration. Once received, the assigned managers or designees

of each Party will work to informally and amicably resolve the issue within five (5) business days. If the managers or designees are unable to come to a mutually acceptable decision within five (5) business days, they may agree to issue an extension to allow for more time.

If the dispute cannot be resolved by the managers or designees, the issue will be referred through each Agency's respective operational protocols, to the Secretary of DCYF ("Secretary") and the County Representative or their deputy or designated delegate. Both Parties will be responsible for submitting all relevant documentation, along with a short statement as to how they believe the dispute should be settled, to the Secretary and the County Representative.

Upon receipt of the referral and relevant documentation, the Secretary and County Representative will confer to consider the potential options for resolution, and to arrive at a decision within fifteen (15) business days. The Secretary and County Representative may appoint a review team, a facilitator, or both, to assist in the resolution of the dispute. If the Secretary and County Representative are unable to come to a mutually acceptable decision within fifteen (15) days, they may agree to issue an extension to allow for more time.

Both Parties agree that, the existence of a dispute notwithstanding, the Parties will continue without delay to carry out all respective responsibilities under the Agreement or applicable Program Agreement(s) that are not affected by the dispute.

The final decision will be put in writing and will be signed by both the Secretary and County Representative. If the Agreement is active at the time of resolution and amendment of the Agreement is warranted for ongoing clarity, the Parties will execute an amendment to incorporate the final decision into the Agreement. If this dispute process is used, the resolution decision will be final and binding as to the matter reviewed and the dispute shall be settled in accordance with the terms of the decision. Notwithstanding the foregoing, each Party reserves the right to litigate issues *de novo* in court.

- 10. Entire Agreement. This Agreement and any Program Agreement, including all documents attached to or incorporated by reference into either, shall contain all the terms and conditions to be agreed upon by the parties. Upon execution of any Program Agreement, this Agreement shall be considered incorporated into that Program Agreement by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement or any Program Agreement shall be deemed to exist or bind the parties.
- **11. Governing Law and Venue.** The laws of the state of Washington govern this Agreement. In the event of a lawsuit by the County against DCYF involving this Agreement or a Program Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DCYF against the County involving this Agreement or a Program Agreement, venue shall be proper only as provided in RCW 36.01.050.
- 12. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of any Program Agreement. No party to this Agreement or any Program Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement and any Program Agreement. DCYF and the County shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that such cooperation may not be feasible in

Page 5

all circumstances. DCYF and the County agree to notify the attorneys of record in any tort lawsuit where both are parties if either DCYF or the County enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible thereafter, and the notice may be either written or oral.

- 13. Independent Status. For purposes of this Agreement and any Program Agreement, the County acknowledges that the County is not an officer, employee, or agent of DCYF or the state of Washington. The County shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DCYF or the state of Washington. The County shall not claim for itself or its employees any rights, privileges, or benefits which would accrue to an employee of the state of Washington. The County shall indemnify and hold harmless DCYF from all obligations to pay or withhold federal or state taxes or contributions on behalf of the County or the County's employees.
- 14. Inspection. Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, any Program Agreement, and applicable laws and regulations. During the term of any Program Agreement and for one (1) year following termination or expiration of the Program Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement, any Program Agreement, any Program Agreement, and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
- **15. Insurance.** DCYF certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The County certifies that it is self-insured, is a member of a risk pool, or maintains insurance coverage as required in any Program Agreements. The County shall pay for losses for which it is found liable.

16. Maintenance of Records.

During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:

- a. Document performance of all acts required by law, regulation, or this Agreement;
- b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the County's invoices to DCYF and all expenditures made by the County to perform as required by this Agreement.
- **17. Operation of General Terms and Conditions.** These General Terms and Conditions shall be incorporated by reference into each Program Agreement between the County and DCYF in effect on or after the start date of this Agreement. These General Terms and Conditions govern and apply only to work performed under Program Agreements between the parties.
- **18. Order of Precedence.** In the event of an inconsistency in this Agreement and any Program Agreement, unless otherwise provided herein, the inconsistency shall be resolved

Department of Children, Youth and Families 2081CF County Agreement - General Terms and Conditions (06-06-2019)

by giving precedence, in the following order, to:

- a. Applicable federal and state of Washington statutes and regulations;
- b. This Agreement;
- c. The Program Agreement(s).
- 19. Ownership of Material. Material created by the County and paid for by DCYF as a part of any Program Agreement shall be owned by DCYF and shall be "work made for hire" as defined by 17 USC§ 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the County uses to perform a Program Agreement but is not created for or paid for by DCYF is owned by the County and is not "work made for hire"; however, DCYF shall have a perpetual license to use this material for DCYF internal purposes at no charge to DCYF, provided that such license shall be limited to the extent which the County has a right to grant such a license.
- 20. Severability. The provisions of this Agreement and any Program Agreement are severable. If any court holds invalid any provision of this Agreement or a Program Agreement, including any provision of any document incorporated herein or therein by reference, that invalidity shall not affect the other provisions this Agreement or that Program Agreement.
- 21. Subcontracting. The County may subcontract services to be provided under a Program Agreement, unless otherwise specified in that Program Agreement. If DCYF, the County, and a subcontractor of the County are found by a jury or other trier of fact to be jointly and severally liable for personal injury damages arising from any act or omission under this Agreement or any Program Agreement, then DCYF shall be responsible for its proportionate share, and the County shall be responsible for its proportionate share, and the County pursuant to a Program Agreement be unable to satisfy its joint and several liability, DCYF and the County shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the trier of fact. Nothing in this section shall be construed as creating a right or remedy of any kind or nature in any person or party other than DCYF and the County. This provision shall not apply in the event of a settlement by either DCYF or the County.

22. Subrecipients.

- a. General. If the County is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the County will:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the County is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its

federal programs;

- (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the County and its Subcontractors who are subrecipients;
- (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
- (6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39.
- b. Single Audit Act Compliance. If the County is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the County will procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the County will:
 - (1) Submit to the DCYF contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
 - (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
- c. Overpayments. If it is determined by DCYF, or during the course of a required audit, that the County has been paid unallowable costs under this or any Program Agreement, DCYF may require the County to reimburse DCYF in accordance with 2 CFR Part 200.
- 23. Survivability. The terms and conditions contained in this Agreement or any Program Agreement which, by their sense and context, are intended to survive the expiration of a particular Program Agreement shall survive. Surviving terms include, but are not limited to: Confidentiality (Section 6), Disputes (Section 9), Responsibility (Section 12), Inspection (Section 14), Maintenance of Records (Section 16), Ownership of Material (Section 19), Subcontracting (Section 21), Termination for Default (Section 26), Termination Procedure (Section 27), and Title to Property (Section 29).

24. Termination Due to Change in Funding, Agreement Renegotiation or Suspension.

If the funds DCYF relied upon to establish any Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after

the effective date of this Agreement but prior to the normal completion of any Program Agreement:

- a. At DCYF's discretion, the Program Agreement may be renegotiated under the revised funding conditions.
- b. Upon no less than fifteen (15) calendar days advance written notice to County, DCYF may suspend County's performance of any Program Agreement when DCYF determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow the County's performance to be resumed prior to the normal completion date of the Program Agreement. For purposes of this subsection, "written notice" may include email.
 - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When DCYF determines that the funding insufficiency is resolved, it will give the County written notice to resume performance. Upon the receipt of this notice, the County will provide written notice to DCYF informing DCYF whether it can resume performance and, if so, the date of resumption.
 - (3) If the County's proposed resumption date is not acceptable to DCYF and an acceptable date cannot be negotiated, DCYF may terminate the Program Agreement by giving written notice to the County. The parties agree that the Program Agreement will be terminated retroactive to the effective date of suspension. DCYF shall be liable only for payment in accordance with the terms of the Program Agreement for services rendered through the retroactive date of termination.
- c. DCYF may terminate the Program Agreement by providing at least fifteen (15) calendar days advance written notice to the County. DCYF shall be liable only for payment in accordance with the terms of the Program Agreement for services rendered through the effective date of termination. No penalty shall accrue to DCYF in the event the termination option in this section is exercised.
- 25. Termination for Convenience. The DCYF Contracts Administrator, or appropriate designee, may terminate this Agreement or any Program Agreement in whole or in part for convenience by giving the County at least thirty (30) calendar days' written notice addressed to the County at the address shown on the cover page of the applicable agreement. The County may terminate this Agreement and any Program Agreement for convenience by giving DCYF at least thirty (30) calendar days' written notice addressed to: DCYF Contracts Department, PO Box 45710, Olympia, Washington 98504-5710.

26. Termination for Default.

- a. The DCYF Contracts Administrator, or appropriate designee, may terminate this Agreement or any Program Agreement for default, in whole or in part, by written notice to the County, if DCYF has a reasonable basis to believe that the County has:
 - (1) Failed to meet or maintain any requirement for contracting with DCYF;

- (2) Failed to perform under any provision of this Agreement or any Program Agreement;
- (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement or any Program Agreement; or
- (4) Otherwise breached any provision or condition of this Agreement or any Program Agreement.
- b. Before the DCYF Contracts Administrator, or their appropriate designee, may terminate this Agreement or any Program Agreement for default, DCYF shall provide the County with written notice of the County's noncompliance with the agreement and provide the County a reasonable opportunity to correct the County's noncompliance. If the County does not correct the County's noncompliance within the period of time specified in the written notice of noncompliance, the DCYF Contracts Administrator, or appropriate designee, may then terminate the agreement. The DCYF Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DCYF has a reasonable basis to believe that a Client's health or safety is in jeopardy.
- c. The County may terminate this Agreement or any Program Agreement for default, in whole or in part, by written notice to DCYF, if the County has a reasonable basis to believe that DCYF has:
 - (1) Failed to meet or maintain any requirement for contracting with the County;
 - (2) Failed to perform under any provision of this Agreement or any Program Agreement;
 - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement or any Program Agreement; and/or
 - (4) Otherwise breached any provision or condition of this Agreement or any Program Agreement.
- d. Before the County may terminate this Agreement or any Program Agreement for default, the County shall provide DCYF with written notice of DCYF's noncompliance with the agreement and provide DCYF a reasonable opportunity to correct DCYF's noncompliance. If DCYF does not correct DCYF's noncompliance within the period of time specified in the written notice of noncompliance, the County may then terminate the agreement.
- **27. Termination Procedure.** The following provisions apply in the event this Agreement or any Program Agreement is terminated:
 - a. The County shall cease to perform any services required by the Program Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
 - b. The County shall promptly deliver to the DCYF contact person (or to his or her

DCYF/County General Terms & Conditions

successor) listed on the first page of the Program Agreement, all DCYF assets (property) in the County's possession, including any material created under the Program Agreement. Upon failure to return DCYF property within fifteen (15) working days of the Program Agreement termination, the County shall be charged with all reasonable costs of recovery, including transportation. The County shall take reasonable steps to protect and preserve any property of DCYF that is in the possession of the County pending return to DCYF.

- c. DCYF shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DCYF may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DCYF.
- d. If the DCYF Contracts Administrator terminates any Program Agreement for default, DCYF may withhold a sum from the final payment to the County that DCYF determines is necessary to protect DCYF against loss or additional liability occasioned by the alleged default. DCYF shall be entitled to all remedies available at law, in equity, or under the Program Agreement. If it is later determined that the County was not in default, or if the County terminated the Program Agreement for default, the County shall be entitled to all remedies available at law, in equity, or under the Program Agreement.
- 28. Treatment of Client Property. Unless otherwise provided in the applicable Program Agreement, the County shall ensure that any adult client receiving services from the County under a Program Agreement has unrestricted access to the client's personal property. The County shall not interfere with any adult client's ownership, possession, or use of the client's property. The County shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of the Program Agreement, the County shall promptly release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the County from implementing such lawful and reasonable policies, procedures and practices as the County deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).
- **29. Title to Property.** Title to all property purchased or furnished by DCYF for use by the County during the term of a Program Agreement shall remain with DCYF. Title to all property purchased or furnished by the County for which the County is entitled to reimbursement by DCYF under a Program Agreement shall pass to and vest in DCYF. The County shall take reasonable steps to protect and maintain all DCYF property in its possession against loss or damage and shall return DCYF property to DCYF upon termination or expiration of the Program Agreement pursuant to which it was purchased or furnished, reasonable wear and tear excepted.
- **30. Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. No waiver shall be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 2, Amendment. Only the DCYF Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DCYF.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-313

File ID:	AB2019-313	Version:	1	Status:	Agenda Ready
File Created:	05/20/2019	Entered by:	LCumming@co.whatcom.wa.u	ıs	
Department:	Public Works Department	File Type:	Contract (WCFCZDBS)		
First Assigned to: Council Finance and Administrative Services Committee					
Agenda Date:	07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Lummi Nation for repair of the Lummi (Red) River Levee (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and Lummi Nation related to repair of the Lummi (Red) River Levee. The Lummi (Red) Levee is defined as the left (east) bank levee of the Lummi River located between Haxton Way and the seawall that surrounds the Lummi Nation's aquaculture pond. The land is Lummi Nation Trust Land. The ILA secures a cost share of 15% of the construction funding required for the levee repair from Lummi Nation. The project will repair 325 lineal feet of damaged levee during the WDFW approved work window (July 15 to October 1) in 2019 or 2020

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
Attachmen	Ū.	ocal Agreement betwe	ZD and Lummi Nation for Repair of the en Whatcom County FCZD and Lummi

Final Action: Enactment Date: Enactment #:



MEMORANDUM

- TO: Whatcom County Flood Control Zone District Board of Supervisors
- THROUGH: Jon Hutchings, Public Works Director
- FROM: Gary Stoyka, Natural Resources Manager Paula J. Harris, P.E., River and Flood Manager
- RE: Interlocal Agreement between Whatcom County FCZD and Lummi Nation for Repair of the Lummi (Red) River Levee
- DATE: June 19, 2019

Enclosed for your review and signature is an Interlocal Agreement (ILA) between the Whatcom County Flood Control Zone District (FCZD) and Lummi Nation for repair of the Lummi (Red) Levee.

Requested Action

Public Works respectfully requests that the County Council, acting as the Flood Control Zone District Board of Supervisors (FCZD), authorize the County Executive to execute the Interlocal Agreement between FCZD and Lummi Nation for repair of the Lummi (Red) River Levee.

Background and Purpose

The purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and Lummi Nation related to repair of the Lummi (Red) River Levee. The Lummi (Red) Levee is defined as the left (east) bank levee of the Lummi River located between Haxton Way and the seawall that surrounds the Lummi Nation's aquaculture pond. The levee is located on Lummi Nation Trust Land. The project will repair 325 lineal feet of damaged levee during the WDFW approved work window (July 15 to October 1) in 2019 or 2020 depending on permitting. The ILA provides a cost share of 15% of the required construction funding from Lummi Nation. In addition, Lummi Nation will put the repair project out to bid for construction and will manage the construction. The remaining 85% of the construction funding will be provided by FCZD with a possible contribution from Diking District 1 (DD1).

Funding Amount and Source

Lummi Nation is contributing 15% of the construction funding towards the Lummi (Red) River Levee Repair Project. The cost for construction is estimated at \$115,000.

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

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department:	Public Works		
Division/Program: (i.e. Dept. Division and Program)	River & Flood Division - 9075/Flood Control Maint (907545)		
Contract or Grant Administrator:	Paula Harris		
Contractor's / Agency Name:	Lummi Nation		
Is this a New Contract? If not, is this an Amendment or Ren	newal to an Existing Contract? Yes O No O WCC 3.08.100 (a)) Original Contract #:		
Does contract require Council Approval? Yes • No • Already approved? Council Approved Date:	If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		
Is this a grant agreement? Yes O No O If yes, grantor agency contract	number(s): CFDA#:		
Is this contract grant funded? Yes O No O If yes, Whatcom County grant	contract number(s):		
Is this contract the result of a RFP or Bid process? Yes O No O If yes, RFP and Bid number(s):	Contract Cost Center: 719002		
Is this agreement excluded from E-Verify? No 🔿 Yes 🖲	If no, include Attachment D Contractor Declaration form.		
If YES, indicate exclusion(s) below: Professional services agreement for certified/licensed professional. Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS). Contract work is for less than 120 days. Work related subcontract less than \$25,000. Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.			
amount and any prior amendments): \$40,000, and \$ N/A than \$10,000	oval required for; all property leases, contracts or bid awards exceeding professional service contract amendments that have an increase greater or 10% of contract amount, whichever is greater, except when : ng an option contained in a contract previously approved by the council.		
1 his Amendment Amount: 2. Contract	2. Contract is for design, construction, r-o-w acquisition, prof. services, or other		
ouplui o	capital costs approved by council in a capital budget appropriation ordinance.Bid or award is for supplies.		
4. Equipme	ent is included in Exhibit "B" of the Budget Ordinance.		
5. Contract	is for manufacturer's technical support and hardware maintenance of c systems and/or technical support and software maintenance from the		
	er of proprietary software currently used by Whatcom County.		
The purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and Lummi Nation related to repair of the Lummi (Red) River Levee. The ILA secures a cost share of 15% of the required construction funding from Lummi Nation. The remaining 85% of the construction funding will be provided by FCZD.			
Term of Contract:	Expiration Date: Upon Project Completion		
Contract Routing: 1. Prepared by: Deb Johnson	Date: 06/25/19		
 Attorney signoff: Christopher Quinn AS Finance reviewed: bbennett 	Date: 06/25/19 Date: 06/25/19		
4. IT reviewed (if IT related):	Date:		
5. Contractor signed:	Date:		
6. Submitted to Exec.:	Date:		
7. Council approved (if necessary):	Date:		
8. Executive signed:	Date:		
9. Original to Council:	Date:		

INTERLOCAL AGREEMENT Between WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT And LUMMI NATION For Repair of the Lummi (Red) River Levee

This Interlocal Agreement (ILA) is made and entered into by and between The Lummi Nation (hereinafter referred to as the "Nation"), and the Whatcom County Flood Control Zone District (hereinafter referred to as the "District"), this _____ day of June, 2019.

WHEREAS, the Lummi (Red) River Levee (levee) is 2.7 miles long and is located on the east bank of the Lummi River between Haxton Way and the seawall that surrounds the Lummi Nation's aquaculture pond; and

WHEREAS, the levee is an integral part of the flood control system that protects Whatcom County and Nation infrastructure both on and off the reservation including Haxton Way, Hillaire Road, Kwina Road, Lummi Shore Drive, Marine Drive, Ferndale Road, and Slater Road; and

WHEREAS, in a periodic inspection, the US Army Corps of Engineers (USACE) identified deficiencies at two nearby locations along the levee face, where the riprap is missing and erosion is starting to cause sloughing of the levee prism; and

WHEREAS, repair of this section of levee is needed (total of 325 lineal feet) to maintain the integrity of the flood control system and to address the deficiencies identified by the USACE; and

WHEREAS, the repair sites are located on lands owned by Lummi Nation; and

WHEREAS, levee repair is in the interest of both parties; and

NOW, THEREFORE, it is agreed by the parties hereto as follows:

PARTIES

This Interlocal Agreement ("ILA") is made by and between the Whatcom County Flood Control Zone District ("District") and Lummi Nation ("Nation") under authority of the Interlocal Cooperation Act, Chapter 39.34 RCW.

PURPOSE OF THE AGREEMENT

(i) To establish and define the obligations and responsibilities of the District and the Nation related to the repair of 325 lineal feet of the Lummi River Levee.

PROPERTY

The parcel identified is located at:

Lummi Nation Trust Land, Whatcom County, WA – T38N, R1E, Sec 10, SE1/4 Parcel Number: 3801105170820000 Latitude and Longitude: 48.7948 N lat. / -122.6622 W long

See Exhibit A for Vicinity Map.

DEFINITIONS

Lummi (Red) River Levee:

• East bank levee of the Lummi (Red) River from Haxton Way south (downstream) to the seawall that surrounds the Lummi Nation's aquaculture pond.

Levee Repair:

- Placement of riprap along the two eroding segments devoid of riprap (total length of 225 feet)
- Enhancement of the existing riprap between the two eroding segments as needed and tie into the newly placed riprap (total length of 65 feet)
- Resurfacing of the road on the levee in the vicinity of the levee repair (total length of 325 feet)
- See attached engineering design drawings (Exhibit A)

TERM OF AGREEMENT

This ILA shall begin on July 10, 2019, and shall remain in effect until the project is completed or the ILA is amended as provided herein.

OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES:

- A. Whatcom County Flood Control Zone District ("District"):
 - 1. Shall develop engineering design drawings and technical specifications (Divisions 2 through 9) for the levee repair project;
 - 2. Shall work with the Nation to develop Division 1 contract specifications and special provisions with inclusion of TERO requirements;
 - 3. Shall prepare a U.S. Army Corps of Engineers (USACE) permit application and supporting documents;
 - 4. Shall review all project bids for compliance with the project solicitation (request for bids) documents;
 - 5. Shall only consider approving final project bids that do not exceed the project budget;

- 6. Shall provide construction support, periodic construction inspections, joint final project inspection with the Nation, and final project approval upon project completion. Construction inspections by the District shall occur, generally, every other day and as needed throughout construction;
- 7. Shall review and approve all change order requests made by the construction contractor prior to the Nation approving the change order requests;
- 8. Shall review and approve the construction contractor invoices provided by the Nation for construction expenses incurred; and
- 9. Shall reimburse the Nation for 85% of the construction cost for the levee repair project, which shall include a 5% TERO fee, as approved by the District. The District shall provide payment to the Nation within thirty (30) days of receiving the Nation's reimbursement request(s).
- B. Lummi Nation ("Nation"):
 - 1. Shall submit application and obtain a U.S. Army Corps of Engineers (USACE) permit;
 - 2. Shall obtain a Lummi land use permit;
 - 3. Shall put the levee repair project out to bid for construction with a state prevailing wage requirement;
 - 4. Shall obtain review of construction bids and approval of final bid award from the District;
 - 5. Shall enter into a contract with the successful bidder to implement the levee repair project;
 - 6. Shall obtain approval from the District prior to approving all change order requests by the construction contractor;
 - 7. Shall manage construction of the levee repair project;
 - 8. Shall notify the District at least one (1) day in advance of key decision points during construction where the District shall be present for an inspection and/or consultation.
 - 9. Shall conduct a joint final construction inspection with the District;
 - 10. Shall provide 15% of the construction funding for the levee repair project; and
 - 11. Shall request reimbursement from the District for 85% of the construction cost for the levee repair project, which shall include a 5% TERO fee. Copies of the construction contractor invoices shall be provided to document the expenses incurred by the Nation for reimbursement.

AGREEMENT ALTERATIONS AND AMENDMENTS

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

DISPUTES

In the event that a dispute arises under this Agreement, a dispute board shall resolve the dispute in the following manner. The parties to this Agreement shall each appoint a member to the dispute board. The dispute board shall evaluate the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the parties hereto.

ASSIGNMENT

The obligations to be performed by the parties under this Agreement are not assignable or delegable by any party in whole or in part, without the prior written consent of both of the other parties.

WAIVER

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

SEVERABILITY

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

INTEGRATION OF AGREEMENT

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

CONTRACT MANAGEMENT

The Contract Administrator for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

The Contract Administrator for Lummi Nation is:

Tim J. Ellis Public Works Director Planning and Public Works Department Lummi Nation 2665 Kwina Road Bellingham, WA 98226 Phone: 360-312-2334 Fax: 360-380-6990 Email: <u>time@lummi-nsn.gov</u> The Contract Administrator for the District is:

Paula J. Harris River and Flood Division Manager Whatcom County Public Works 322 N. Commercial Bellingham, WA 98225 Phone: 360.778-6285 Fax: 360.778-6231 Email: <u>pharris@co.whatcom.wa.us</u>

IN WITNESS WHEREOF, the parties have executed this Agreement.

LUMMI NATION By: Title: tubic ORKSL Date: 6

Approved as to Form for Nation:

Staff Attorney

Lummi Nation

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: _____

Title: _____

Date: _____

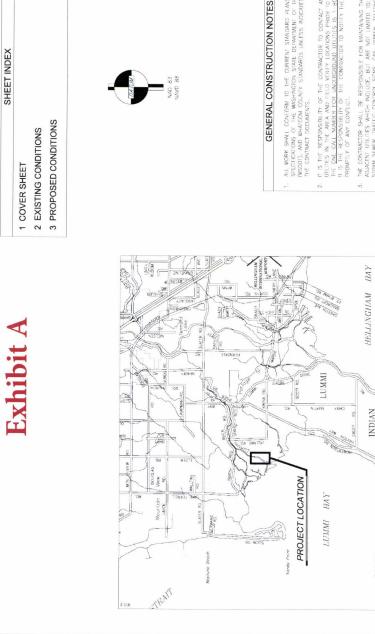
Approved as to Form for District:

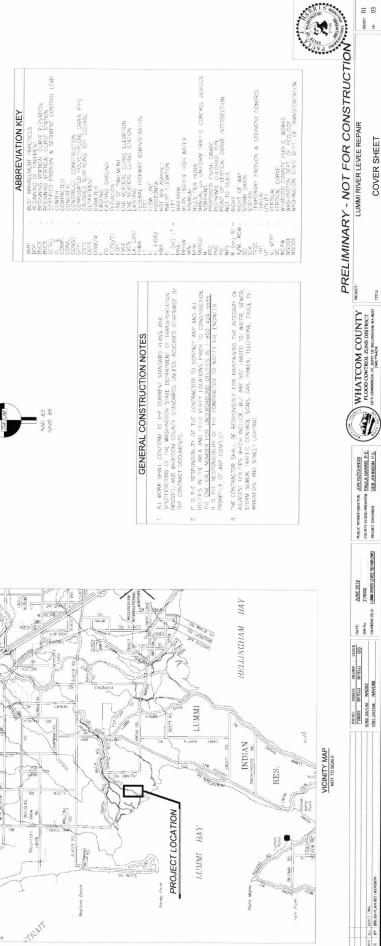
Senior Deputy Prosecuting Attorney – Civil Division for

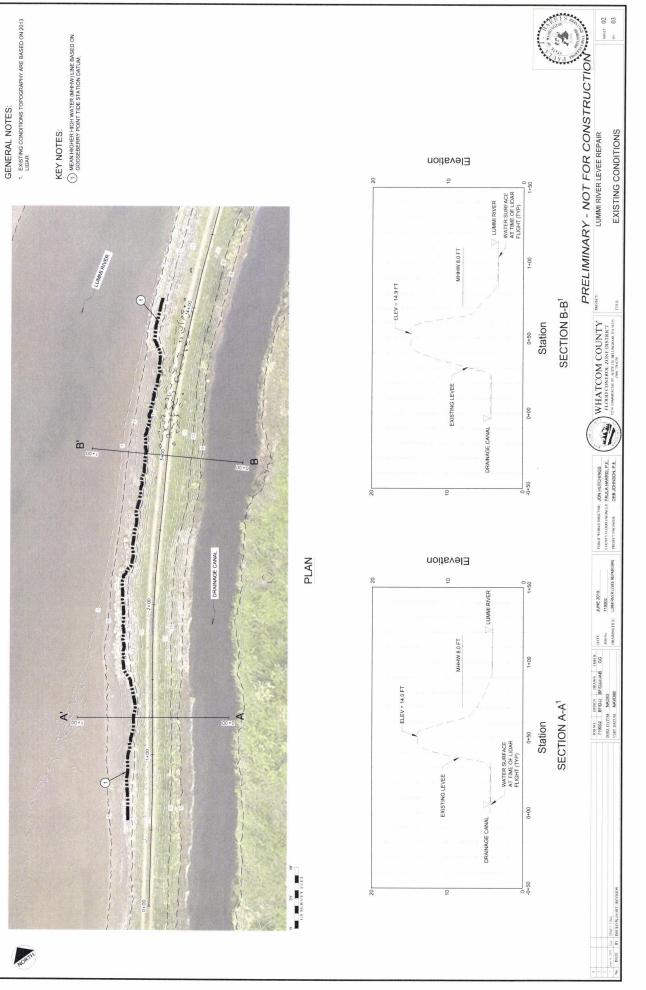
Senior Deputy Prosecuting Attorney – Civil Division for Whatcom County

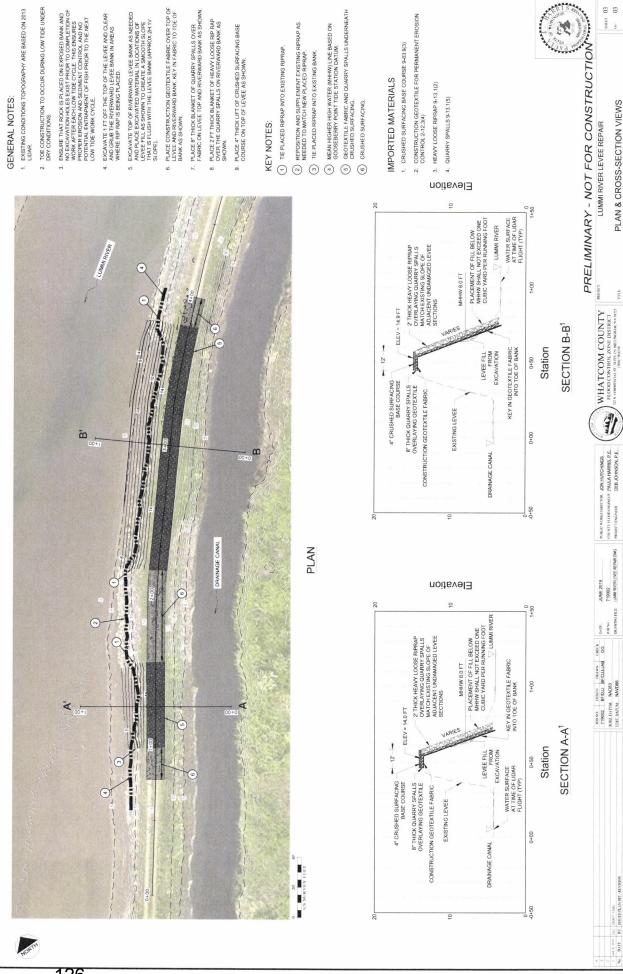
Exhibit A Engineering Design Drawings LUMMI RIVER LEVEE REPAIR PROJECT No. 719002

SECTION 10, TOWNSHIP 38 NORTH, RANGE 01 EAST, W.M., WHATCOM COUNTY, WASHINGTON











Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-385

First Assigned t Agenda Date:	o: Council Finance and 07/09/2019	d Administrative Next Mtg. Da	e Services Committee ate:	Hearing	Date:
Department:	Public Works Department	File Type:	Resolution		
File Created:	07/02/2019	Entered by:	smock@co.whatcom.wa.us		
File ID:	AB2019-385	Version:	1	Status:	Agenda Ready

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

TITLE FOR AGENDA ITEM:

Resolution authorizing an application to the Brian Abbott Fish Barrier Removal Board for North Fork Road/Kenney Creek fish passage project, CRP No. 919007

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution authorizing an application to the Brian Abbott Fish Barrier Removal Board for North Fork Road/Kenney Creek fish passage project, CRP No. 919007

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Memo, Proposed Resolution

Final Action: Enactment Date: Enactment #:



Joseph P. Rutan, P. E. County Engineer/Assistant Director 322 N. Commercial Street, Ste 301 Bellingham, WA 98225-4042 Phone: (360) 778-6200 Fax: (360) 778-6201

Memorandum

To:	The Honorable Jack Louws, Whatcom County Executive and Honorable Members of the Whatcom County Council
Through:	Jon Hutchings, Director
From:	Joseph P. Rutan, P.E., Assistant Director / County Engineer James E. Lee, P.E., Engineering Manager
Date:	June 21, 2019
Re:	Resolution Authorizing an Application to the Brian Abbott Fish Barrier Removal Board North Fork Road/Kenney Creek Fish Passage Project, CRP No. 919007

Enclosed for your review and signature is one original of a Whatcom County Council resolution.

Requested Action

Public Works respectfully requests the County Council approve a resolution which authorizes Public Works to submit an application to the Brian Abbott Fish Barrier Removal Board (FBRB) for grant funding assistance to complete preliminary engineering, alternatives analysis and prepare a final bid ready package to remove a fish passage barrier on Kenney Creek at North Fork Road. The resolution also authorizes the Whatcom County Executive to enter into a grant agreement with the Washington State Recreation and Conservation Office (RCO).

Background and Purpose

A pre-application was submitted to the FBRB in June 2018 to request financial assistance to design and permit a project to restore full fish passage at an existing poorly functioning fishway and culvert where Kenney Creek crosses under North Fork Road approximately 1-mile north of Mosquito Lake Road. The ranked FBRB statewide list formed the basis for a funding request to the Washington State Legislature. The final state budget includes funding for the Kenney Creek project.

The RCO requires an authorizing resolution prior to issuing a grant agreement. The RCO uses a standard template preapproved by the Washington State Attorney General's Office; this template was retained and formatted to meet Whatcom County Council standards.

Funding Amount and Source

The Washington State Legislature has approved \$443,000 in FBRB grant funds. The required local cost share of \$80,000 will be funded with local road funds. The estimated project cost for the preliminary engineering phase of this project is \$523,000. This project is listed as Item No. 31 on the 2019 Annual Construction Program.

Please contact James at extension 6264 if you have any questions or concerns regarding this resolution.

PROPOSED BY: <u>PUBLIC WORKS</u> INTRODUCED: <u>JULY 9, 2019</u>

RESOLUTION NO.

AUTHORIZATION FOR APPLICATION TO THE BRIAN ABBOTT FISH BARRIER REMOVAL BOARD - FISH BARRIER REMOVAL DESIGN FOR KENNEY CREEK AT NORTH FORK ROAD

(RCO Project No. 19-1565 Plan)

WHEREAS, the Whatcom County Council seeks funding to pay for site assessment, alternatives analysis, design of a preferred alternative, and preparation of bid ready construction plans, bid documents, construction cost estimates, and permits to remove the high priority barrier to salmon passage on Kenney Creek at North Fork Road in Whatcom County, Washington; and

WHEREAS, this resolution authorizes submitting an application for grant funding assistance for a fish barrier removal project to the Brian Abbott Fish Barrier Removal Board, which is established under RCW 77.95.160 and managed through the Recreation and Conservation Office (Office); and

WHEREAS, state grant assistance is requested to aid in financing the cost of the planning and design project referenced above; and

WHEREAS, the Whatcom County Council considers it in the best public interest to complete the project described in the application.

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

- Our organization intends to apply for funding assistance managed by the Office for the above Fish Barrier Removal Design for Kenney Creek at North Fork Road project.
- 2. <u>Jack Louws, Whatcom County Executive</u>, is authorized to act as a representative/agent for our organization with full authority to bind the organization regarding all matters related to the Project(s), including but not

limited to, full authority to: (1) approve submittal of a grant application to the Office, (2) enter into a project agreement(s) on behalf of our organization, (3) sign any amendments thereto on behalf of our organization, (4) make any decisions and submissions required with respect to the Project(s), and (5) designate a project contact(s) to implement the day-to-day management of the grant(s).

- 3. Jon Hutchings, Public Works Director, is designated the authority to make formal grant application to the Office and to oversee and delegate implementation of the day-to-day management of the grant.
- 4. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's Website at: https://rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf. We understand and acknowledge that if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to Tribes) and other terms and conditions substantially in the form contained in the sample project agreement and that such terms and conditions of any signed project agreement shall be legally binding on the sponsor if our representative/agent enters into a project agreement on our behalf. The Office reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above authorized representative/agent before execution.
- 5. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative/agent has full legal authority to enter into a project agreement(s) on its behalf, that includes indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement or as may be revised prior to execution.
- 6. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the Office is purely voluntary on our part.
- 7. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of

funding in the project agreement, the characteristics of the project, and the characteristics of our organization.

- 8. Our organization further understands that *prior to* our authorized representative/agent executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the project agreement(s), confer with our authorized representative/agent as to any revisions to the project agreement from that of the sample project agreement. We also acknowledge and accept that if our authorized representative/agent executes the project agreement(s) with any such revisions, all terms and conditions of the executed project agreement (including but not limited to the indemnification, the waiver of sovereign immunity, and the legal venue stipulation) shall be conclusively deemed to be executed with our authorization.
- Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
- 10. Our organization acknowledges and warrants, after conferring with its legal counsel, that no additional legal authorization beyond this authorization is required to make the indemnification, the waiver of sovereign immunity (as may apply to Tribes), and the legal venue stipulation substantially in form shown on the sample project agreement or as may be revised prior to execution legally binding on our organization upon execution by our representative/agent.
- 11. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until the Project is complete.
- 12. This resolution/authorization is deemed to be part of the formal grant application to the Office.

13. Our organization warrants and certifies, after conferring with its legal counsel, that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

APPROVED this _____ day of _____, 2019

ATTEST:

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Rud Browne, Chairman Whatcom County Council

APPROVED AS TO FORM:

Christopher Quinn, Senior Civil Deputy Prosecuting Attorney

Washington State Attorney General's Office

Approved as to form

Buon Taller

1/19/18

Assistant Attorney General

Date



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-370

File ID:	AB2019-370	Version:	1	Status:	Agenda Ready
File Created:	06/19/2019	Entered by:	ESchlehu@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Bid Award		
First Assigned t	o: Council Finance and	d Administrative	e Services Committee		
Agenda Date:	07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to award Bid #19-39 and enter into a subsequent contract between Whatcom County and Lake Union Drydock Company for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$555,219

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Bid #19-39 Drydocking, Repair and Maintenance of the Whatcom Chief-2019.pdf

Final Action: Enactment Date: Enactment #:

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings Director



EQUIPMENT SERVICES DIVISION

901 West Smith Road Bellingham, WA 98226-9610 Phone (360) 778-6400 Fax (360) 778-6401

Eric L. Schlehuber, Division Manager

MEMORANDUM

То:	The Honorable Jack Louws, County Executive & Honorable Members of the Whatcom County Council
Through:	Jon Hutchings, Public Works Director
From:	Eric L. Schlehuber, PW Equipment Services Manager
Date:	June 19, 2019
Re:	Bid #19-39, Drydocking, Repair & Maintenance of the Whatcom Chief (2019)

Requested Action

Approval requested to award the bid and subsequent contract for the 2019 Annual Drydocking, Repair and Maintenance of the Whatcom Chief to the lowest responsive bidder, Lake Union Drydock Company in Seattle, Washington in the total amount of \$555,219.00.

Background and Purpose

Bids were duly advertised and submitted for the annual drydocking, repair and maintenance of the Whatcom Chief Ferry. This work is contracted out annually by the Public Works Equipment Services Division. Three shipyards (Foss Maritime Co., Lake Union Drydock Co., and Vigor Marine, LLC.) attended the mandatory pre-bid meeting held onboard the Whatcom Chief ferry Thursday, May 23, 2019. Two bid responses were received Tuesday, June 18 2019. This year's drydock is anticipated to take up to thirteen days, from Saturday, September 7, 2019 through Friday, September 20, 2019. Listed below is the bid tabulation for the two responsive and responsible bids received. The Engineer's Estimate was \$653,233, with a return to service anticipated to be Tuesday, September 24, 2019.

DRYDOCKING, REPAIRS, & MAINTENANCE OF THE WHATCOM CHIEF (2019)

VENDOR	TOTAL
Lake Union Drydock Company	\$ 555,219.00
Foss Maritime Co	\$ 701,091.00

Funding Amount and Source

Adequate funds exist within the 2019-2020 ER&R fund budget for repairs and maintenance as approved during the 2019-2020 budget process. I am requesting Executive and the Whatcom County Council approval to award this bid and subsequent contract to Lake Union Drydock Company (Seattle, Washington) for a total of \$555,219.00.

Recommended Action

Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 09, 2019 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns.

In Accordance with WCC 3.08.030, I concur with this recommendation.

Brad Bennett, AS Finance Manager

6/19/19

Date



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-371

File ID:	AB2019-371	Version:	1	Status:	Agenda Ready
File Created:	06/20/2019	Entered by:	DEbergso@co.whatcom.wa.us	;	
Department:	Facilities Management Division	File Type:	Presentation		
First Assigned to: Council Finance and Administrative Services Committee					
Agenda Date:	07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

Primary Contact Email: <u>rney@co.whatcom.wa.us <mailto:rney@co.whatcom.wa.us></u>

TITLE FOR AGENDA ITEM:

Discussion/presentation by Rob Ney, Facilities Management, on the state of capital facilities and long-term capital facilities planning

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A discussion/presentation on the state of Whatcom Counties capital facilities and long-term capital facilities planning; an information discussion only.

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: AB2019-243

File ID:	AB2019-243	Version:	2	Status:	Agenda Ready
File Created:	04/15/2019	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Presentation		
First Assigned to: Council Criminal Justice and Public Safety Committee Agenda Date: 07/09/2019 Next Mtg. Date:			Hearing	Date:	

Primary Contact Email: <u>BBuchanan@co.whatcom.wa.us <mailto:BBuchanan@co.whatcom.wa.us</u>

TITLE FOR AGENDA ITEM:

Presentation of the Incarceration Prevention and Reduction Task Force 2019 Annual Report

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: IPRTF 2019 Annual Report 06 30 19 FINAL.pdf

Final Action: Enactment Date: Enactment #:



Whatcom County Incarceration Prevention and Reduction Task Force

2019 Annual Report

June 30, 2019

TASK FORCE MEMBERS

Angela Anderson Chief Deputy, Whatcom County Public Defender

Travis Brockie Lummi Nation Barry Buchanan Whatcom County Council

Anne Deacon Human Services Manager, Whatcom County Health Department

Jerry DeBruin Fire District 14 Chief

David Doll Police Chief, City of Bellingham Bill Elfo Whatcom County Sheriff

Arlene Feld Citizen Representative Heather Flaherty Citizen Representative

Deborra Garrett Superior Court Judge

Stephen Gockley Co-Chair; Health and Social Services Representative

Daniel Hammill Council Member, City of Bellingham

Deborah Hawley Consumer Representative

Jack Hovenier Co-Chair; Consumer Representative

Raylene King Blaine Court Administrator Scott Korthuis Mayor, City of Lynden

Kelli Linville Mayor, City of Bellingham

Rachel Lucy Director for Community Affairs, PeaceHealth St. Joseph Medical Center

Byron Manering Executive Director, Brigid Collins

Moonwater Executive Director, Whatcom Dispute Resolution Center

Eric Richey Whatcom County Prosecuting Attorney

Darlene Peterson Court Administrator, Bellingham Municipal Court

Eric Petersen Washington State Department of Corrections Dave Reynolds Whatcom County Superior Court Administrator

Tyler Schroeder Whatcom County Deputy Executive Representative

Kevin Turner Police Chief, City of Ferndale Bruce Van Glubt Whatcom County District Court Greg Winter Executive Director, Opportunity Council

TASK FORCE COMMITTEES*

BEHAVIORAL HEALTH COMMITTEE

Doug Chadwick Dan Hammill Byron Manering Kelli Linville Ryan King Mike Parker Megan Ballew

CRISIS STABILIZATION FACILITY COMMITTEE

Doug Chadwick Anne Deacon Todd Donovan Jack Hovenier Michael McCauley Tyler Schroeder

LEGAL AND JUSTICE COMMITTEE

Angela Anderson Bill Elfo Arlene Feld Heather Flaherty Deborra Garrett Stephen Gockley Deborah Hawley Raylene King Moonwater Darlene Peterson Eric Peterson Peter Ruffatto

INDEX COMMITTEE

Ryan Anderson Brenda Beeman Barry Buchanan **Doug Chadwick Bob** Crider Amy Ebenal Caleb Ericksen Erin Herschlip Amy Hockenberry Wendy Jones Marty Mulholland **Christine Paulson Darlene Petersen Courtney Polinder** Dave Reynolds Perry Rice Tyler Schroeder Bruce Van Glubt

*Task Force Committees may include Task Force members, their proxies, or other agency staff or community members.

TABLE OF CONTENTS

Introduction and Executive Summary	5
2019 Annual Report	9
Introduction	9
Legal and Justice System Committee	10
Behavioral Health Committee	18
Crisis Stabilization Facility Committee	23
INDEX Committee	26

I. Introduction and Executive Summary

TASK FORCE STATEMENT OF PURPOSE. The Incarceration Prevention and Reduction Task Force was formed by an ordinance of the Whatcom County Council in 2015 to review Whatcom County's criminal justice and behavioral health programs and recommend changes to reduce incarceration of individuals struggling with mental illness and chemical dependency, and to reduce jail use by pretrial defendants who can be safely released. The Task Force includes a broad range of participants including representatives from organizations involved in criminal justice and law enforcement, policy makers, service providers, members of the public, and consumers of services. In 2019, the Task Force's role was broadened by the County Council to also serve as the County's Law and Justice Council, responding to a requirement in state law and creating an ongoing oversight function for the group.

The Task Force has established four committees to work on criminal justice or behavioral health issues and needs. A *Crisis Stabilization Facility Committee* is advising the County on the development of an expanded crisis facility. A *Legal and Justice System Committee* is examining reforms in law enforcement and justice system practices. A *Behavioral Health Committee* is identifying ways to improve delivery of mental health and substance use disorder services. In 2018, a new *Information Needs and Data Exchange (INDEX) Committee* was formed to improve data systems, information-sharing across jurisdictions, and availability of outcome data. Progress in the prior year is noted briefly below.

Legal and Justice System Committee

• Pretrial Services Unit Established; Work Continues on Risk Assessment Tool

A risk assessment tool for pretrial release decisions, and a capacity to monitor defendants who are released, has been demonstrated to be effective in reducing incarceration. The Legal and Justice System Committee's Pretrial Processes Work Group has worked to develop a pretrial program for Superior Court. A manager has been hired to oversee a pretrial services unit, and the Court has retained a data scientist to identify risk factors that are predictive of failures to appear in court or of committing a new crime. This information will be used to produce a tool that is neutral to racial and other factors that can result in disparate treatment.

• Drug Court Gets National Review

Drug Court provides a method of sentencing that voids criminal charges in exchange for successful participation in substance use disorder treatment and other activities. The Drug Court team engaged technical experts through the National Association of Drug Court Professionals (NADCP) to review the operations of the program for adherence to national standards. Resulting recommendations include improving criteria for eligibility; adopting standardized assessments of participant risks and needs; and, ensuring that contracted providers use best practices.

• Improved Services are Available at Local Courts

A Moral Reconation Therapy (MRT) program has been established at District Court that uses cognitive-behavioral therapy to address substance abuse, domestic violence, trauma, and other issues. A separate MRT program has been created for domestic violence perpetrators, and capacity will be expanded as more probation officers receive training.

• Medically Assisted Treatment (MAT) now available in the County Jail

A Medically Assisted Treatment (MAT) program was implemented in September 2018 to assist those with opioid use disorder to withdraw under medical supervision. A second phase was implemented in February 2019 to allow the use of an opioid substitute for offenders already on a community maintenance program. A third phase will begin later this year and will initiate medication for individuals willing to work with a community provider upon reentry.

Behavioral Health Committee

• The GRACE program is Now Operational

The Ground-level Response and Coordinated Engagement (GRACE) program works to reduce unnecessary and costly contacts with law enforcement, EMS, the hospital emergency department, and the jail. SeaMar Community Health Center was selected as the GRACE administrative hub and the program is now operational. A Program Manager has been hired, and most other staff positions have been filled. The program is operating throughout the county.

• Crisis Response and Behavioral Health Capacity is Increasing

The County conducted a multi-agency behavioral health training in 2019, including training on behavioral health disorders and brain dysfunction, and hoarding disorders. In addition, the number of Medication Assisted Treatment (MAT) providers offering services in Whatcom County has more than doubled in the prior two years. Lastly, the County Sheriff and City of Bellingham Police Department are adding officers with behavioral health expertise to their staffs, and Ferndale is adding a community paramedic to its Fire Department.

• Local Leaders Participate in Young Adult Policy Academy

Local and state leaders are participating in a multi-city process to develop policies to reduce young adult incarceration. The local team's plan includes a multijurisdictional resolution focusing on measures that will reduce the number of young adults jailed for 72 hours or less, which is associated with long-term adverse outcomes. The resolution, passed in June by the County Health Board, calls for prioritizing prevention of young adult incarceration, developing in-field crisis response capacity, and for complete funding for the Crisis Stabilization Facility.

Crisis Stabilization Facility Committee

• Crisis Stabilization Facility Ready to Break Ground

A new 32 bed dual mental health treatment/substance use stabilization facility will be developed on County property on Division Street in Bellingham. County staff have hired an architectural firm and design work is currently in the final stages. The County is ready to submit plans to the City, and a request for construction bids has been prepared. Groundbreaking should occur this summer, with project completion expected 12 to 14 months thereafter.

• State Operational Funding has been Secured for 2020-21

Although a stabilization facility is expected to receive Medicaid dollars for most services, services for the 30% of people not enrolled in Medicaid may not be reimbursed. County staff and local elected leaders worked with our legislative representatives in Olympia to secure \$1 million in the 2020-21 state budget for supplemental operating funds. The budget proviso also instructed the Health Care Authority to devise a plan by the end of 2019 to provide long-term funding for this and similar centers.

• Facility Operations Plans are Being Developed

The Crisis Stabilization Facility Committee has worked with County Department of Health staff to develop criteria for the future services at the center. The facility will operate under a "recovery model" although 12-hour involuntary holds may occur in the mental health side of the facility under limited circumstances. Providers will conduct on-site medical clearances for admission and work to optimize drop-offs by law enforcement and EMS. Both sets of operations will be able to prescribe and manage administration of medications.

INDEX Committee

• A Data Inventory has been Completed

Committee members from a number of jurisdictions created an inventory of data that can be made available to support the work of the Task Force and help improve justice operations. Specific data points to be collected were identified through the work of the Task Force's committees, the final report from the Vera Institute of Justice, and a list of primary data elements from Dr. James Austin, JFA Institute. Committee members also identified system barriers to good information and to information-sharing and worked to solve these problems.

• Data Availability is Being Improved

Lack of timely information on the status of inmates held in custody can impede timely case processing. County technical staff are working with the INDEX committee to develop reports on inmate status. Each court agency will receive a customized report on inmates' time served as sentenced by the courts, and city prosecutors will receive a point-in-time report on who is in jail on their city cases. Another project will revamp the County's web pages to enhance the availability and clarity of data available to the public and policy makers.

• Data on Young Adult Offenders age 18 to 24 Developed for Policy Academy

A local team consisting of City and County Council members, state representatives, and city and County staff requested data on young adult incarceration to inform their work in the grantfunded national Policy Academy. The Committee's technical workgroup developed a Young Adult Inmate report to provide statistics on bookings, average length-of-stay, and top offenses for young adults aged 18 to 24.

II. 2019 Annual Report: Incarceration Reduction Programs and Initiatives

A. Introduction

The Incarceration Prevention and Reduction Task Force was formed by the Whatcom County Council in 2015. Its purpose, as stated in Whatcom County Code Chapter 2.46, is to "…continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released." The Task Force is made up of participants from a broad range of sectors, including local judicial and law enforcement agencies, behavioral health organizations, local government executive and legislative representatives, members of the public, and consumers of services. In 2019, the Task Force role was broadened to also serve as the County's Law and Justice Council, fulfilling a requirement in state law and creating an ongoing oversight and coordination function for the group.

The Task Force has established four Committees to work on specific criminal justice or behavioral health issues:

- A *Crisis Stabilization Facility Committee* is supporting development of an expanded Crisis Stabilization Facility for initial treatment of individuals experiencing acute behavioral health issues and to provide an alternative to jail and the hospital emergency department.
- A *Legal and Justice System Committee* is examining reforms in law enforcement and judicial practices to safely divert more people from jail, or reduce time in incarceration when possible.
- A *Behavioral Health Committee* is identifying ways to improve delivery of mental health and substance use disorder treatments to help people avoid entanglement with the justice system, or help them successfully transition out of it.
- An *Information Needs and Data Exchange (INDEX) Committee* is working to improve data availability, provide jurisdictions with data to improve operations, and making information on incarceration trends available to the public and policy makers.

This report summarizes a broad range of activities and outcomes resulting from the work of the Task Force and its involved agencies.

A BRIEF OVERVIEW OF TASK FORCE ACTIVITIES.

In 2018, the Legal and Justice Committee formed a working group to accelerate the development of a pretrial risk assessment tool and a pretrial services program, and significant progress has been made, including the inauguration of a pretrial services program. A number of improvements to the Drug Court are also being implemented. Now that construction money has been secured and design work for a stabilization facility have been completed, the Crisis Stabilization Facility Committee is focusing on refinements to the operational model, and on ensuring adequate long-term operational funding for the facility.

The new INDEX Committee, focused on improving data availability and quality, is developing measures to track progress and facilitating improvements in data systems and cross-jurisdictional informationsharing. A number of improvements to data collection capacity have been identified and are in the early stages of being

Despite gains in the prior year, certain issues highlighted in last year's report persist, including housing availability and full funding of the Crisis Stabilization Facility.

implementation. The Behavioral Health Committee supported the inauguration of the new Ground-Level Response and Coordinated Engagement (GRACE) program that provides care coordination and case management to people who are frequent utilizers of various systems. A hub organization to coordinate GRACE is under contract, staff have been hired, and the program is now in operation countywide. Behavioral health response capacity in law enforcement is also increasing.

Expanded treatment for opiates is another critical element for our community—especially new capacity for Medically Assisted Treatment (MAT) regimens that have been shown to be effective in helping people manage the effects of addiction. Local capacity in the community has increased, and new MAT programs in the jail are being phased in.

Despite these gains, certain issues highlighted in last year's report remain. While the County is ready to break ground on its Crisis Stabilization Facility, financing mechanisms to fully fund this and similar facilities statewide long-term are not yet in place. Although a state budget proviso will help shore up funding for the next two years, the Crisis Stabilization Facility Committee remains vigilant in its efforts to secure sustained funding.

Housing remains an issue. Housing is needed post-incarceration, during treatment programs, and for those with long-term behavioral health needs. While local program partners have been successful in procuring funding for housing for Drug Court participants and other individuals in local treatment programs, capacity remains insufficient.

Specifics of activities and accomplishments of the Task Force and its committees are detailed below. Where applicable, issues or barriers to progress are also identified, along with possible solutions to those barriers.

B. Progress Report: Legal and Justice System Committee

Members of the Legal and Justice System Committee have engaged in a wide array of recent initiatives. Activities included development of a pretrial risk assessment tool and of a pretrial services unit, improvements to the Whatcom County Drug Court, warrant reduction efforts, and expansion of access to jail alternative programs. Specific initiatives, progress, and remaining issues are discussed below.

PRETRIAL RISK ASSESSMENT AND PRETRIAL SERVICES

Goals: There are two goals for improvements to pretrial practices:

- Select and implement an accurate assessment tool for judges to use in identifying defendants who may be conditionally released while awaiting trial, and in ordering release conditions for those defendants.
- Implement a program for monitoring defendants on pretrial release.

Context: Roughly three-fifths of Whatcom County Jail inmates are awaiting trial, most of them in Superior Court. However, unlike the District Court, the Superior Court has no probation department or other resources to assure that these people will appear in court as ordered and refrain from violent crime in the meantime, leaving judicial officers with bail as the only option. Very few pretrial defendants can pay even a modest bail.

The Pretrial Processes work group was formed in early 2018 as a part of the Legal and Justice System Committee, with two purposes: to identify and implement pretrial monitoring and referral services for appropriate defendants; and, to help the courts select the most effective tool to assist judicial officers in determining the defendants for whom pretrial services will be an effective alternative to bail. Chaired by Superior Court Judge Deborra Garrett, the group includes a District Court judge, the administrators of both Superior and District Courts, representatives of the Prosecutor's Office and the Public Defender, a victims' advocate, and two members of the Legal and Justice System Committee.

At about the same time, the State court system formed a multi-stakeholder Pretrial Reform Task Force to assess needs for pretrial reform on a statewide level and to recommend appropriate legislation. Two members of the work group participated in that state task force. The interaction with colleagues elsewhere working on the same issues proved extremely valuable. The state task force concluded its work at the end of 2018 and the local work group has found its reports and recommendations helpful in charting a course for Whatcom County.

Progress: Working with the Superior and District Courts, the Pretrial Processes work group is achieving both its goals.

<u>Pretrial Services Unit</u>: The work group studied the experiences of many jurisdictions and found that pretrial monitoring and reminder services have been effective in many courts. The services vary, but core services common to most pretrial services units include text and telephone reminders of upcoming court dates; regularly scheduled check-ins or other required contact with defendants awaiting trial; regular monitoring to assure that the pretrial defendant does not incur new charges; and referrals to appropriate treatment and mental health services. Working with the administration of the Superior Court, the work group recommended graduated steps in developing pretrial services and programs. With funding approved by the County Council, the Court conducted a search and hired a manager to establish a Pretrial Services Unit within the Superior Court. This manager is developing operating protocols and policies, initiating monitoring services approved by the judicial officers, and recommending additional services. A second staff member will be hired within the next several months.

Reliable demographic information is essential for every pretrial services program to identify the defendants who are most likely to respond to pretrial monitoring and services, and to assess the impacts of those services on an ongoing basis after services are implemented. Working with the Superior Court administrator who began compiling demographic information specific to pretrial issues, the work group identified demographic experts familiar with the process of compiling and assessing information about

jail populations. With the assistance of the Washington Administrator of Courts, the group retained Dr. Andrew Peterson to assess the 2018 jail population by crimes charged, criminal history, bail set, and other pertinent information. Dr. Peterson has done a preliminary assessment, based on 2018 information, and will assess the impacts of pretrial services on an ongoing basis.

Work group members wanted a risk assessment tool that was understandable and transparent rather than one using an unknown and inaccessible algorithm.

<u>Pretrial Risk Assessment Tool</u>: The use of pretrial risk assessment instruments in making pretrial release decisions has gained wide currency in the national movement for criminal justice reform, based on research establishing that data-informed decisions are sounder and more consistent than those resting only on one individual's subjective conclusions. Pretrial risk assessment instruments give the judicial officer information, based on a defendant's criminal history, current charges, court attendance in the past, and similar factors, that indicates whether a defendant is likely to fail to return to court when required and whether a defendant is likely to commit a crime while awaiting trial. These factors help ensure compliance with existing state court rules that call for pretrial release of low risk individuals.

A risk assessment tool gives information to the judicial officer, who ultimately decides what release conditions are appropriate for a given defendant. Risk assessment tools are helpful to the judicial officer because they give pertinent background information and prioritize specific elements of that information for the judicial officer's consideration. They give more weight to those factors that experience has shown to be most predictive of success or failure pretrial. The assessment is a helpful tool for the judicial officer, who remains the ultimate decision maker.

The work group carefully considered the pros and cons of adopting a risk assessment instrument and studied various versions of such instruments used elsewhere in the state and nationally. The work group established criteria for its approach that would rely on accepted best practices in the field. Members agreed that a risk assessment instrument should be used to inform a judicial officer's decision, with the decision ultimately based on the judicial officer's discretion and experience. They also agreed that a risk assessment instrument should be statistically validated at adoption to ensure that it accurately predicted risk for the local population. Members favored an instrument using information that was both reliable and quickly obtainable. They also wanted a risk assessment instrument that would be understandable, simple to use, and transparent in its application, rather than one that produced results through an unknown and inaccessible formula or algorithm. Finally, the tool must produce results that are neutral as to racial, ethnic, and other factors which have resulted in disparities in other areas of law enforcement and criminal justice administration. This can be achieved with careful and frequent demographic monitoring and updating, which will indicate which factors are truly predictive for the Whatcom County population.

The work group consulted with the Superior Court judges to identify a tool that best meets these criteria and will continue to work with the Court on the application and continuing validation of its risk assessment tool.

The Pretrial Processes work group also consulted with Dr. Andrew Peterson, a criminal justice data scientist employed by the Washington Administrative Office of the Courts who was an advisor to the

state Pretrial Reform Task Force. In part using the statewide courts database, Dr. Peterson analyzed hundreds of Whatcom County Superior Court and District Court cases compiled since May 2018 to determine the factors that best predict the risks of a failure to return to court or to commit a new violent crime, and his work is shaping the final form that a local pretrial risk assessment instrument will take. He will also continue assisting the Whatcom County effort by re-validating that instrument while it is in use, including testing for its neutrality on racial and ethnic factors, and recommending adjustments he thinks are necessary. The work group's reliance on this expertise furthers its commitment to a rigorous, evidence-based approach to developing a pretrial program.

DRUG COURT IMPROVEMENTS

Goal: Effective engagement with high-quality treatment and appropriate support services for as many defendants with substance use disorder as possible, as an alternative to prosecution and incarceration.

Context: The drug court program involves staff from the prosecutor's office, the Superior Court bench, the Public Defender's office, and treatment professionals. Since the Whatcom County Drug Court program was established in the 1990's, the use of therapeutic courts has spread widely and an extensive body of research has looked carefully at practices that are effective for promoting successful treatment interventions and in redirecting drug court participants away from cyclical incarceration and into more productive and healthy lives. Over the last few years, some Drug Court team members have viewed the program as working well, while others have raised questions about how participants are selected, whether the program could divert even more individuals from jail, and whether treatment services were as robust as possible.

Progress:

<u>Assessment of local practices</u>: In 2018, with the encouragement of the Legal and Justice System Committee, the Drug Court team engaged technical assistance experts through the National Association of Drug Court Professionals (NADCP) to assess whether the Whatcom County Drug Court utilized current evidence-based practices and to recommend improvements if needed. Team members completed detailed questionnaires about the operation of the program and a NADCP-affiliated evaluator conducted a two-day site visit to Whatcom County in February 2019 to observe and talk to the team.

A report of this assessment, with recommendations for possible improvements, was received on May 1 of 2019. The evaluators noted the leadership of Judge Raquel Montoya-Lewis, and commended the entire team for requesting technical assistance to implement best practices and for its dedication to the program. Among other points, the assessment report recommended improving the legal criteria for eligibility, adopting validated, standardized assessments of participants' risks and needs to better guide services, strengthening the expectation of evidence-based practices with treatment providers, and pursuing grant funding to address program needs. Both the Drug Court team itself and the Legal and Justice System Committee will work on ways to implement the changes suggested.

<u>Development of supported housing</u>: The Opportunity Council, in partnership with Lifeline Connections, intends to rehabilitate a property in Bellingham for the purpose of creating a Recovery House that will serve people who are committed to their recovery from substance use disorders, and who will benefit from a high level of support from professional staff. The project will be located at a property on Girard Street, formerly a recovery house and detox program owned by PeaceHealth, that has been vacant for

over ten years. The two buildings will be rehabilitated to Washington Department of Health standards for a Level 4 Recovery Residence (as specified by the National Alliance for Recovery Residences).

This type of program provides peer-supported services plus life skills and clinical

The Drug Court assessment report recommended improving the legal criteria for eligibility and adopting validated, standardized assessments of participants' risks and needs.

programming by a licensed treatment provider. This level of care includes a high degree of daily structure and 24/7 staffing. In addition, the program includes mental health services provided by mental health professionals on staff. This project adds a significant, missing component to our local continuum of care. The emphasis of this level of care is equipping participants for the next phase of recovery, which could be another residential level of care, or independent living and employment.

This project was inspired by recommendations from Whatcom County's Incarceration Prevention and Reduction Taskforce, the Drug Court program staff, and Superior Court Judge Montoya-Lewis, who approached Opportunity Council seeking solutions to the housing stability challenges of Drug Court participants. Project partners expect that Whatcom County Drug Court and Whatcom County Mental Health Court will be primary sources of referrals to the Recovery House program.

The Opportunity Council was awarded a \$1,000,000 grant for the capital costs of the rehabilitation, and Whatcom County Health Department and Lifeline Connections helped to secure the operating funding. Opportunity Council is in the early design phase and anticipates construction starting later this year, and hopes to begin delivering services in late 2019.

SHORTENING CASE PROCESSING TIMES

Goal: Reduce the time people are held in jail, especially pretrial, by enhancing the efficiency of Court operations and decision-making.

Context: The Vera Institute's Final Report to the Task Force noted that cases in Whatcom County courts progress from initiation to resolution more slowly than state standards call for and cited this as one of the reasons there are more defendants in the jail than necessary on any given day. The Legal and Justice Systems Committee suggested that this factor would be an area amenable to improvement, with a resulting reduction in incarceration.

Progress: The Prosecutor's Office and the Public Defender's Office have begun discussing possible steps to reduce delays in case processing time and have presented preliminary proposals to the Superior Court judicial officers. At present, this discussion is on-going. The Legal and Justice System Committee will seek periodic progress reports and will lend any assistance it can to the effort.

CHANGES AT COURTS OF LIMITED JURISDICTION

Goal: The purpose of changes at the municipal and district courts include the following:

- Expand capacity for alternative sentencing at courts of limited jurisdiction
- Provide effective prevention therapies where applicable
- Provide pretrial services and notifications to reduce warrants

Progress:

<u>District Court</u>: An MRT (Moral Reconation Therapy) program has been established. MRT is a proprietary systematic, cognitive-behavioral treatment system that uses tailored approaches to address substance abuse, domestic violence, trauma, and other issues. This program draws its participants from Mental Health Court clients and individuals assigned to the probation office's Behavioral Health Unit. The MRT program is being evaluated for its effectiveness with this population.

In August of 2018 the Municipal Courts for the Cities of Blaine, Everson, and Sumas allowed electronic monitoring as an alternative to being housed at the Whatcom County Jail.

A separate DV-MRT program has also been established for clients being supervised for domestic violence cases. There is one group currently operating with a nearly full cohort of nine clients. Two additional Probation Officers will be attending training in May and will also become certified to conduct these classes. These additional trained staff will give the Whatcom County Probation Office the option of increasing the number of treatment group sessions offered.

Having shown its effectiveness, the District Court's text message reminder program now sends reminders to defendants for all probation appointments, scheduled substance testing, and court hearings in District Court and the Bellingham, Blaine, Everson, Lynden and Sumas Municipal Courts. (In October, the department also began texting reminders for Superior Court's arraignment and out-ofcustody plea calendars). Finally, District Court in the past year formed a Pretrial Unit with four current staff members credentialed as Certified Pretrial Services Professionals with the National Association of Pretrial Services Agencies.

<u>Bellingham Municipal Court</u>: As of March of 2019, more than 1,000 Bellingham Municipal Court defendants have completed sentences on electronic monitoring rather than in Whatcom County Jail. This has enabled those defendants to remain employed, attend school, continue with treatment, keep children in their custody, attend medical appointments, and still be held accountable for their actions. The City subsidizes any defendant who is indigent so that inability to pay never prevents a defendant from serving their time on electronic monitoring instead of in the jail. This program has resulted in a savings to the City of over \$2 million dollars.

The City has also recently hired a Jail Alternatives and Diversion Manager to oversee this program and to help the City explore additional alternatives to incarcerating nonviolent offenders through diversion programs and expansion of other jail alternatives.

<u>Small Cities Municipal Courts</u>. In August of 2018 the Municipal Courts for the Cities of Blaine, Everson, and Sumas established a contract to allow for electronic monitoring as an alternative to being housed at the Whatcom County Jail. The three cities combined have used GPS monitoring on 24 individuals for a combined total use of 763 days as of June 2019. This has allowed individuals qualified for the program to be held accountable for their actions while remaining employed and continuing with treatment programs. The total savings for the three cities as an alternative to being held in Whatcom County Jail was \$79,352. The courts are also allowing some defendants to be released pre-trial with alcohol monitoring devices, some of whom may have otherwise remained in jail with a high bail.

LAW ENFORCEMENT AND JAIL INITIATIVES

Goal: Goals in this area are threefold:

- Ensure that the best services are provided to vulnerable populations in contact with law enforcement by adopting a liaison and problem-solving approach that connects people with appropriate social service agencies to reduce future calls for service and incarceration;
- Provide better access to jail alternative programs to reduce incarceration and the need for warrants;
- Provide better access to needed services within the jail, and at re-entry.

Context: Many 911 calls have a mental health/substance abuse component. Because of the lack of dedicated follow-up, these particular incidents may result in repeated calls for help by the individual, the individual's family, or simply by a concerned citizen who is witnessing the crisis. The goal of these changes is to provide appropriate care to persons in crisis while reducing repeat calls for service. This is done by taking a proactive approach to mental health issues and substance abuse in Whatcom County and in the City of Bellingham.

Progress: Both the Whatcom County Sheriff's office and the Bellingham Police Department are enhancing their ability to properly respond to individuals with behavioral health issues. Changes are described below.

<u>Sheriff's Office Crisis Intervention Deputy</u>. The Whatcom County Sheriff's Office established a Crisis Intervention deputy position in 2018 to assist the Patrol Division to effectively intervene and de-escalate crisis situations involving persons with behavioral health issues. The Crisis Intervention deputy works to divert subjects experiencing a crisis from the criminal justice system prior to their arrest for a criminal act. The Crisis Intervention deputy will also divert chronic utilizers of 911 services to the appropriate service providers, including referring participants to the GRACE program. These diversions are expected to reduce the cost of incarceration and court proceedings, limit the continued response time deputies must spend returning to deal with the same individuals, lessen the impact crisis situations have on limited law enforcement resources, and increase deputies' ability to handle other calls for service and conduct proactive patrols.

The current Crisis Intervention deputy, Jamie Collins, began serving in this role in September 2018. Prior to that time, he attended basic and advanced training in Crisis Intervention and de-escalation, as well as spending time with established Crisis Intervention programs of the Seattle Police Department and King County Sheriff's Office. In addition, Deputy Collins expects to complete his graduate study for a master's degree in counseling psychology in early 2020.

The Crisis Intervention deputy will be a liaison between the Sheriff's Office and the behavioral health community and other social service organizations. The Crisis Intervention deputy meets on a regular basis with behavioral health providers to ensure that persons experiencing crisis are being connected with the services they need. The Crisis Intervention deputy collaborates on behavioral health issues with the Incarceration Prevention and Reduction Task Force's Behavioral Health Committee, the County Health Department's GRACE program, the Bellingham Police Department's Crisis Prevention Intervention Team (CPIT), and the Crisis Oversight committee.

Over the past year, the Sheriff's Office has seen a 33% increase in calls for service related to mental health. To address the growing needs of the community, the Sheriff's Office received authorization to hire a second Crisis Intervention deputy in 2019 and anticipates assigning the new deputy by mid-summer. The Sheriff's Office is also working with the Prosecuting Attorney's

The County Council's policy change to eliminate a requirement that all jail alternative programs be self-supporting, often requiring a defendant to pay, has resulted in a reduction of jail bed days.

Office in planning a Law Enforcement Assisted Diversion (LEAD) program and believes that this will provide increased options to the Crisis Intervention Deputies.

<u>BPD Behavioral Health Officer</u>. The Bellingham Police Department has recently completed a staff reorganization which has allowed the department to place one current commissioned FTE into the position of Behavioral Health Officer. This position performs analogous duties to that of the Bellingham Fire Department's Community Paramedic. This change will become effective the first part of June and the department's Behavioral Health Officer will be Zach Serad.

Operationally, Bellingham's plan incorporates one commissioned police officer position for proactive follow-up with those individuals who are showing signs of mental illness/substance use issues and are identified as having multiple or high-risk contacts with police. Potential contacts, and subsequent follow-ups, will be determined by the BH officer after reviewing police reports or after referrals through other patrol officers/organizations, including the Community Paramedic. The Behavioral Health Officer will contact and work with those individuals to assess and make connections with appropriate resources within our community, including the GRACE program.

<u>Reduction of warrants</u>. Warrants are issued by the court and direct deputies and other officers to take persons into custody. The Sheriff's Office does not have the unilateral ability to ignore these requirements. However, the Sheriff's Office continues to work very closely with the District Court to reduce incarceration, and the court probation office has adopted a system of phone and text messages of upcoming court dates to reduce failures to appear. The Sheriff's Office also facilitates the placement and monitoring of electronic home monitoring devices on *pre-trial defendants*. The Sheriff's Office does not supervise these people but rather reports violations of the conditions of monitoring to District Court probation which determines the appropriate course of action. This arrangement satisfies liability concerns previously expressed by the Prosecuting Attorney's Office. In 2018, 63 offenders participated in the pre-trial program reducing incarceration needs for those people by 5,314 bed days. The program was expanded in late 2018 and in just the first two months of 2019, 2,663 jail bed days were diverted into this program. It is important to emphasize that this electronic home detention program is <u>not</u> the same program the Sheriff's Office employs for monitoring convicted and sentenced offenders who may require a higher degree of supervision and which is operated entirely by the Sheriff's Office—a more intensive and costly program.

<u>Jail alternative programs</u>: The County Council's policy change to eliminate a requirement that all jail alternative programs be self-supporting (often requiring a defendant to pay) has resulted in a reduction of jail bed days. The out-of-custody jail work crews (day reporting) resulted in a reduction of 2,663 jail bed days in 2018, which was 58% more jail bed days avoided than in 2016.

<u>Out-of-county transfers</u>: Due to issues involving safety and infrastructure and security system reliability, the Sheriff's Office continues to limit the jail population through measures that include transfers by the County and other users of the jail to out-of-county facilities. Control measures are also necessitated when failing infrastructure and life-safety systems require cells and even entire cell blocks be taken out of use for extended periods of time. The Sheriff's Office and the City of Bellingham Prosecutor's Office have worked together closely to avoid transferring inmates to Yakima whenever possible and divert them instead to alternative programs or housing in the jail work center. Total bed day use for the jail dropped approximately 2% from 2017 to 2018 with an average daily population drop from 319 to 314. These efforts help avoid some consequences of separating inmates from their family and support systems and should result in more use of work programs.

<u>Community services connections for inmates</u>: The Sheriff's Office has engaged community partners to help inmates succeed upon re-entry into the community. This has included the engagement of the Homeless Outreach Team with homeless offenders; Literacy Council (assisting with reading and writing skills); Goodwill (to help offenders with criminal records attain employment); Domestic Violence and Sexual Assault Services (counseling for victims); Bible studies; one-on-one faith-based counseling; GED preparation; Alcoholics/Narcotics Anonymous; and Parents for Parents (peer-based parents involved with dependency proceedings).

<u>Medically Assisted Treatment (MAT) for opioid use disorder</u>: Phase one of a program that was under development for over a year was implemented in September 2018 to assist those in the jail who are affected by opiate use disorder to withdraw with medical supervision. Phase two was implemented in February 2019 and allows the use of an opioid substitute for jailed offenders already on a community maintenance program. Phase three will begin later this year and will assist users to withdraw and work with a community provider in an opioid substitution program after release from the jail. Questions about the availability of MAT in the jail were the subject of a pending lawsuit, which was recently dismissed by agreement of the parties as a result of these steps.

C. Progress Report: Behavioral Health Committee

The Behavioral Health Committee works collaboratively across jurisdictions to support the creation of programs that provide effective mental health and substance use disorder treatment available to all County residents. Milestones in 2018 include implementation of the Ground-level Response and Coordinated Engagement (GRACE) program to integrate behavioral health services and reduce inappropriate use of the jail and emergency response systems; securing of grants for development of a Recovery House level of care in the substance use disorder (SUD) treatment system; and, an expansion of multi-agency training on behavioral health issues, including hoarding and the neuroscience of behavioral health disorders.

IMPROVEMENTS IN BEHAVIORAL HEALTH SERVICES AND COORDINATION

Goal: Provide effective coordination to meet the needs of frequent users of health and criminal justice resources, and reduce the use of and costs incurred by the criminal justice and emergency response systems through the provision of effective behavioral health programs and services.

Context: A portion of the population served in the criminal justice system is often challenged with poor health, behavioral health disorders, and/or unstable housing or homelessness. Some individuals will frequently require emergency responses from law enforcement or Emergency Medical Services (EMS). Whatcom GRACE is a program developed to provide care coordination services to individuals who frequently use the crisis system or draw law enforcement responses. GRACE has three goals:

- Increase public safety
- Reduce use and costs of criminal justice and emergency response systems
- Improve health and well-being of individuals with complex needs

Progress: Recent activities to implement GRACE and other support services include the following:

- **Procurement of GRACE provider.** A "Request for Qualifications" (RFQ) was released in spring 2018 seeking an agency to serve as the "hub" of the GRACE program, and SeaMar Community Health Center was selected for this role. SeaMar has hired a Program Manager for GRACE and all other staff positions have been filled except for a nurse practitioner. SeaMar is currently in the process of interviewing and hiring an ARNP for GRACE. The program is operating throughout the county. The GRACE team is now working from an office located at 800 Chestnut, although they continue to have care managers at workstations at Fire Districts and law enforcement locations as needed to promote collaboration and provide local services.
- Health information sharing. The County has created new mechanisms to facilitate sharing of
 protected health information among GRACE partners. Release of Information forms have been
 developed with expert consultation from a health care attorney to ensure privacy of individuals
 served, while also allowing for optimal coordination of care while in the GRACE program. The
 County and SeaMar are working to customize an information system for GRACE use now being
 used by the North Sound Accountable Community of Health as a care coordination platform,
 and to explore "application programming interfaces" that will allow more automated
 information sharing between EMS, law enforcement, jail and health care systems. The first such
 interface being explored is with ImageTrend application, a data sharing software currently being
 implemented by all Fire District EMT services throughout the County. The Team is also exploring
 alternative care coordination information systems if needed in the future.
- **GRACE capacity.** Program capacity is increasing. A total of four case managers have been hired, and a nurse practitioner will be added to meet the needs of those with other health needs. Community partnerships continue to develop, and an expansion of the Community Paramedic model to include Ferndale will add another cooperating partner to the program. To date, the program is providing case management services for around 60-70 people, with a caseload potential of approximately 80 individuals.
- **Recovery House level of care.** The county is working with the Opportunity Council and Lifeline Connections in the remodel and operational startup of a new enhanced co-occurring disorder Recovery House level of care. This program will be staffed 24/7 with mental health and chemical dependency professionals, peer counselors, and technicians. The target populations will primarily be Drug Court, Mental Health Court, and GRACE participants. Recovery House level of care is a step down from inpatient substance use disorder (SUD) treatment intended to provide additional support and treatment for people to maintain gains achieved during inpatient treatment. The goal is to open Recovery House services by summer 2020. (See discussion of this item under the Legal and Justice System Committee for additional background information).

 Criminal Justice Treatment Account funding. The County successfully increased access to assessments and treatment for eligible people in the jail, and also began providing rental assistance for drug court, mental health court, and GRACE participants discharged from inpatient SUD treatment, using funds from the state Criminal Justice Treatment Account (CJTA). A local panel oversees CJTA funds and makes recommendations about service priorities.

The GRACE program target population is often reluctant to accept services and requires sophisticated engagement practices. Lack of suitable housing also remains a challenge.

Issues and opportunities:

- The ability to share necessary protected health information among the various GRACE providers has been a significant challenge. Care coordination among healthcare providers is allowed under the laws of confidentiality to some extent. However, sharing protected health information with law enforcement is more difficult without a Release of Information signed by the GRACE member to allow it.
- The target population is often reluctant to accept services and requires sophisticated engagement practices to include them in the GRACE program.
- The lack of suitable housing is a challenge for GRACE members and other individuals who have frequent contacts with the criminal justice system.
- In 2019, commercial health insurance plans will become the primary funders of behavioral health services for individuals covered under Medicaid. The County is working closely with these managed care organizations as well as the GRACE hub agency to ensure that Medicaid-eligible services delivered to GRACE members are fully reimbursed.
- The Community Outreach and Recovery Support (CORS) program provides professional support and peer coaching to Whatcom County residents in need. After 18 months of outreach in the community, the program is experiencing funding challenges. CORS has historically received funding from the Federal Mental Health Block Grant (MHBG) with a smaller portion coming from the Behavioral Health Program fund. With implementation of Fully Integrated Managed Care in July 1, 2019, MHBG funds will be reallocated to community crisis services and will no longer be available to support CORS. CORS is an important resource in the community and has effectively served many individuals at the Lighthouse Mission, Francis Place, 22 North and other housing and resource locations. The County is reviewing options for continued funding of this valuable program.

IMPROVED CRISIS RESPONSE AND SUBSTANCE USE DISORDER TREATMENT

Goal: Reduce jail admissions/readmissions through improved crisis response and treatment.

Context: A high number of people in jail have substance use disorders (SUDs) and co-occurring (mental health and SUD) disorders—68% and 44% respectively.¹ Other data indicate a rise in opioid use and its consequences—such as opioid-related arrests, overdoses, detox and treatment admissions, and Hepatitis C. Equally important, people with mental illness can experience escalation of behavior to the level of criminal involvement unless law enforcement is sufficiently trained in crisis de-escalation and management. Although a basic level of crisis training is now required of all law enforcement officers in Washington State, and many agencies exceed basic requirements, additional behavioral health expertise is needed in certain cases to prevent escalation of crises.

Progress: Targeted efforts to address crisis and addiction can be effective in reducing jail admissions and readmissions. Activities include:

- **Crisis Training and Response Capability in Law Enforcement.** Crisis Prevention and Deescalation Training for law enforcement has proven to reduce or avert arrests while also connecting individuals to appropriate services. In 2018, the Sheriff's Office added a position for a Crisis Intervention Deputy to respond to persons in crisis and follow up with services, and Bellingham is adding a behavioral-health trained officer in 2019. (See additional discussion of this topic in the Legal and Justice System Committee Section).
- Multi-agency behavioral health training. Coordinated activity across agencies to provide practitioner training resulted in delivery of training on behavioral health disorders and brain dysfunction, and hoarding disorders.

Opiate Use Disorder Treatment. Since 2016, the number of Medication Assisted Treatment (MAT) providers offering services in Whatcom County has more than doubled. Two additional agencies provide full-service MAT, and an additional agency provides MAT and substance use disorder treatment. Adults of all ages are accessing these services, with the largest percentage of recipients in the 26 to 35 year old age range.

• **MAT at the Whatcom County Jail.** The jail has implemented a medication assisted treatment (MAT) program to help people who are withdrawing from opioids while incarcerated. The program currently tapers individuals not actively involved in treatment and continues MAT services for those enrolled in treatment programming. The program also assists individuals released from the jail with connection to community-based services for continuing care.

Issues and Opportunities:

- Methamphetamine use is on the rise again, yet there is no effective treatment medication. Methamphetamine is a stimulant, and often individuals under the influence demonstrate agitated or aggressive behaviors that can lead to a law enforcement response. Not only is methamphetamine addiction difficult to treat effectively, but smoking the drug has potential to contaminate housing units which creates challenges in finding safe and stable housing for individuals struggling with methamphetamine addiction.
- Complex behavioral health issues, especially for those people who are incarcerated, often stem from early childhood, repeated traumatic events. The multi-system trainings coordinated by the

¹ Data are for people on Medicaid only; however, 86% of inmates in the jails had been enrolled in Medicaid at some point over the previous five years. See Paula Henzel et al., "Behavioral Health Needs of Jail Inmates in Washington State," Department of Social and Health Services, Research and Data Analysis, January 2016.

Health Department will include dissemination of trauma-informed approaches (TIA) throughout the criminal justice and law enforcement systems, and include behavioral health and housing partners.

• More treatment services for people with co-occurring substance use and mental health disorders are needed in the community. The county recently welcomed a new outpatient SUD treatment provider, Lifeline Connections, located on the Guide Meridian in Bellingham. An inpatient SUD treatment facility is also slated to open in 2019, which will be the first such facility for adults in the county. These additions will expand access to services for adults with SUD.

YOUNG ADULT INCARCERATION PREVENTION INITIATIVE

Goal: Prevent young adults from entering the criminal justice system

Context: In 2018, a John D. and Catherine T. MacArthur foundation grant was secured to focus on young adult (aged 18-24) incarceration prevention. A team was formed consisting of representatives from the City of Bellingham and Whatcom County Councils, Washington State House of Representatives and Senate, and Bellingham and Whatcom County staff. This team, in coordination with National League of Cities, National Association of Counties, and the National Conference of State Legislatures, has worked alongside stakeholders from Indianapolis, Overland Park, Albuquerque, and Kalamazoo.

Team members are the following:

- City Councilmember April Barker
- City Councilmember Dan Hammill
- County Councilmember Barry Buchanan
- Whatcom County Probation Manager Bruce Van Glubt
- Whatcom County Health Department Human Services Manager Anne Deacon
- Bellingham City Attorney Peter Ruffatto
- Washington State Representative Roger Goodman
- Washington State Representative Sharon Shewmake
- Washington State Representative Debra Lekanoff
- Washington State Senator Jeannie Darneille

The Bellingham/Whatcom team's workplan is to create a joint City/County/small cities resolution that prioritizes prevention of young adult incarceration, emphasizes in-field crisis and mobile responses and interventions, prioritizes an operational funding solution for the Crisis Stabilization Facility, and tracks data to evaluate successes, challenges and further needs.

Progress: Thus far, biennial operational funding for the Crisis Stabilization Facility has been secured but the long-term solution has not been worked out at the state legislature. The joint resolution was reviewed and approved by City and County executives and was presented to the small city mayors. The resolution was approved in June by the Whatcom County Health Board, and calls for the following changes:

1. Identify the multiple efforts and initiatives currently in operation in the community focused on reducing the exposure of youth and young adults to the criminal justice system;

- 2. Coalesce these efforts along a continuum of Prevention, Intervention, Treatment and Support, aligning with the Sequential Intercept Model as appropriate across jurisdictions in Whatcom County including service and nonprofit sectors, Tribes, education institutions, and foundations;
- 3. Create a system for improved data collection, analysis, reporting, and responsive action across all sectors, to include fiscal and asset mapping and gap analyses;
- 4. Develop cultural competencies in staff and incorporate into processes throughout the various criminal justice systems to eliminate racial disparities; and
- 5. Prioritize policy development and funding that invests in growing healthy and resilient children, youth and young adults through prevention and early intervention programs.

Issues and opportunities: A sustainable funding model has yet to be created at the State level. Upstream diversions that include youth and family supports will be required to achieve greater success in young adult incarceration prevention. Differing data systems across jurisdictions need better alignment and reporting capabilities. Stable housing continues to be a barrier for many young adults who have or have had exposure to adverse social determinants of health that can lead them into contact with the criminal justice system.

D. Progress Report: Crisis Stabilization Facility Committee

Introduction: Whatcom County currently owns a Crisis Triage Facility that houses 13 treatment beds, with eight dedicated to substance withdrawal management services and five to mental health stabilization services. The demand for these services has increased beyond the current building's capacity, resulting in a situation where first responders are often unable to use the facility. As a result, people end up in the hospital or in the jail instead of being diverted to treatment alternatives. The ordinance creating the Incarceration Prevention and Reduction Task Force called for the Task Force to work to create a new facility to "assist with jail and hospital diversion of individuals struggling with mental illness and chemical dependency." The Crisis Stabilization Facility Committee has worked steadily since the Task Force's inception to help create this new center.

Substantial progress has been made. In 2018, construction funding was secured, an architectural design was completed, and a public meeting to introduce the facility was held. Current activities include establishing contracts with agencies to operate the center, working with the selected contractors to refine the operational model for the center, and securing long-term funding to operate the facility.

CRISIS STABILIZATION FACILITY CONSTRUCTION, OPERATIONS, AND FUNDING

Goal: Provide a safe location with appropriate services for law enforcement and other first responders for individuals in behavioral health crisis who might otherwise end up in jail or in the emergency department of the hospital.

Context: The current space allocated to crisis stabilization has proven inadequate to the needs of first responders and the community. Present capacity of eight detox beds and five mental health beds will be increased to 16 acute substance withdrawal management (detox) beds and 16 mental health stabilization (triage) beds at a new facility near the current facility on Division Street in Bellingham. This will provide law enforcement and emergency services personnel with more options for individuals with acute behavioral health needs. The aim is to provide an alternative to incarceration and link people to

the appropriate mental health and substance use disorder services. Increased capacity will also reduce unnecessary use of costly emergency department services.

Securing reliable and sustainable operational funding for the center is a critical issue. In accordance with State legislative mandate, behavioral health and medical care are being A state budget proviso provides funding for the center for the next two years, but ongoing mechanisms for full funding of all services still need to be identified.

integrated, with Medicaid Managed Care Organizations (MCOs) becoming primary funders for Medicaid behavioral health services. While it is likely that the services provided at the crisis stabilization facility will be reimbursed for Medicaid enrolled individuals, there is some concern that funding for non-Medicaid individuals may not be sufficient to meet the need. Historical data indicates that approximately 30% of the population currently served at these facilities in this region are not Medicaid enrolled. Commercial Health Plans do not pay for these stabilization services typically. As a result of uncertain operational funding, some similar facilities planned elsewhere in the state have been canceled or postponed.

Progress: The Crisis Stabilization Facility Committee has made progress in the following areas.

Facility Planning and Construction:

• A total of \$9.5 million in state funds were secured in 2018, supplementing \$3 million in local funds and allowing design and permitting work for the facility to proceed. County staff hired an architectural firm and design work is currently in the final stages. The County is ready to submit plans to the City, and a request for construction bids has been prepared. Bids are expected to be requested soon, and groundbreaking is expected to occur this summer, with project completion 12 to 14 months thereafter.

Operational Planning:

- <u>State dollars secured for 2020-21 operations</u>. As stated above, while partial operational funding for the center is likely, full reimbursement for all services remains uncertain. County staff and local elected leaders worked with our legislative representatives in Olympia to secure \$1 million in supplemental operating funds in the 2020-21 state budget. The budget proviso also instructed the Health Care Authority to "...coordinate with crisis stabilization providers, managed care organizations, and behavioral health administrative services organizations throughout the state to identify payment models that reflect the unique needs of crisis stabilization and crisis triage providers. The report must also include an analysis of the estimated gap in nonmedicaid funding for crisis stabilization and triage facilities throughout the state. The authority must provide a report to the office of financial management and the appropriate committees of the legislature on the estimated nonmedicaid funding gap and payment models by December 1, 2019." This type of facility aligns with Governor Inslee's plan to develop a number of regional treatment facilities around the state, so the need for a sustainable funding plan is not limited to our local facility.
- <u>Further development of the service delivery model.</u> The Crisis Stabilization Facility Committee has worked with County Department of Health staff to develop criteria for the future providers of services at the center. Both sets of operations will adopt a "recovery model" under Substance Abuse

and Mental Health Services Administration (SAMHSA's) ten <u>Guiding Principles of Recovery</u>. Providers will be expected to conduct on-site medical clearances for admission and to optimize drop-offs by law enforcement and EMS. Both sets of operations will be able to prescribe and manage administration of medications. The facility will have showers and laundry facilities. As indicated in released RFQs, the following elements will be included for the different sides of the facility.

- Mental health stabilization services. This side of the center will be licensed as a "Residential Treatment Facility" and also be certified for "Triage Involuntary Services." Involuntary holds may occur under state statute <u>RCW 10.31.110</u> and are limited to 12 hours. These involuntary holds are initiated by law enforcement under the criminal code. Those held involuntarily may be shifted to a voluntary hold if circumstances warrant and the provider is encouraged to do so whenever possible. The facility will be managed for 85% occupancy at a minimum. Additional requirements for a mental health provider include:
 - Managing disruptive or dangerous client behavior in the least restrictive, intrusive manner
 - Minimizing seclusion and restraint used in an involuntary setting
 - Collaborating with a Substance Abuse Disorder treatment provider co-occupying the facility
 - Planning, coordinating and transferring care upon discharge, to include medications and ongoing care in other appropriate facilities, agencies, or under the supervision of a mental health professional
- Substance Withdrawal Management Services. The contracted organization will provide withdrawal management services at 3.2 and 3.7 ASAM (American Society of Addiction Medicine) levels of care. The facility will be licensed as a <u>Residential Treatment Facility</u> and will receive program certification for Withdrawal Management services for adults. This side of the facility will provide strictly voluntary services. Additional requirements for a provider include:
 - Initiating Medication Assisted Treatment for both withdrawal management purposes as well as maintenance
 - Monitoring client health and wellbeing during the withdrawal phase
 - Collaborating with the mental health treatment provider co-occupying the facility
 - Planning, coordinating, and transferring ongoing care upon discharge including any necessary medication
- <u>Data collection</u>. Providers will collect data to monitor operations and improve operations. Data to be collected include:
 - Number of transfers from one unit to another
 - Discharges to other services
 - Number of voluntary/involuntary stays
 - Readmissions
 - Denials of admission and reason for denial

Issues and Opportunities: As noted in last year's annual report, a key issue in the coming months include securing long-term *operational funding*. Ensuring optimal funding for an expanded center that allows for 24/7 operations is a key to a successful program. The success of the facility will be limited without sufficient resources to support individuals once they have stabilized and are ready to be discharged.

Areas that the Task Force will be working on in the coming months are:

- Advocating for full state funding for operations, and adequate reimbursement via the MCOs
- Ensuring service integration between the GRACE program, crisis services and Crisis Stabilization Facility operations
- Advocating for increased affordable housing units for vulnerable populations
- Ensuring that protocols are developed so that the facility can be a point of discharge from the hospital Emergency Department to "step-down" services without overwhelming the facility
- Identify other entities that benefit from reduced utilization and that should participate in helping to fund the facility such as the hospital and law enforcement



E. Progress Report: Information Needs and Data Exchange (INDEX) Committee

Introduction. Access to accurate and timely data is necessary to measure progress in reducing incarceration. In late 2018 the Task Force created a new Information Needs and Data Exchange (INDEX) Committee to develop data collection and reporting capacity. The committee is working across many jurisdictions to identify or develop useful data and program information to measure progress in reducing jail use and to document the use of jail alternatives. Data is also being developed to track the

effectiveness of programs. Lastly, the committee is facilitating information-sharing across jurisdictions to support improved operation of justice programs and facilitate cross-jurisdictional system improvements.

Goals: The mission of the INDEX Committee is to develop a data collection and reporting system that accurately informs policymakers when considering programmatic changes necessary to minimize jail use and improve efficiency in the criminal justice system. To achieve the mission, the INDEX Committee is:

- Developing baseline statistics on jail use to determine whether programmatic changes are successful.
- Establishing measures for a realistic and achievable percentage decrease in the jail population.
- Identifying how to assess performance and establish metrics that measure the success of each new initiative.
- Identifying where data is a barrier to implementing various initiatives and work to fill those gaps.
- Identifying data that can indicate the presence of racial, poverty, gender, and other social and economic disparities in the criminal justice system.
- Maximizing the accuracy of a data collection system by integrating the system across all jurisdictions.
- Allowing policymakers to refine processes, improve the way things work, and then observe outcomes.

Context: The INDEX Committee structure includes a Technical Subcommittee and a Policy Subcommittee. The Policy Subcommittee, consisting of the entire Task Force, drives the process and guides the work of the technical subcommittee. The Technical Subcommittee includes the information technology and agency staff who work with the systems and data to measure outcomes. The Technical Subcommittee interacts with the Policy Subcommittee to identify options to achieve those outcomes and identifies existing data or develops improved data practices to monitor progress.

Progress: Since the Committee's first meeting in October 2018, it has completed the following projects or activities.

• The INDEX Technical Subcommittee has completed a data inventory. Initial INDEX Technical Subcommittee meetings were spent with each participant identifying data their jurisdiction collects and the software platform in which it's collected. Specific data points were identified through the work of the Task Force's committees, the final report from the Vera Institute of Justice, and a list of primary data elements from Dr. James Austin, JFA Institute. Law enforcement and court departments in Whatcom County, Bellingham, Blaine, and Sumas identified which of these data elements they collect at various points of contact with an individual. (Click here to see the <u>data matrix</u>).

Technical Committee members cited the lack of interoperability among various collection systems as a significant barrier to maximizing the efficiency of their operations. Because there is not one universal repository for criminal justice data for all users in the county, common data points must be entered multiple times into different systems at various points in the processes or up-to-date data may not be available in real time. Some software systems are antiquated, and new systems being implemented don't provide all the necessary information. INDEX

Technical Subcommittee members now have an opportunity to communicate their specific needs for shared data, and solutions are quickly being identified.

- The Technical Subcommittee has achieved significant operational improvements. The INDEX Technical Subcommittee members discussed the lack of accurate or accessible data necessary to make critical decisions about a particular case, such as how much credit is already given to an inmate for time served. The subcommittee formed a small group of individuals who meet as a workgroup to develop a more dynamic and interactive reporting process for disseminating information on the current jail population. The workgroup participants include representatives from County and Bellingham information technology staff, courts, public defenders, prosecutors, and the Sheriff's Office. The workgroup identified five main target audiences and developed draft reports from the Sheriff's Office Records Management System (Spillman). Those five target audiences are:
 - Courts
 - Public Defender
 - Prosecutor
 - Public and private entities
 - Policy-makers

Progress to date includes the following:

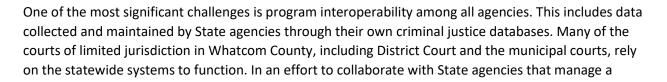
Development of reports on inmates. Workgroup participants expressed the need for more detailed and up-to-date information on inmates currently held in the jail. Lt. Caleb Erickson from the Sheriff's Office, and County Information Technology (IT) Manager Perry Rice are working with city and county representatives to develop an accurate and timely reporting system to verify credited time served and other factors specific to a particular inmate. Each court agency will receive a customized report from the jail's Spillman system to document inmates' time served as sentenced by the courts. City prosecutors will receive a point-in-time report on who is in the jail on their city cases. While all reports will have a consistent look and format, the data content on each form is being customized to meet the needs of each jurisdiction, such as reporting either by case number or by person. IT staff have identified a reporting server that can deliver these new reports to each jurisdiction and are working to implement the program. In addition to these static reports, the workgroup members are considering how to provide a more dynamic report on current jail inmate data.

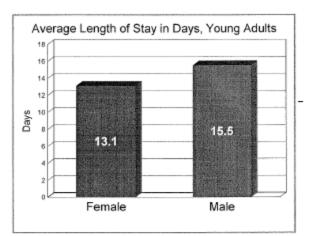
<u>Enhancement of data on the County website.</u> One option for gaining access to detailed information is via the Sheriff's Office online inmate databases, available on the Bureau of Corrections' website. The workgroup identified website database models in other counties that currently provide a more robust level of data via their websites. County IT staff are working to migrate the Sheriff's Office website to another server that will allow more access on jail information to key users and the public. The targeted information for the public and for private entities will be delivered via updated website information to include dynamic clickable fields and updates for all inmates in custody, bookings, and releases. The INDEX Technical Subcommittee assisted Policy Academy participants by producing data on young adult offenders. The Intergovernmental Policy Academy is an incarceration reduction project sponsored by the MacArthur Foundation, National Association of Counties (NACO), National League of Cities (NLC) and the National Conference of State Legislatures (NCSL). The Policy Academy's focus is reducing incarceration for young adults (18-24). A primary objective of the local team is to reduce the amount of time young adults spend in jail. Studies show that incarceration for more than 72 hours is particularly traumatic for young adults. The team is working with the INDEX Technical Subcommittee to collect data relative to length of stay for the young adult population. This in turn can be utilized to develop policies to reduce length of stay. The workgroup has developed a Young Adult Inmate report to provide statistics on bookings, inmates, average length-of-stay, and top offenses for young adults aged 18 to 24. (See graphic of Young Adult Inmates).

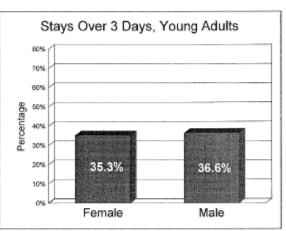
Issues and Opportunities: The INDEX Technical Subcommittee members discussed the need for data to serve two purposes and pinpointed the differences in how data can be collated, interpreted, and disseminated to serve either a policy or operational function:

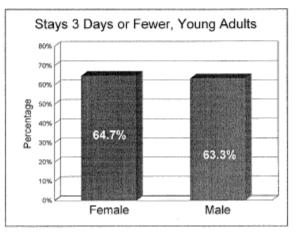
Policy data: Analytics for policy-makers to use for program evaluation and improvement is crucial for program monitoring. Data must allow jurisdictions to engage in trend analysis and provide historic records and information.

Operational data: Data must be accessible to provide a snapshot of information on a particular person.









Source: Whatcom County Sheriff's Office

significant amount of the data on which local courts and criminal justice representatives rely, the INDEX Technical Subcommittee met in March 2019 with representatives from the Administrative Office of the Courts (AOC) regarding the AOC's Courts of Limited Jurisdiction case management system (CLJ-CMS) project. Subcommittee members expressed the crucial need for compatible data systems to function as efficiently as possible, and plan to stay engaged with the State as they navigate this project.

Next Steps: The INDEX Committee continues to work on the tasks identified in the mission statement. Those beginning tasks include:

- Identifying data points not collected
- Identifying baseline information across all data points
- Developing accurate definitions and a glossary of terms that includes national standards, which can be applied uniformly across all agencies and jurisdictions to create clarity in the data reports

To assist in completing its beginning tasks, the Committee will identify potential consultant resources to further define the policy questions for the Task Force based on the more accurate data being collected. The Policy and Technical Subcommittees will continue to collaborate to ensure they are responsive to the needs the Task Force outlined in the original request. Collaboration with the Intergovernmental Policy Academy will continue to identify any other data that would contribute to the goal of reducing incarceration of young adults.

Technical subcommittee members have begun discussing a potential work item to improve operational efficiencies by creating a process for courts to convey sentencing information to the jail. Current messaging between a court and the jail can be inconsistent and unclear. Jail staff have indicated the need for one universal form for all jurisdictions. Also, the technical subcommittee will continue to engage the AOC on its Courts of Limited Jurisdiction case management system (CLJ-CMS) project.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-388

File ID:	AB2019-388	Version:	1	Status:	Agenda Ready
File Created:	07/02/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
First Assigned to: Council Criminal Justice and Public Safety Committee Agenda Date: 07/09/2019 Next Mtg. Date: Hearing Date:				Date:	

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

TITLE FOR AGENDA ITEM:

Discussion regarding a proposed ordinance amending Whatcom County Code 2.46.020 and 2.46.030 to revise the Whatcom County Incarceration Prevention and Reduction Task Force purpose and function (ordinance scheduled for introduction this evening)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding a proposed ordinance amending Whatcom County Code 2.46.020 and 2.46.030 to revise the Whatcom County Incarceration Prevention and Reduction Task Force purpose and function

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
Attachment	s: Proposed Ordinance		
			Final Action:
			Enactment Date:

Enactment #:

ORDINANCE 2019-____

AMENDING WHATCOM COUNTY CODE 2.46.020 AND 2.46.030, TO AMEND THE WHATCOM COUNTY INCARCERATION PREVENTION AND REDUCTION TASK FORCE PURPOSE AND FUNCTION

WHEREAS, the Whatcom County Council created the Incarceration Prevention and Reduction Task Force (IPRTF) in 2015 to provide recommendations, oversight, and specific timeframes on the development of new, or enhancement of existing, programs designed along a continuum that effectively reduces incarceration of individuals struggling with behavioral health challenges (mental illness and chemical dependency), and minimizes jail use by pretrial defendants who can safety be released; and

WHEREAS, the IPRTF completed its initial tasks and also provided to the County Council its Phase I, Phase II, and Phase III Reports, as required by Ordinance 2015-037 to develop plans for a new or expanded crisis triage center for individuals struggling with behavioral health challenges; and

WHEREAS, the IPRTF continues to work with all stakeholders on creating new and enhancing existing criminal justice and behavioral health programs and processes to reduce the number of individuals with behavioral health challenges who use costly interventions like jail, emergency rooms, and hospitals and to divert them from initial or further justice system involvement; and

WHEREAS, there is ample evidence that interventions and investments in social determinates of health have positive impacts on people's lives; and

WHEREAS, investment in birth to three help children succeed in school and in life; and

WHEREAS, the PITA continuum (Prevention, Intervention, Treatment and Aftercare) provides a structure for policy makers to follow; and

WHEREAS, investments in the zero intercept in the Sequential Intercept Model help people stay out of the Criminal Justice System.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that County Code Chapter 2.46 is hereby amended as outlined in **Exhibit A** to this ordinance.

APPROVED this ______ day of ______, 2018.

ATTEST:

Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM	COUNTY	COUNCIL
WHATCOM	COUNTY	, WASHINGTON

Rud Browne , Council Chair

WHATCOM COUNTY EXECUTIVE WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

) Approved () Denied (

Date Signed: _____

EXHIBIT A

Chapter 2.46 INCARCERATION PREVENTION AND REDUCTION TASK FORCE LAW AND JUSTICE COUNCIL

Sections:

- 2.46.010 Established.
- 2.46.020 Purpose.
- 2.46.030 Function.
- 2.46.040 Permanent Members.
- 2.46.050 Additional Appointed Members.
- 2.46.060 Term of Office.
- 2.46.070 Organization Meetings.
- 2.46.080 Staff and Funding Support.
- 2.46.090 Reporting.

2.46.010 Established.

There is hereby established a Whatcom County Incarceration Prevention and Reduction Task Force.

2.46.020 Purpose.

The purpose of the Incarceration Prevention and Reduction Task Force is to continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released, <u>and identify, examine, and recommend implementing programs and policies</u> that focus on intervention and prevention strategies that are pursuant to incarceration.

The purpose of the Incarceration Prevention and Reduction Task Force is also to function as the Whatcom County Law and Justice Council as required by RCW 72.09.300 and to carry out the function described in in RCW 72.09.300(d).

2.46.030 Function.

The Task Force will consider national best practices and report on and make recommendations to the County Council, Executive, and other appropriate officials regarding:

A. The construction and operation of a new or expanded multi-purpose crisis triage facility to assist with jail and hospital diversion of individuals struggling with mental illness and chemical dependency;

B. Development of new, or enhancement of existing, programs designed along a continuum that effectively reduces incarceration of individuals struggling with mental illness and chemical dependency;

C. Effective pretrial service programs that assure that defendants appear for court proceedings while minimizing jail utilization by defendants who can safely be released;

D. Necessary and effective programs and services that can assist offenders with successful transition from both the jail and triage center back to the community to reduce rates of recidivism and improve public health and safety;

E. The ongoing staff support and funding for the Task Force;

F. Review of the diversion programs of the County and all cities, and establishment of benchmarks to measure the effectiveness of the programs in reducing incarceration.

<u>G. Practice evidence-based strategies and interventions that positively impact the social</u> determinants of health that address interventions for criminogenic factors. The Task Force, as the Law and Justice Council, will meet the requirements of RCW 72.09.300.

2.46.040 Permanent Members.

The Incarceration Prevention and Reduction Task Force shall include the following 13 designated officials or their representative:

- A. One Member of the Whatcom County Council
- B. Whatcom County Executive
- C. Whatcom County Sheriff/Jail Administrator
- D. Whatcom County Prosecuting Attorney
- E. Whatcom County Public Defender Director
- F. Juvenile Court Administrator/Superior Court Clerk
- G. One Representative from the Whatcom County Superior Court
- H. One Representative from the Whatcom County District Court
- I. Tribal representation from the Lummi Nation and/or the Nooksack Tribe
- J. One representative from the Whatcom County Health Department Human Services
- K. Emergency Medical Services (EMS) Representative
- L. PeaceHealth St. Joseph's Medical Center
- M. Secretary of the State Department of Corrections or his/her designee

One each of the following, or their designee, to represent municipal courts, prosecutors, police, and legislative authorities:

- N. Bellingham Mayor
- O. Small City Mayor, designated by the Small City Partnership
- P. Bellingham Council Member
- Q. Small City Council Member, designated by the Small City Partnership
- R. Bellingham Police Chief
- S. Small City Police Chief, designated by the Small City Partnership
- T. Bellingham Municipal Court Administrator
- U. Small City Municipal Court, designated by the Small City Partnership

2.46.050 Additional Appointed Members.

In addition to the officials designated above, the Incarceration Prevention and Reduction Task Force shall include the following 11 members appointed by the Whatcom County Council:

- A. Health and Social Service Providers (4)
- B. Consumer of Services or Family Member of Consumer (2)
- C. Concerned Citizens (2)

2.46.060 Terms of office for appointed members.

The term of office for appointed members shall be four years. Appointment of members shall comply with Chapter 2.03 WCC.

2.46.070 Organization – Meetings.

A. Meetings of the Task Force shall be open and accessible to the public and shall be subject to the Open Public Meetings Act.

B. At every meeting, the Task Force will schedule an open session to take public comment.

C. The Task Force shall keep written records of meetings, resolutions, research, findings and recommendations; and such records shall be submitted to county staff and shall be made public, including posting on the county website.

D. The Task Force shall adopt its own rules and procedures for the conduct of business.

E. The Task Force shall elect a chairperson from among its members who shall preside at its meetings.

F. The Task Force shall determine its meeting schedule and agenda, but shall meet at least quarterly.

G. The Task Force may form and appoint ad hoc committees to work on specific issues and may designate non-members to participate as committee members.

2.46.080 Staff and Funding Support.

The Task Force will have full support from the Council, the County Executive's Office, Health Department staff, and locally delivered paid consultant assistance to conduct and complete its tasks in an efficient and effective manner.

2.46.090 Reporting.

The Task Force will provide at least two updates per year to the County Council and Executive. One of the two reports will be an annual written report presented no later than June 30 of each year, and will provide recommendations to the County Council and Executive on outcomes of existing incarceration prevention and reduction programs throughout Whatcom County, new innovative programs being used in other communities, and recommendations for changes or additional programs.



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2019-045

File ID:	MIN2019-045	Version:	1	Status:	Agenda Ready
File Created:	07/02/2019	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
First Assigned t Agenda Date:	to: Council 07/09/2019	Next Mtg. Da	ate:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Draft Special Committee of the Whole AM for June 18, 2019

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Special Committee of the Whole AM June 18 2019.pdf

Final Action: Enactment Date: Enactment #:

<u>)</u> }	WHATCOM COUNTY COUNCIL Special Committee of the Whole	
 	June 18, 2019	
) ' }	CALL TO ORDER	
,))	Council Chair Rud Browne called the meeting to order at 10:17 a.m. Chambers, 311 Grand Avenue, Bellingham, Washington.	in the Council
<u>}</u> } 	ROLL CALL	
	Present: Barbara Brenner, Rud Browne, Barry Buchanan, Tyle Donovan, Carol Frazey, and Satpal Sidhu.	r Byrd, Todd
	Absent: None.	
	COMMITTEE DISCUSSION	
<u>)</u> }	1. AB2019-293 DISCUSSION OF PROPOSED RATE STRUCTURE WHATCOM STORMWATER UTILITY	FOR LAKE
- 5 5	Gary Stoyka, Public Works Department, gave a staff report on a rate cr	edit proposal
, , }	The following staff answered questions:	
	Gary Stoyka, Public Works DepartmentCathy Craver, Public Works Department	
	Mike McFarlane, Parks Department Director	
	Councilmembers and staff discussed rate credits and incentives, the equivalent service units (ESUs) that are in the watershed, calculations f	for measuring
	phosphorus reduction, phosphorus loading due to park use, not using the r infrastructure costs, the utility focus on residential and commercial uses a	
	other sources of phosphorous pollution in other legislation, static sources of	f phosphorous
	pollution beyond the impacts of a property development, the administrative complicated utility fee, using flood fund to pay for general impacts,	e burden of a
	Donovan moved to include this rate credit proposal as proposed by st	aff.
	The motion was seconded.	
	Byrd moved to amend the rate credit proposal to collect a percenta	
	that would equal the percentage of phosphorous loading above forested con homeowner/developer achieves a zero phosphorus loading above forested	
	utility or development fee would be collected.	· · -
	The motion to amend the rate credit failed by the following vote:	
	Ayes: Brenner and Byrd (2)	

1 2		Nays:	Browne, Buchanan, Donovan,	Frazey, and Sidhu (5)
2 3		The moti	on to include the rate credit as p	proposed carried by the following vote:
4		Ayes:	Browne, Buchanan, Byrd, Don	ovan, Frazey, and Sidhu (6)
5 6		Nays:	Brenner (1)	
6 7 8				
8	<u>OTHE</u>	<u>R BUSINE</u>	ESS	
9 10		Thorowa	is no other business.	
10		mere wa	is no other business.	
12				
13	<u>ADJO</u>	<u>URN</u>		
14 15		The meet	ting adjourned at 11:11 a.m.	
16		The meet		
17		The Cour	ncil approved these minutes on _	, 2019.
18 19	ATTES	`т.		WHATCOM COUNTY COUNCIL
20	ATTES) .		WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
21				
22				
23 24				
25	Dana	Brown-Day	vis, Council Clerk	Rud Browne, Council Chair
26				
27 28				
28 29				
30	Jill Nix	on, Minute	es Transcription	



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2019-046

File ID:	MIN2019-046	Version:	1	Status:	Agenda Ready
File Created:	07/02/2019	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
First Assigned t Agenda Date:	:o: Council 07/09/2019	Next Mtg. Da	ıte:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Draft Special Committee of the Whole PM for June 18, 2019

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
• • •			

Attachments: Draft Special Committee of the Whole PM June 18 2019.pdf

Final Action: Enactment Date: Enactment #:

WHATCOM COUNTY COUNCIL Special Committee of the Whole			
	June 18, 2019		
<u>CALL</u>	TO ORDER		
Cham	Council Chair Rud Browne called the meeting to order at 2:50 p.m. in the Coun abers, 311 Grand Avenue, Bellingham, Washington.		
<u>ROLL</u>	<u>CALL</u>		
	Present:Barbara Brenner, Rud Browne, Barry Buchanan, Tyler Byrd, To Donovan, Carol Frazey, and Satpal Sidhu.Absent:None.		
<u>COMN</u>	MITTEE DISCUSSION		
1.	AB2019-021 ORDINANCE GRANTING DEER CREEK WATER ASSOCIATION FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTAC CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND US FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH TI FRANCHISE AREA TO ALLOW FOR THE PROVISION OF WATER SERVICES		
	Byrd moved to recommend adoption to the full Council.		
	The motion was seconded.		
agree	Karen Frakes, Prosecutor's Office, answered questions on the length of the franchi ement.		
	Councilmembers discussed the Council's authority to address disputes and servi rements through a franchise agreement, the need to update the coordinated wat m plan (CWSP), and whether water associations are owned by their members.		
	The motion carried by the following vote: Ayes: Browne, Buchanan, Byrd, Donovan, Frazey, and Sidhu (6) Nays: Brenner (1)		
2.	AB2019-167 ORDINANCE GRANTING GLENHAVEN LAKES CLUB INC. FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER T		

	Byrd moved to recommend adoption to the full Council.			
	The motion was seconded.			
	The motion carried by the following vote:Ayes:Browne, Buchanan, Byrd, Donovan, Frazey, and Sidhu (6)Nays:None (0)Abstains:Brenner (1)			
3.	AB2019-285 ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 3, REQUIRING THAT PUBLIC FUNDS USED FOR CONSTRUCTION PROJECTS DO DOUBLE DUTY BY ALSO PROVIDING APPRENTICES WITH JOB TRAINING HOURS TO MEET THE REQUIREMENTS NECESSARY TO BECOME THE NEXT GENERATION OF SKILLED TRADES PERSONS			
	This item was withdrawn from the agenda.			
<u>COMN</u>	AITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL			
1.	AB2019-358 RESOLUTION FORWARDING CASCADIA LAW GROUP'S RECOMMENDATIONS FOR CHERRY POINT UGA COMPREHENSIVE PLAN AND ZONING CODE AMENDMENTS			
review	Byrd moved to forward to the Planning and Development Services Department for v with legal staff.			
	The motion was seconded.			
questi	Mark Personius, Planning and Development Services Department Director, answered ons.			
	Councilmembers and staff discussed who is working with Cascadia Law Group, the ne for review, getting clarity on the proposals, review of the Comprehensive Plan es, and State Environmental Policy Act (SEPA) review.			
	The motion carried by the following vote: Ayes: Brenner, Browne, Buchanan, Byrd, Donovan, Frazey, and Sidhu (7) Nays: None (0)			
allowe	Councilmembers and staff discussed the need to define "expansion" that would be ed.			
Persor	Donovan moved for councilmembers to send questions to legal counsel and Mark nius by Friday.			
	The motion was seconded.			

1 2 3	Nays: Brenner (1)	
3 4 5	OTHER BUSINESS	
6 7	There was no other business.	
8 9	ADJOURN	
10	<u>Absolution</u>	
11	The meeting adjourned at 3:41 p.m.	
12 13 14	The Council approved these minutes on _	, 2019.
15 16 17 18 19	ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
20 21 22 23 24 25	Dana Brown-Davis, Council Clerk	Rud Browne, Council Chair
26 27	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: MIN2019-047

File ID:	MIN2019-047	Version:	1	Status:	Agenda Ready
File Created:	07/02/2019	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
First Assigned t Agenda Date:	o: Council 07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Draft County Council for June 18, 2019

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft County Council June 18 2019.pdf

Final Action: Enactment Date: Enactment #:

	WHATCOM COUNTY COUNCIL Regular County Council Meeting
	June 18, 2019
<u>CALL</u>	TO ORDER
Cham	Council Chair Rud Browne called the meeting to order at 7:00 p.m. in the Cour bers, 311 Grand Avenue, Bellingham, Washington.
ROLL	. CALL
	 Present: Barbara Brenner, Rud Browne, Tyler Byrd, Todd Donovan, Ca Frazey, and Satpal Sidhu. Absent: Barry Buchanan.
<u>FLAG</u>	<u>SALUTE</u>
ANNC	DUNCEMENTS
MINU	JTES CONSENT
	Brenner moved to approve the Minutes Consent items.
	The motion was seconded.
	The motion carried by the following vote: Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6) Nays: None (0) Absent: Buchanan (1)
1.	MIN2019-042 SPECIAL COMMITTEE OF THE WHOLE AM FOR JUNE 4, 2019
2.	MIN2019-043 SPECIAL COMMITTEE OF THE WHOLE PM FOR JUNE 4, 2019
3.	MIN2019-044 REGULAR COUNTY COUNCIL FOR JUNE 4, 2019
<u>SPEC</u>	IAL PRESENTATION
1.	AB2019-354 ANNUAL REPORT ON BEHAVIORAL HEALTH PROGRAM FUND
	Chris Phillips, Behavioral Health Advisory Committee Chair, reported on t nditures of the behavioral health fund, including background information about t successful programs, and next steps.

PUBLIC HEARINGS

1

2 3

4

5

6

7 8

9 10

11

12

13

19

24

25

26

37

38

1. AB2019-363 COUNCIL SEEKS PUBLIC COMMENT ON TASK 3 (STAKEHOLDER ENGAGEMENT) OF THE PROPOSED CONTRACT WITH TRANSPO GROUP USA, INC., RELATED TO THE WHATCOM COUNTY ADA PLAN FOR PUBLIC RIGHTS-OF-WAY (RELATED PROPOSED CONTRACT FILED UNDER AB2019-319)

Browne opened the public hearing, and the following people spoke:

Kyann Flint stated anyone has the potential for becoming a member of the disabled community, and the contract needs to involve the disabled community throughout the process.

Daman Wandke, AbiliTrek, stated the public input allowed in the contract is minimal.
There needs to be more input on the plan before it is published.

James Christianson stated the contractor seems knowledgeable about ADA issues.
 Pedestrians need more visual cues at pedestrian-activated light crossings.

Candice Styer stated features that people think make the environment accessible may not actually do so. There needs to be more consideration of and planning around barriers. Recruit as many people with disabilities as possible to participate in the process.

Bob Burr stated the County needs to hire a researcher who can engage in research and write plans on County issues rather than hire a contractor.

Mark Challendar stated he is a member of the County's ADA Advisory Committee and
 worked with staff when interviewing consultants. He described the scope of the contract
 and answered questions about the required qualifications of the contractor.

Harley Draven spoke about her volunteer work as an ADA advocate. More people in
the community need to be involved.

Ashanti Monts-Tréviska stated there isn't enough support for the disabled community. There needs to be better visual cues in traffic, bus lines, and bicycle lanes. 36

Hearing no one else, Browne closed the public hearing.

Jon Hutchings, Public Works Department Director, gave a staff report and introduced
 members of the Public Works staff team who will be working on the project. They will
 create an open and inclusive process to develop ADA infrastructure.

Jim Karcher, Public Works Department, answered questions on a similar process
happening with the City of Bellingham and required qualifications for someone to do this
work.

47 2. AB2019-322 ORDINANCE AMENDING WHATCOM COUNTY CHARTER 48 SECTIONS 4.20 (QUALIFICATIONS) AND 6.90 (ILLEGAL CONTRACTS) 49

50 Browne opened the public hearing, and the following person spoke:

1		
2		Bob Burr stated the changes are necessary.
3		
4		Hearing no one else, Browne closed the public hearing.
5		
6		Donovan moved to adopt the ordinance.
7		
8		The motion was seconded.
9		
10		Donovan moved to amend to delete the gender pronouns and replace with "their."
11		5 1 1
12		Councilmembers discussed appropriate grammar and whether the Council vote needs
13	to be	unanimous with all seven councilmembers.
14		
15		Karen Frakes, Prosecutor's Office, answered questions.
16		Rater Hakes, Hosecutor's Office, answered questions.
17		Donovan withdrew his motions.
18		The Course it as a second the ball in Course it for a second term in which we
19		The Council concurred to hold in Council for a meeting in which no
20	counc	ilmembers will be absent.
21	_	
22	3.	AB2019-308 ORDINANCE SUSPENDING WHATCOM COUNTY CODE 1.28 TO
23		UPDATE THE CORRECTIONAL FACILITIES OPERATIONAL STANDARDS
24		
25		Browne opened the public hearing, and the following person spoke:
26		
27		Bob Burr stated create a focus group of former jail inmates to comment on the
28	currer	it inhumane policies and procedures.
29		
30		Hearing no one else, Browne closed the public hearing.
31		
32		Byrd moved to adopt the ordinance.
33		- y
34		The motion was seconded.
35		
36		Karen Frakes, Prosecutor's Office, answered questions.
37		Rateri Flakes, Flosecutor 5 Office, answered questions.
		Councilmentation discussed rules succession due to successfulling
38		Councilmembers discussed rules suspension due to overcrowding.
39		
40		Donovan moved to amend to add language, "Be It Further Ordained that The
41	Sherif	f's Office will provide public access to these current policies and procedures."
42		
43		The motion to amend was seconded.
44		
45		The motion to amend carried by the following vote:
46		Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)
47		Nays: None (0)
48		Absent: Buchanan (1)
49		
50		The motion to adopt as amended carried by the following vote:
		······································

1 Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6) Ayes: 2 Nays: None (0) 3 Absent: Buchanan (1) 4 5 6 **OPEN SESSION** 7 8 The following people spoke: 9 Dana Briggs spoke about declaring a climate emergency. • 10 • Bob Burr spoke about declaring a climate emergency. 11 • Manny (no last name given) spoke about the ordinance imposing an interim moratorium on new or expanded facilities in the Cherry Point UGA, regarding 12 13 the shipment of unrefined fossil fuels at Cherry Point AB2019-339. 14 Jan Dietzgen submitted information (on file) and spoke about passing a • 15 resolution to welcome refugees. Lane McElvoy spoke about the ordinance imposing an interim moratorium on 16 • 17 new or expanded facilities in the Cherry Point UGA, regarding the shipment of 18 unrefined fossil fuels at Cherry Point AB2019-339. 19 Colleen Curtis submitted information (on file) and spoke about passing a • 20 resolution to welcome refugees. 21 Judy Wilson, Laborer's 292, spoke about the ordinance imposing an interim • 22 moratorium on new or expanded facilities in the Cherry Point UGA, regarding 23 the shipment of unrefined fossil fuels at Cherry Point AB2019-339. 24 Eddy Ury, ReSources for Sustainable Communities Program Manager, spoke • 25 about the ordinance imposing an interim moratorium on new or expanded 26 facilities in the Cherry Point UGA, regarding the shipment of unrefined fossil 27 fuels at Cherry Point (AB2019-339) and the resolution forwarding Cascadia 28 Law Group's recommendations for Cherry Point UGA Comprehensive Plan and 29 Zoning Code Amendments (AB2019-358). 30 Tim Johnson, Phillips 66 Refinery Public Affairs Officer, spoke about the ordinance imposing an interim moratorium on new or expanded facilities in 31 32 the Cherry Point UGA, regarding the shipment of unrefined fossil fuels at 33 Cherry Point (AB2019-339) and the resolution forwarding Cascadia Law 34 Group's recommendations for Cherry Point UGA Comprehensive Plan and 35 Zoning Code Amendments (AB2019-358). 36 Cameron Charvay, Laborer's Local 292, spoke about the ordinance imposing • 37 an interim moratorium on new or expanded facilities in the Cherry Point UGA, 38 regarding the shipment of unrefined fossil fuels at Cherry Point (AB2019-339) 39 and the resolution forwarding Cascadia Law Group's recommendations for 40 Cherry Point UGA Comprehensive Plan and Zoning Code Amendments 41 (AB2019-358). 42 Theresa (no last name given), Laborer's Local 292, spoke about the ordinance 43 imposing an interim moratorium on new or expanded facilities in the Cherry 44 Point UGA, regarding the shipment of unrefined fossil fuels at Cherry Point 45 (AB2019-339) and the resolution forwarding Cascadia Law Group's 46 recommendations for Cherry Point UGA Comprehensive Plan and Zoning Code 47 Amendments (AB2019-358). 48 Hanna Holt, Laborer's Local 292, spoke about the ordinance imposing an 49 interim moratorium on new or expanded facilities in the Cherry Point UGA, 50 regarding the shipment of unrefined fossil fuels at Cherry Point (AB2019-339)

$ \begin{array}{c} 1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\12\\13\\14\\15\\16\\17\\18\\9\end{array} $		 and the resolution forwarding Cascadia Law Group's recommendations for Cherry Point UGA Comprehensive Plan and Zoning Code Amendments (AB2019-358). Rod Roth, Laborer's Local 292, spoke about the ordinance imposing an interim moratorium on new or expanded facilities in the Cherry Point UGA, regarding the shipment of unrefined fossil fuels at Cherry Point (AB2019-339) and the resolution forwarding Cascadia Law Group's recommendations for Cherry Point UGA Comprehensive Plan and Zoning Code Amendments (AB2019-358). James Christianson spoke about the need for captioning services in all local public places to accommodate the deaf community. Marcus Dee spoke about the ordinance imposing an interim moratorium on new or expanded facilities in the Cherry Point UGA, regarding the shipment of unrefined fossil fuels at Cherry Point (AB2019-339) and open carry gun laws at public events in Washington state. Alex Ramel spoke about the resolution forwarding Cascadia Law Group's recommendations for Cherry Point UGA Comprehensive Plan and Zoning Code Amendments (AB2019-358).
20		
21	CONS	ENT AGENDA
22		
23		Sidhu reported for the Council Finance and Administrative Services Committee and
24 25	move	<i>d</i> to approve Consent Agenda items one through six.
26		The motion carried by the following vote:
27		Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)
28		
		Nays: None (0)
29		Absent: Buchanan (1)
30		ADAAAA AAAA DEGULEAT AUTUGDIZATION FOD THE AGUNTV EVENUTIVE TO
31	1.	AB2019-336 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
32		ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND
33		CATHOLIC COMMUNITY SERVICES TO ADD \$25,000 IN FUNDING FOR
34		HOUSING CASE MANAGEMENT AND \$3,325 IN SUBSEQUENT INDIRECT
35		COSTS TO REPLACE THE RECENT LOSS OF FUNDING CATHOLIC COMMUNITY
36		SERVICES INCURRED AT A COMPARABLE AMOUNT
37		
38	2.	AB2019-342 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
39		ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WHATCOM
40		CENTER FOR EARLY LEARNING TO PROVIDE CHILD DEVELOPMENT
41		SERVICES, IN AN ESTIMATED AMOUNT OF \$128,400
42	_	
43	3.	AB2019-350 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
44		ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND OPPORTUNITY
45		COUNCIL FOR CHILD DEVELOPMENT SERVICES, IN THE ESTIMATED AMOUNT
46		OF \$66,120
47		
48	4.	AB2019-352 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
49		ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE

1 2 3		OPPORTUNITY COUNCIL TO PROVIDE FUNDING FOR THE SINGLE ENTRY ACCESS TO SERVICES (SEAS) PROGRAM, IN THE AMOUNT OF \$80,149			
4 5 6 7 8	5.	AB2019-353 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN AGREEMENT BETWEEN WHATCOM COUNTY AND PIONEER HUMAN SERVICES TO LEASE THE BEHAVIORAL HEALTH TRIAGE CENTER, IN THE AMOUNT OF \$10,056			
9 10 11 12 13 14 15	6.	AB2019-357 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND COMMUNITIES IN SCHOOLS TO PROVIDE STUDENT SUPPORT SERVICES IN THE BELLINGHAM, BLAINE AND FERNDALE SCHOOL DISTRICTS, IN THE AMOUNT OF \$136,000			
16 17	<u>OTHE</u>	<u>R ITEMS</u>			
18 19 20 21 22 23 24	1.	AB2019-334 REQUEST FOR AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A COMMERCIAL LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND CORNWALL CENTER INC FOR USE OF THE PARKING LOT AT THE BELLINGHAM SENIOR ACTIVITY CENTER IN THE TOTAL AMOUNT OF \$118,260 OVER FIVE YEARS WITH COST SHARING FROM THE CITY OF BELLINGHAM AND WHATCOM COUNCIL ON AGING			
25 26	move	Sidhu reported for the Council Finance and Administrative Services Committee and ed to approve the request.			
27	move				
28		The motion carried by the following vote:			
29		Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)			
30 31		Nays: None (0)			
32		Absent: Buchanan (1)			
33 34 35 36 37	2.	AB2019-335 REQUEST FOR AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM TO ALLOW FOR COST SHARING OF THE PARKING LOT LEASE AT THE BELLINGHAM SENIOR ACTIVITY CENTER IN THE AMOUNT OF \$78,879 OVER FIVE YEARS			
38		Cidbus reported for the Council Finance and Administrative Complete Committee and			
39 40	move	<i>Sidhu</i> reported for the Council Finance and Administrative Services Committee and oved to approve the request.			
41	noved to approve the request.				
42		The motion carried by the following vote:			
43		Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)			
44		Nays: None (0)			
45		Absent: Buchanan (1)			
46 47 48 49 50	3.	AB2019-338 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND CASCADE CONNECTIONS TO PROVIDE SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES FOR AN ADDITIONAL YEAR IN THE			

> 21 22

23

1

ESTIMATED AMOUNT OF \$1,145,600 FOR AN ESTIMATED TOTAL AMENDED CONTRACT AMOUNT OF \$3,093,326

Sidhu reported for the Council Finance and Administrative Services Committee and *moved* to approve the request.

The motion carried by the following vote:

- Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)
- Nays: None (0) Absent: Buchanan (1)
- 24.AB2019-343 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO3ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND4WORK OPPORTUNITIES TO PROVIDE SERVICES TO INDIVIDUALS WITH5DEVELOPMENTAL DISABILITIES FOR AN ADDITIONAL YEAR IN AN6ESTIMATED AMOUNT OF \$478,800 FOR AN ESTIMATED TOTAL AMENDED7CONTRACT AMOUNT OF \$1,564,161

Sidhu reported for the Council Finance and Administrative Services Committee and *moved* to approve the request.

- The motion carried by the following vote:
 - Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)
- 24 **Nays:** None (0)
- 25 Absent: Buchanan (1) 26
- 27 AB2019-344 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO 5. 28 ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND 29 KULSHAN SUPPORTED EMPLOYMENT TO PROVIDE SERVICES то 30 INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES FOR AN ADDITIONAL 31 YEAR IN THE ESTIMATED AMOUNT OF \$923,125 FOR AN ESTIMATED TOTAL 32 AMENDED CONTRACT AMOUNT OF \$3,404,224 33
- *Sidhu* reported for the Council Finance and Administrative Services Committee and
 moved to approve the request.

3637 The motion carried by the following vote:

- 38 Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6)
- 39 **Nays:** None (0)
- 40 **Absent**: Buchanan (1) 41
- 42 6. AB2019-345 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO 43 ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WASHINGTON 44 VOCATIONAL SERVICES TO PROVIDE EMPLOYMENT OR COMMUNITY 45 SERVICES то INDIVIDUALS DEVELOPMENTAL INCLUSION WITH 46 **DISABILITIES, IN AN ESTIMATED AMOUNT OF \$191,225** 47

48 *Sidhu* reported for the Council Finance and Administrative Services Committee and
 49 *moved* to approve the request.

50

1 2 3 4		The motion carried by the following vote: Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6) Nays: None (0) Absent: Buchanan (1)					
5 6 7 8	7.	AB2019-321 ORDINANCE AMENDING THE 2019 WHATCOM COUNTY BUDGET, REQUEST NO. 8, IN THE AMOUNT OF \$508,163					
9 10 11	move	Sidhu reported for the Council Finance and Administrative Services Committee and I to adopt the ordinance.					
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32		The motion carried by the following vote: Ayes: Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6) Nays: None (0) Absent: Buchanan (1)					
	8.	AB2019-320 RESOLUTION AMENDING THE 2019 FLOOD CONTROL ZON DISTRICT AND SUBZONES BUDGET, REQUEST NO. 3, IN THE AMOUNT O \$1,560,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTRO ZONE DISTRICT BOARD OF SUPERVISORS)					
	move	<i>Sidhu</i> reported for the Council Finance and Administrative Services Committee and to approve the resolution.					
	wheth	Jon Hutchings, Public Works Department Director, answered questions about er the properties have had appraisals.					
		The motion carried by the following vote: Ayes: Brenner, Browne, Donovan, Frazey, and Sidhu (5) Nays: Byrd (1) Absent: Buchanan (1)					
33 34 35 36	9.	AB2019-358 RESOLUTION FORWARDING CASCADIA LAW GROUP'S RECOMMENDATIONS FOR CHERRY POINT UGA COMPREHENSIVE PLAN AND ZONING CODE AMENDMENTS					
30 37 38 39	forwa	Browne reported for the Special Committee of the Whole meeting and moved to d to the Planning Department staff and legal counsel.					
40 41 42	to sta	Councilmembers discussed whether it's necessary to approve another motion to send					
43 44		Browne withdrew the motion.					
44 45 46 47	goal is	Mark Personius, Planning and Development Services Department Director, stated his to bring it back to Council on July 9.					
48 49	10.	AB2019-319 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND TRANSPO					

GROUP USA, INC., TO DEVELOP THE ADA COMPLIANCE FOR PUBLIC RIGHTS OF WAY IN THE AMOUNT OF \$145,251.99

Sidhu moved to approve the request.

The motion was seconded.

Jon Hutchings, Public Works Department Director, answered questions about involving more people in the ADA community, whether the County could hire staff to do this work, and councilmember membership on the County's ADA Advisory Committee.

Browne moved to amend the scope of work "Hold ten hours of outreach, including two 2-hour sessions in Bellingham, one 1-hour session each in Birch Bay, East County, and Sudden Valley, advertised to the community...more."

The motion was seconded.

Karen Frakes, Prosecutor's Office, answered questions on the bid process and a major change requiring that it be re-bid.

Councilmembers and staff discussed considering the limited abilities of senior citizens, the Council's role in writing contracts, the possibility of creating a change order or amending the contract after it's signed, and staff fulfilling additional requests for outreach.

Browne withdrew his motion.

- The motion carried by the following vote: **Ayes:** Brenner, Browne, Byrd, Donovan, Frazey, and Sidhu (6) **Nays:** None (0)
- Absent: Buchanan (1)
- INTRODUCTION ITEMS
- Brenner moved to accept Introduction items one through four.
 The motion was seconded.
 Dana Brown-Davis, Clerk of the Council, answered questions.
 Councilmembers and staff discussed the schedule for AB2019-339.
 The motion carried by the following vote:
 Ayes: Browne, Byrd, Donovan, Frazey, and Sidhu (5)
 Nays: Brenner (1)
 Absent: Buchanan (1)
 AB2019-316 ORDINANCE AMENDING WCC CHAPTERS 20.51 AND 20.71
- 49 PERTAINING TO TREE REMOVAL PERMIT PROCEDURES, AND CHAPTER 23.10

1		UPDATING THE REFERENCED CRITICAL AREAS ORDINANCE IN THE					
2	2 SHORELINE MANAGEMENT PROGRAM 3						
3 4 5 6 7 8 9	2.	AB2019-339 ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT UGA, THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT					
10 11 12 13	3.	AB2019-340 ORDINANCE ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF TEMPORARY HOMELESS FACILITIES					
14 15 16 17 18 19 20 21	4.	AB2019-347 ORDINANCE GRANTING NORTHWEST 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					
22	<u>COM</u>	MITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES					
23 24 25							
26 27		Councilmembers gave updates on recent activities and upcoming events.					
28 29 30	<u>ADJO</u>	<u>PURN</u>					
30 31 32		The meeting adjourned at 9:25 p.m.					
33 34		The County Council approved these minutes on, 2019.					
35 36 37 38 39 40	ATTES	ST: WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON					
41 42 43 44 45 46	Dana	Brown-Davis, Council Clerk Rud Browne, Council Chair					
40	Jill Nix	xon, Minutes Transcription					



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-316

File ID:	AB2019-316	Version:	1	Status:	Introduced for Public Hearing
File Created:	05/20/2019	Entered by:	CStrong@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Ordinance		
First Assigned to: Council					
Agenda Date:	07/09/2019	Next Mtg. Da	te:	Hearing	Date: 07/09/2019

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

TITLE FOR AGENDA ITEM:

Ordinance amending WCC Chapters 20.51 and 20.71 pertaining to tree removal permit procedures, and Chapter 23.10 updating the referenced Critical Areas Ordinance in the Shoreline Management Program

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed ordinance amending WCC Chapters 20.51 and 20.71 pertaining to tree removal permit procedures, and Chapter 23.10 updating the referenced Critical Areas Ordinance in the Shoreline Management Program

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/18/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo, Staff Report, Ordinance, Exhibit A, Amendments

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



Memorandum

TO:	County Council Jack Louws, County Executive
FROM:	Cliff Strong, Senior Planner
THROUGH:	Mark Personius, Director
DATE:	May 20, 2019
SUBJECT:	Tree Canopy Permit Procedure and SMP CAO Reference Update Amendments (PLN2019-00012)

Attached for your review and action are some proposed amendments to the Whatcom County Code.

The first set deals with clarifying what type of permit is needed to remove trees within the Lake Whatcom Watershed and the Water Resource Protection overlay districts¹. In 2012 Council adopted tree canopy retention regulations as part of its strategy to manage stormwater in these sensitive areas. The regulations require that a certain amount of canopy be retained on each lot, though allows for removal if mitigated (i.e., by planting new trees). Canopy retention is monitored through the requirement to apply for a tree removal permit. Through the proposed amendments, staff is attempting to clarify what permits are needed to avoid any misinterpretation or confusion. The proposed amendments do not change the intent or operation of any existing tree canopy retention regulations.

The second amendment is a follow up from the 2018 Code Scrub, in which Council adopted one definition of "hazard tree" to replace four different ones found in various sections of the code. One of those amended definitions was in the Critical Areas Ordinance (CAO). As you know, the CAO is adopted by reference into our Shoreline Master Program (SMP). Thus, amending the CAO requires an amendment to the SMP for it to take effect in the shoreline jurisdiction. This is what the second proposed amendment does: It amends the SMP to adopt the recently amended CAO and directs PDS to submit it to the Department of Ecology for their review and approval.

Please review the attached staff report, ordinance, and amendments for more detailed information.

¹ Such regulations only apply in the Lakes Padden, Samish, and Whatcom watersheds, not countywide.

Whatcom County Planning & Development Services Staff Report

Tree Canopy Permit Procedure and SMP CAO Reference Update Amendments

I. File Information

File # PLN2019-00012

File Name: Tree Canopy Permit Procedure and Shoreline Master Program Critical Areas Ordinance Reference Update Amendments

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to Whatcom County Code Titles 20 (Chapters 20.51 and 20.71) pertaining to tree removal permit procedures and 23 (Chapter 23.110) updating the referenced Critical Areas Ordinance (CAO)

Location: Countywide.

II. Recommendation

The Planning Commission recommends that the County Council adopt the proposed amendments, as does Planning and Development Services. The amendments are necessary to add clarity to existing regulations pertaining to tree canopy retention within Lake Whatcom, Lake Samish, and Lake Padden watersheds and implementing the hazard tree definition approved through ORD2019-013 within the shoreline jurisdiction.

III. Background

Tree Retention

On October 12, 2016, Council adopted ordinance 2016-045, which adopted the Department of Ecology stormwater manual (with modified applicability thresholds) to better manage stormwater, promote the use of Low Impact Development, and comply with our NPDES Phase II permit. The ordinance also amended the tree protection regulations for our sensitive watersheds (Lakes Whatcom, Padden, and Samish) in an effort to better manage stormwater runoff (retaining trees helps retain and infiltrate stormwater).

Staff has recently identified that those regulations for tree canopy management are not as clear as they could be on how an applicant applies for tree removal within the regulated watersheds. Specifically, subsection (1) of both WCC 20.51.430 and 20.71.354 read:

(1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Padden and Lake Samish watersheds, or any tree(s) in the public right-of-way, without first obtaining a tree removal permit as provided in this section, unless the activity is exempted below; *provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer*: [emphasis added]

- (a) Removal of any hazard trees considered an emergency within the definition of "hazard tree" in Chapter 20.97 WCC. Within 30 days after the emergency is abated the landowner shall submit photo documentation with a form provided by Whatcom County.
- (b) Pruning and maintenance of trees of up to 25 percent of the foliage.

The clause, "provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer," was intended to mean that trees located in these areas must apply for permits as specified in WCC Title 23 (Shoreline Master Program) or Chapter 16.16 (Critical Areas Ordinance). However, we recognize that it could be read to mean that trees located in those areas are exempt from regulation. Staff would therefore like to correct and clarify this and proposes the amendments shown in Exhibit A, Items 1 & 2.

A Tale of Two CAOs

As you know, any amendments of the SMP regulations must be sent to and approved by the Department of Ecology (Ecology) before they can take effect. After the 2017 CAO update, staff forwarded Council's adoption of it to Ecology for review and approval. During that time, from December 5, 2017 to May 2, 2019, Whatcom County has had two CAOs: the 2017 version for use outside of the shoreline jurisdiction and the 2005 version for use inside the shoreline jurisdiction.

On April 19, 2019, Whatcom County received notification from Ecology approving the date change for the referenced CAO from the 2005 CAO to the 2017 CAO, which will become effective on May 3, 2019. As of that date we will revert to having only one CAO to be applicable countywide. Recognize, however, that every time we amend the CAO we may again have two versions until the amendments are approved by Ecology and the reference date in the SMP is again updated.

This is the case with the hazard tree definition. In the recent 2018 Code Scrub (ORD 2019-013, adopted 2/12/2019), Council deleted the four different definitions of "hazard tree" from various chapters of the code and replaced it with one. In part, the duplicative definition that was found in both the CAO and the SMP was removed from the SMP, and the one in the CAO replaced with the new one. Ecology has confirmed that, given that the same definition is in the CAO, the deletion from the SMP of the duplicative definition is an administrative change and does not require Ecology approval. However, to have the new one apply (via the CAO) within the shoreline jurisdiction, Ecology must again approve an SMP amendment to reference the CAO amended on 2/12/2019. Until that time we will have one CAO, but within it two definitions of hazard tree: the newer one for use outside the shoreline jurisdiction and the older one for use within the shoreline jurisdiction. Thus, staff proposes the amendment shown in Exhibit A, Item 3, which would adopt the 2/12/2019 CAO into the SMP.

IV. Code Amendments

The proposed code amendments are shown in Exhibit A. Please refer to that attachment.

V. Comprehensive Plan Evaluation

The proposed amendments are consistent with the Comprehensive Plan's following goal and policies regarding stormwater management:

Goal 10H: Protect water resources and natural drainage systems by controlling the quality and quantity of stormwater runoff.

- Policy 10H-1: Manage stormwater runoff to minimize surface water quality and quantity impacts and downstream impacts on channel morphology, property owners, and aquatic species and habitats.
- Policy 10H-2: Maintain or enhance, when appropriate, natural drainage systems and natural water storage sites in order to better protect water quality, moderate water quantity, minimize environmental degradation, and reduce public costs.
- Policy 10H-3: Limit the alteration of natural drainage systems and natural water storage sites without mitigating measures. Such measures should not degrade water quality or fish and wildlife habitat and should not increase hazards to the community.
- Policy 10H-5: Evaluate the role of watersheds in the maintenance of water quality and quantity and determine what cumulative impacts development activity may have on watershed hydrology.
- Policy 10H-6: Develop specific stormwater management programs for each drainage basin within the county's jurisdiction that may be impacted by urban levels of development. Recognize the Lake Whatcom Watershed, Lake Samish, and Drayton Harbor as high priorities in this effort. Coordinate efforts with the Lake Whatcom Policy Group, the various shellfish protection districts, and other watershed management entities.
- Policy 10H-8: Strongly incentivize the use of low impact development strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed, street swales and rain gardens instead of curbs and gutters. Where feasible, encourage alternate surfacing options and other techniques associated with low impact development (see Glossary).
- Policy 10H-9: Develop and administer stormwater management standards as required by the NPDES Phase II Permit.
- Policy 10H-11: Place a high priority on integrating impervious surface reduction incentives into policies, regulations, and standards.
- Policy 10H-12: Develop and implement comprehensive stormwater management programs and strategies designed to address runoff from all private and public developments and facilities within regulated and sensitive watersheds.
 - Implement the Western Washington Phase II Municipal Stormwater Permit as part of the National Pollutant Discharge Elimination System (NPDES) Program. Incorporate watershed considerations into the development of a comprehensive stormwater management strategy for designated areas.
 - 2. Review Stormwater Special Districts Standards, Watershed Protection Districts, and other related codes that address runoff treatment from potentially polluting surfaces for their applicability to other sensitive watersheds with the Technical Advisory Committee and other appropriate agencies. Coordinate efforts for ongoing monitoring and evaluation within the sensitive watersheds and NPDES areas.
 - 3. Amend subdivision, zoning, and other land use regulations and design standards to encourage that land use activities minimize the amount of impervious surface.
 - 5. Focus on the Lake Whatcom watershed as a high priority in developing a stormwater management program. Develop a stormwater management plan that

achieves a uniform level of protection throughout the Lake Whatcom watershed. Ensure coordination and communication with the public and affected jurisdictions, such as the Lake Whatcom Water and Sewer District, the Sudden Valley Community Association, and the City of Bellingham.

6. Ensure existing stormwater standards are adequately enforced within Stormwater Special Districts, Watershed Protection Districts, and the NPDES areas.

VI. Proposed Findings of Fact and Reasons for Action

Staff recommends the following findings of fact and reasons for action be adopted:

- Whatcom County Planning and Development Services has submitted an application to amend Whatcom County Code Titles 20 (Chapters 20.51 and 20.71), 16 (Chapter 16.16), and 23 (Chapter 23.110) pertaining to hazard trees.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 2, 2019, 2018.
- 3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 29, 2019.
- 4. The Planning Commission held a public hearing on the proposed amendments on May 9, 2019, notice of which was published in the Bellingham Herald.
- 5. The Planning Commission recommended approval of the amendments.
- 6. The County Council held a public hearing on the proposed amendments on June 18, 2019, notice of which was published in the Bellingham Herald.
- 7. The proposed amendments are consistent with the Comprehensive Plan's goal 10H and its policies regarding stormwater management.
- 8. The proposed amendments are necessary to implement the Council's intent to protect significant trees and tree canopy within our Watershed Resource Protection Overlay districts (Lakes Whatcom, Padden, and Samish) as part of the County's stormwater management strategy and comply with the County's NPDES Phase II permit.

VII. Proposed Conclusions

- 1. The amendments are in the public interest.
- 2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VIII. Attachments

- 1. Draft Ordinance
- 2. Exhibit A Proposed Code Amendments

PROPOSED BY: ______ INTRODUCTION DATE:_____

ORDINANCE NO. _____

PROPOSED AMENDMENTS TO WHATCOM COUNTY CODE TITLES 20 (CHAPTERS 20.51 AND 20.71) PERTAINING TO TREE REMOVAL PERMIT PROCEDURES AND 23 (CHAPTER 23.10) UPDATING THE REFERENCED CRITICAL AREAS ORDINANCE

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 20 and 23; and,

WHEREAS, Whatcom County Council adopted ORD2019-013 on February 12, 2019 which amended various sections of the Whatcom County Code to improve implementation of the County Code. Included in these amendments were clarifications to tree canopy retention requirements in Lake Whatcom, Lake Samish, and Lake Padden watersheds and creating a single definition of hazard tree in Title 20, Chapter 16.16 (Critical Area Ordinance) and removing a duplicate definition in Title 23; and

WHEREAS, the Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

WHEREAS, the County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

- 1. Whatcom County Planning and Development Services has submitted an application to amend Whatcom County Code Titles 20 (Chapters 20.51 and 20.71) pertaining to tree removal permit procedures and 23 (Chapter 23.110) updating the referenced Critical Areas Ordinance.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 2, 2019, 2018.
- 3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 29, 2019.
- 4. The Planning Commission held a public hearing on the proposed amendments on May 9, 2019, notice of which was published in the Bellingham Herald.
- 5. The Planning Commission recommended approval of the amendments.
- 6. The County Council held a public hearing on the proposed amendments on June 18, 2019, notice of which was published in the Bellingham Herald.
- 7. The proposed amendments are consistent with the Comprehensive Plan's goal 10H and its policies regarding stormwater management.
- 8. The proposed amendments are necessary to implement the Council's intent to protect significant trees and tree canopy within our Watershed Resource Protection Overlay districts (Lakes Whatcom, Padden, and Samish) as part of the County's stormwater management strategy and comply with the County's NPDES Phase II permit.

CONCLUSIONS

1. The amendments to the development regulations are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

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

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. The Director of Planning and Development Services will forward the amendment to Chapters 23.10 to the Department of Ecology for review and approval pursuant WAC 173-26-100.

ADOPTED this _____ day of _____, 2019.

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Council Chair

APPROVED as to form:

() Approved () Denied

Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

Exhibit A: Tree Canopy Retention Permit Procedures and Shoreline Management Plan CAO Reference Date Change Amendments

Proposed amendments to Whatcom County Code Titles 20 (Chapters 20.51 and 20.71) pertaining to tree retention and 23 (Chapter 23.10) adopting the February 12, 2019 into the Shoreline Master Program by reference

1. Amend Title 20 (Zoning), Chapter 20.51 (Lake Whatcom Watershed Overlay District), as follows:

20.51.430 Tree removal not associated with development activity.

- (1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Whatcom watershed, or any tree(s) in the public right-of-way, without first obtaining <u>the appropriate</u> tree removal permit as provided in this section, unless the activity is exempted below; provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer:
 - (a) Removal of any hazard trees considered an emergency within the definition of "hazard tree" in Chapter <u>20.97</u> WCC. Within 30 days after the emergency is abated the landowner shall submit photo documentation with a form provided by Whatcom County.
 - (b) Pruning and maintenance of trees of up to 25 percent of the foliage.
- (2) Removal of trees located within the shoreline jurisdiction or within a critical area or a critical area buffer may be subject to additional regulations pursuant to WCC Title 23 (Shoreline Master Program) or Chapter 16.16 (Critical Areas Ordinance). Where additional regulations conflict the more stringent regulation shall apply.
- (2)(3) Tree Removal Permit Application. The department of planning and development services shall establish and maintain a tree removal permit application, which shall at <u>At</u> a minimum require the following to submitted by the applicant:
 - (a) A complete permit application.
 - (a)(b) A sketch for this purpose may be prepared by the homeowner or other lay person and shall depict:
 - (i) The approximate location of significant trees, indicating those to be removed;
 - (ii) The species and canopy area (as determined pursuant to WCC 20.51.440(4));
 - (iii) The location of structures, driveways, access ways, and known easements.
 - (b)(c) Canopy calculations (existing and proposed).
 - (d) For required replacement trees, a planting plan showing location, species, and 20-year canopy area of the new trees in accordance to standards set forth in WCC 20.51.440(4) for calculating 20-year canopy coverage.
 - (c)(e) Other information as required by the applicable permit application.

- (4) Tree Removal Permit Application Procedure and Appeals. Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the county.
 - (a) Applicable permit
 - (i) The permit application to remove trees within the shoreline jurisdiction is a shoreline permit (WCC Title 23).
 - (ii) The permit application to remove trees within a critical area or a critical area buffer is a notification of activity (WCC 16.16.235).
 - (iii) The permit application to remove trees in areas outside of (a) or (b) is a tree removal permit.
 - (d)(b) The county shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application, or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.
 - (c) The removal shall be completed within one year from the date of permit approval.
 - (e) The decision of the director is appealable pursuant to WCC 22.05.160 (Appeals).
 - (f)(d) Time Limit. The removal shall be completed within one year from the date of permit approval.
- (3)(5) Tree Removal Allowances. With a tree removal<u>an appropriate</u> permit, any property owner may remove up to 35 percent or 5,000 square feet, whichever is greater, and as measured cumulatively, of the existing canopy area of on-site significant trees on their property; provided, that:
 - (a) There is no active application for development activity for the site; and
 - (a)(b) No other Whatcom County regulation is more restrictive; and
 - (b)(c) The tree(s) were not required to be retained or planted as a condition of previous development activity.
- (4)(6) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) of this section must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided, that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter <u>16.16</u> WCC.
- (5)(7) Penalties and Enforcement. Removal of significant trees without obtaining a tree removal the appropriate permit may be subject to replacement at a ratio of three trees for each tree removed without a valid permit. Failure to replace removed significant trees may be subject to a fine as determined under Chapter 20.94 WCC.

2. Amend Title 20 (Zoning), Chapter 20.71 (Water Resource Protection Overlay District), as follows:

20.71.354 Tree removal not associated with development activity.

(1) Permit Required for Removal of Trees. No person, directly or indirectly, shall remove any significant tree(s) on any property within the Lake Padden and Lake Samish watersheds, or any tree(s) in the public right-of-way, without first obtaining <u>the appropriate a tree removal permit</u> as provided in this section, unless the activity is exempted below; provided the tree is not located within the shoreline jurisdiction or within a critical area or a critical area buffer:

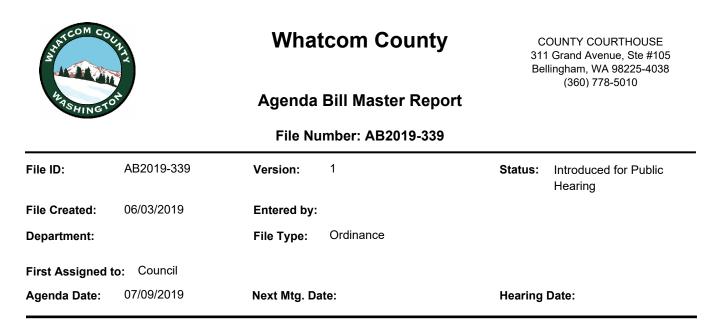
- (a) Removal of any hazard trees considered an emergency within the definition of "hazard tree" in Chapter <u>20.97</u> WCC. Within 30 days after the emergency is abated the landowner shall submit photo documentation with a form provided by Whatcom County.
- (b) Pruning and maintenance of trees of up to 25 percent of the foliage.
- (2) Removal of trees located within the shoreline jurisdiction or within a critical area or a critical area buffer may be subject to additional regulations pursuant to WCC Title 23 (Shoreline Master Program) or Chapter 16.16 (Critical Areas Ordinance). Where additional regulations conflict the more stringent regulation shall apply.
- (2)(3) Tree Removal Permit Application. The Department of Planning and Development Services shall establish and maintain a tree removal permit application, which shall aAt a minimum require the following to submitted by the applicant:
 - (a) A complete permit application.
 - (a)(b) A sketch for this purpose may be prepared by the homeowner or other lay person and shall depict:
 - (i) The approximate location of significant trees, indicating those to be removed;
 - (ii) The species and canopy area (as determined pursuant to WCC 20.51.440(4));
 - (iii) The location of structures, driveways, access ways, and known easements.
 - (b)(c) Canopy calculations (existing and proposed).
 - (d) For required replacement trees, a planting plan showing location, species, and 20-year canopy area of the new trees in accordance to standards set forth in WCC 20.71.356(4) for calculating 20-year canopy coverage.
 - (c)(e) Other information as required by the applicable permit application.
- <u>(4)</u> Tree Removal Permit Application Procedure and Appeals. Applicants requesting to remove any significant trees must submit a completed permit application on a form provided by the county.
 (a) Applicable permit
 - (i) The permit application to remove trees within the shoreline jurisdiction is a shoreline permit (WCC Title 23).
 - (ii) The permit application to remove trees within a critical area or a critical area buffer is a notification of activity (WCC 16.16.235).
 - (iii) The permit application to remove trees in areas outside of (a) or (b) is a tree removal permit.
 - (d)(b) The county shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application, or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.
 - (c) The removal shall be completed within one year from the date of permit approval.
 - (e)(d) The decision of the director is appealable pursuant to WCC 22.05.160.
 - (f) Time Limit. The removal shall be completed within one year from the date of permit approval.

- (3)(5) Tree Removal Allowances. With a tree removal the appropriate permit, any property owner may remove up to 35 percent or 5,000 square feet, whichever is greater, and as measured cumulatively, of the existing canopy area of on-site significant trees on their property; provided, that:
 - (a) There is no active application for development activity for the site; and
 - (a)(b) No other Whatcom County regulation is more restrictive; and
 - (b)(c) The tree(s) were not required to be retained or planted as a condition of previous development activity.
- (4)(6) Removal of Hazard Trees. Any property owner seeking to remove any number of significant trees not considered an emergency pursuant to subsection (1) of this section must submit a tree risk assessment using an approved Whatcom County method prepared by a qualified professional; provided, that removal of hazard trees in critical areas or their buffers shall be in accordance with the requirements of Chapter <u>16.16</u> WCC.
- (5)(7) Penalties and Enforcement. Removal of significant trees without obtaining a tree removal the appropriate permit may be subject to replacement at a ratio of three trees for each tree removed without a valid permit. Failure to replace removed significant trees may be subject to a fine as determined under Chapter 20.94 WCC.

3. Amend the Shoreline Master Program (WCC Title 23) to adopt the February 12, 2019, CAO, as follows:

23.10.060 References to plans, regulations or information sources.

A. The Whatcom County Critical Areas Ordinance, WCC Chapter 16.16 (as most recently amended by Ordinance No. 2017-0772019-013, dated December 5February 12, 20197), is hereby adopted in whole as a part of this program, except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance, WCC 16.16.270 (Reasonable Use Exceptions), 16.16.273 (Variances), 16.16.275 (Nonconforming Uses/Buildings), 16.16.280 (Appeals), and through 16.16.285 (Penalties and Enforcement) WCC 16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16.WCC, are for this specific version.



TITLE FOR AGENDA ITEM:

Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point UGA, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point UGA, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/18/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council
Attachment	s: Proposed Ordinance		
			Final Action:
			Enactment Date:

Enactment #:

PROPOSED BY: INTRODUCTION DATE: JUNE 18, 2019

ORDINANCE NO. _____ (AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)

IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF <u>UNREFINED</u> FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT

WHEREAS, on July 12, 2016, the county received a letter from Chairman Ballew of the Lummi Business Council which included the statement that they "hope that the amendments to the Comprehensive Plan not unfairly impact the current employers within Cherry Point."; and

WHEREAS, the County Council previously adopted Title 20-Zoning of Whatcom County Code which regulates land use within unincorporated areas of Whatcom County; and

WHEREAS, the County Council adopted the Whatcom County Comprehensive Plan on May 20, 1997, which contains goals, objectives and policies regarding land use compatibility and environmental considerations; and

WHEREAS, the Whatcom County Council recently updated the Whatcom County Comprehensive Plan as required by Revised Code of Washington 36.70A; and

WHEREAS, during the Comprehensive Plan review process the Whatcom County Council received many individual public comments on fossil fuel transshipment, transport, and transfer from Cherry Point related to the protection of the health of Whatcom County's environment, economy, and residents; and

WHEREAS, the County recognizes that the existing refineries have for decades been significant shippers of refined fossil fuels such as jet fuel and calcined coke used in manufacture of aluminum while providing substantial local employment; and

WHEREAS, the refining of fossil fuels at Cherry Point provides high wage jobs which could be lost if the existing refineries were converted to crude oil export facilities; and

WHEREAS, the Whatcom County Council has requested the Whatcom County Planning Commission review language that would discourage new development that would primarily facilitate the shipment of <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, multiple trains carrying crude oil from the Bakken formation moving through the United States and Canada have derailed and exploded causing damage to property and the environment, one derailment caused significant fatalities, which is the reason regulations must be improved; and

WHEREAS, a unit train carrying Bakken crude traveling through Mosier, Oregon, on June 3, 2016, derailed and exploded causing damage to property and the Columbia River, demonstrating that recently adopted state and federal policies and corporate investment intended to reduce the risks associated with oil by rail have proven insufficient to protect communities along the rail corridor; and

WHEREAS, the Washington State Department of Natural Resources has designated waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure long-term protection of this unique aquatic environment; and

WHEREAS, the United States recently lifted a ban on the export of crude oil from the country, increasing pressure on deep water ports such as Cherry Point to develop into crude export terminals; and

WHEREAS, existing refineries at Cherry Point have recently increased their ability to accept crude oil by rail by constructing new rail offloading facilities to serve the refineries; and

WHEREAS, existing and proposed pipeline facilities have increased, or proposed to increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point; and

WHEREAS, Title 20 currently does not explicitly prohibit transshipment, transport, and transfer of <u>unrefined</u> fossil fuels and construction of infrastructure to facilitate expanded shipment of <u>unrefined</u> fossil fuels not to be processed at Cherry Point; and

WHEREAS, according to the June 27, 2016, Land Capacity Analysis report produced by Planning and Development Services, Cherry Point contains only 1,072.6 acres of developable land that is zoned Heavy Impact Industrial (HII) for the purposes of "supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses" and to "minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof..." (WCC 20.68.010); and

WHEREAS, expansion of existing facilities for purposes of shipping <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point will increase the transport of dangerous fuels through our community and increase the risk of possible derailment, spills, explosions, and the fallout will pose a serious threat to the community; and

WHEREAS, pursuant to the Washington State Constitution, the general police powers granted to counties empower and authorize Whatcom County to adopt land use controls to provide for the regulation of land uses within the County and to provide that such uses shall be consistent with applicable law; and

WHEREAS, on August 9, 2016, the Whatcom County Council adopted Ordinance 2016-031, an emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, the Whatcom County Council adopted interim measures on September 27, 2016 (Ordinance 2016-039), March 21, 2017 (Ordinance 2017-011), September 26, 2017 (Ordinance 2017-049), February 27, 2018 (Ordinance 2018-007), August 8, 2018 (Ordinance 2018-044), and January 29, 2019 (Ordinance 2019-010), prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of the ordinance and vested pursuant to Washington statutes;

2. Were for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point would result; or

3. Were necessary to protect health and safety of the community.

WHEREAS, the County Council finds that extending the moratorium imposed by Ordinance 2018-007 is necessary for the protection of public health and safety; and

WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within sixty (60) days of adoption; and

WHEREAS, the Whatcom County Council is scheduled to hold a public hearing on this issue on <u>July 9, 2019</u>, or a later date; and

WHEREAS, the County Council fully recognizes the limits to its authority over transportation of certain goods imposed by federal statutes and the US Constitution, and finds that this action is within its authority;

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390

BE IT FURTHER ORDAINED by the Whatcom County Council that an interim moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of this ordinance and vested pursuant to Washington statutes;

2. Are for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping <u>unrefined</u> fossil fuels not to be processed or consumed at Cherry Point will result; or

3. Are necessary to protect health and safety of the community.

BE IT FURTHER ORDAINED by the Whatcom County Council that this interim ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one or more six-month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

BE IT FURTHER ORDAINED that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance, and if the provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

BE IT FURTHER ORDAINED that for the purpose of this ordinance the definition of "<u>unrefined</u> fossil fuel" includes but is not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane propane, butane, and other "natural gas" in liquid or gaseous formats excluding those that are the byproduct of refinery processes in the Cherry Point UGA; and condensate.

BE IT FINALLY ORDAINED that for the purpose of this ordinance, the definition of "facility" includes but is not limited to piers, wharfs, buildings, tank farms, pipelines, rail loading and offloading facilities, road spurs, or any other such physical infrastructure intended to receive, transfer, or store <u>unrefined</u> fossil fuels;

APPROVED 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:



Whatcom County

Agenda Bill Master Report

File Number: AB2019-340

File ID:	AB2019-340	Version:	1	Status:	Introduced for Public Hearing
File Created:	06/03/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
First Assigned t Agenda Date:	:o: Council 07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/18/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council
Attachment	s: Proposed Ordinance		

Final Action: Enactment Date: Enactment #:

ORDINANCE NO.

(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)

ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF TEMPORARY HOMELESS FACILITIES

WHEREAS, homelessness continues to be a local, regional and national challenge due to many social and economic factors; and

WHEREAS, tent and tiny house encampments have become a temporary mechanism for providing shelter for homeless individuals and families; and

WHEREAS, under RCW 36.01.290 the Washington State Legislature has authorized religious organizations to host temporary encampments to provide shelter for homeless individuals on property that these religious organizations own or control; and

WHEREAS, on July 24, 2018, the Whatcom County Council adopted Ordinance 2018-041, adopting interim regulations for the establishment and operation of temporary homeless facilities for one year; and

WHEREAS, Ordinance 2018-041 is set to expire on July 24, 2019; and

WHEREAS the County Council finds that extending the interim regulations imposed by Ordinance 2018-041 is necessary for the protection of public health and safety; and

WHEREAS, the Whatcom County Code does not currently have permanent provisions addressing the establishment and operation of temporary homeless facilities; and

WHEREAS, interim homeless facility regulations and processing requirements are necessary to preserve and protect public health and safety and prevent danger to public or private property; and

WHEREAS, interim zoning controls enacted under RCW 36.70A.390 and/or RCW 36.70.790 are methods by which the County may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of an interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing as long as a public hearing is held within at least sixty days of enactment; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the propose d moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal"; and

WHEREAS, in conformity with the responsibilities of Whatcom County to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the County's authority to regulate land use activity within its corporate limits, the County intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment and operation of temporary homeless facilities; and

WHEREAS, the County Council has determined it needs additional time to conduct appropriate research to analyze the effects of the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will provide the County with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will also allow qualifying religious organizations and registered not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate temporary homeless facilities; and

WHEREAS, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 3, 2018; and

WHEREAS, the County Council concludes that the County does have the authority to establish an interim zoning ordinance and that the County must adopt interim zoning concerning the establishment and operation of temporary homeless facilities to act as a stop- gap measure: (a) to provide the County with an opportunity to study the issues concerning the establishment and operation of temporary homeless facilities and prepare appropriate revisions to the County's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of Whatcom County by avoiding and ameliorating negative impacts and unintended consequences of establishing and operating temporary homeless facilities and (c) to avoid applicants possibly establishing vested rights contrary to and inconsistent with any revisions the County may make to its rules and regulations as a result of the County's study of this matter; and

WHEREAS, the County Council adopts the foregoing as its findings of facts justifying the
 adoption of this Ordinance; and
 36

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

Section 1. <u>Findings of Fact.</u> The County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36. 70A.390 and RCW <u>36.70.790</u>.

Section 2. Regulations established. Regulations concerning the establishment and processing of applications for temporary homeless facilities in unincorporated Whatcom County are hereby established. Establishing such facilities contrary to the provisions of this ordinance is prohibited. Administrative Use approvals shall be required for temporary homeless facilities in the County. Applications for administrative use approvals, land use approvals, or any other permit or approval, in any way associated with temporary homeless facilities, shall not be processed, issued, granted, or approved unless in compliance with this ordinance. If a temporary homeless facility is established in violation of this ordinance or if, after an administrative use permit is issued for the same, the director of the planning and development services department determines that the permit holder has violated this ordinance or any condition of the permit, the temporary homeless facility, its sponsor and managing agency shall be subject to code enforcement and all activities associated with the temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-encampment conditions.

Section 3. <u>Definitions.</u> The following definitions apply to temporary homeless facilities:

- A. "Temporary homeless facility" means a facility providing temporary housing accommodations that includes a sponsor and managing agency, the primary purpose of which is to provide temporary shelter for people experiencing homelessness in general or for specific populations of the homeless. Temporary homeless facilities include temporary tent encampments and temporary tiny house encampments.
- B. "Temporary tent encampment" means a short-term living facility for a group of homeless people that is composed of tents or other temporary structures, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.
- C. "Temporary tiny house encampment" means a temporary homeless facility for a group of people living in purpose-built tiny houses for people experiencing homelessness, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. Temporary tiny houses for the homeless are typically less than 200 square feet and easily constructed and moved to various locations. For the purposes of this ordinance, temporary tiny homes are not dwelling units and, as such, are not required to meet building codes.
- D. "Managing agency" means an organization identified as the manager of a temporary homeless facility that has the capacity to organize and manage a temporary homeless facility. Managing agencies are limited to religious organizations and non-profit agencies. A "managing agency" may be the same entity as the sponsor.
- E. "Sponsor " means an organization that :
 - 1. invites a temporary homeless facility to reside on land they own or lease; and
 - 2. is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization; or
 - 3. is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless.
- F. "Director" means the Planning and Development Services Department Director.

Section 4. <u>Requirements</u>. The following requirements shall apply to all temporary homeless facilities approved under this ordinance, unless modified by the director through approval of an administrative use permit.

- A. The encampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The encampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses, unless the director finds that a reduced buffer width will provide adequate separation between the encampment and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site of the encampment.
- B. No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.
- C. A temporary homeless facility shall comply with the applicable development standards of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined by WCC 20.97.217.
- D. A six-foot-tall fence is required around the perimeter of the encampment to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined

by the county engineer, unless the director determines that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.

- E. Exterior lighting must be directed downward and glare contained within the temporary encampment.
- F. The maximum number of residents at a temporary encampment site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.
- G. On-site parking of the sponsor shall not be displaced unless sufficient required offstreet parking remains available for the host's use to compensate for the loss of onsite parking or unless a shared parking agreement is executed with adjacent properties.
- H. A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the encampment, shall be submitted for review and approval.
- I. No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall immediately contact Child Protective Services and shall actively endeavor to find alternative shelter for the child.
- J. The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary encampment residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative use permit. Said code shall be incorporated into the conditions of approval. The managing agency shall post the County approved written code of conduct on site.
- K. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. Individuals or organizations shall have either a demonstrated experience providing similar services to homeless residents; and/or certification or academic credentials in an applicable human service field; and/or applicable experience in a related program with a homeless population. Should an individual or organization not have any of the preceding qualifications, additional prescriptive measures may be required to minimize risk to both residents of the temporary homeless facility and the community in general.
- L. The sponsor and the managing agency shall ensure compliance with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.
- M. The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:
 - 1. Potable water, which shall be available at all times at the site;
 - 2. Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
 - 3. Hand-washing stations by the toilets and food preparation areas;
 - 4. Food preparation or service tents; and
 - 5. Refuse receptacles.

- N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and homeless encampment residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.
- O. The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their contact information shall be provided to the Whatcom County Sheriff's Office as described above.
- P. Facilities for dealing with trash shall be provided on-site throughout the encampment. A regular trash patrol in the immediate vicinity of the temporary encampment site shall be provided.
- Q. The sponsor and the managing agency shall take all reasonable and legal steps to obtain verifiable identification information, to include full name and date of birth, from current and prospective encampment residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the encampment. This log shall be available upon request to law enforcement agencies and prospective encampment residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are prohibited from the encampment's location.
- R. The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the encampment when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.
- S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.
- T. The sponsor, the managing agency and temporary encampment residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.
- U. The sponsor and/or managing agency shall provide before-encampment photos of the host site with the application. Upon vacation of the temporary encampment, all temporary structures and debris shall be removed from the host site within one calendar week.
- V. Upon cessation of the temporary encampment, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

Section 5. Frequency and duration of temporary homeless facilities.

- A. No more than a maximum of 100 people may be housed in temporary homeless facilities (encampments) located in the unincorporated County at any time. Multiple encampment locations may be permitted provided that the aggregate total of people in all temporary tent and/or tiny house encampments shall not exceed 100.
- B. The director shall not grant a permit for the same site more than once in any calendar year; provided that director is not authorized to issue a permit for the same site sooner

than 180 days from the date the site is vacated as provided for in Section 4 of this ordinance.

- C. Temporary tent encampments may be approved for a period not to exceed 180 days. The director may grant one 180-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. This extension shall be subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.
- D. Temporary tiny house encampments may be approved for a period of between six months and up to one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year, provided enabling legislation allows so. Extensions are subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.

Section 6. <u>Permit required.</u> Establishment of a temporary homeless facility shall require approval of an administrative use permit, as described in this ordinance, and compliance with all other applicable County regulations. The director shall have authority to grant, grant with conditions or deny an application for an administrative use permit under this ordinance.

Section 7. <u>Application</u>. Application for an administrative use permit shall be made on forms provided by the County, and shall be accompanied by the following information; provided, that the director may waive any of these items, upon request by the applicant and finding that the item is not necessary to analyze the application. An application to establish a temporary homeless facility shall be signed by both the sponsor and the managing agency ("applicant") and contain the following:

- A. A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-ofway and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed encampment and the property and off-street parking);
- B. A vicinity map, showing the location of the site in relation to nearby streets and properties;
- C. A written summary of the proposal, responding to the standards and requirements of this ordinance;
- D. The written code of conduct, operations plan and a transportation plan as required by this ordinance;
- E. Statement of actions that the applicant will take to obtain verifiable identification from all encampment residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;
- F. Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the encampment;
- G. Address and parcel number of the subject property;
- H. Photographs of the site;
- A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
- J. Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25;
- K. A list of any requirement under this ordinance for which the applicant is asking to modify.
- 7

Section 8. Permit Procedures.

- A. <u>Notice.</u> All temporary homeless facility applications shall be reviewed under a Type II process under WCC 22.05, except that the final decision must be rendered within 60 days of a determination of completeness. Additionally, the notice of application shall contain proposed duration and operation of the temporary homeless facility, number of residents for the encampment, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
- B. <u>Decision and Notice of Decision</u>. Final action on permit applications made under this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 20.84.220 and the following:
 - 1. The proposed use meets the requirements of this ordinance; and
 - 2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts which the proposed encampment may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the encampment will be limited.

A notice of the decision shall be provided in accordance with WCC 22.05.

- C. <u>Conditions</u>. Because each temporary encampment has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness, traffic, physical hazards and other similar impacts that the temporary encampment may have on the area in which it is located. In cases where the application for an administrative use permit does not meet the provisions of this ordinance (except when allowed under subsection (D) of this section) or adequate mitigation may not be feasible or possible, the director shall deny the application.
- D. <u>Modification of Requirements.</u> The director may approve an administrative use permit for a temporary encampment that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe encampment with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of encampment residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on encampment residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.
- E. <u>Appeal.</u> The director's decision may be appealed to the hearing examiner as provided in WCC 22.05.020(1) and 22.05.160.
- F. <u>Revocation</u>. The director shall also have the authority to revoke an approved administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of this ordinance or permit.

Section 9. <u>Purpose.</u> The purpose of this interim ordinance is to allow and establish a review process for the location, siting, and operation of temporary homeless facilities within the unincorporated County. While the interim ordinance is in effect, the County will study the land use and other impacts associated with temporary homeless facilities, draft final zoning and

regulations to address such uses, hold public hearings on such draft regulations, and adopt such regulations.

Section 10. <u>Duration of Interim Ordinance</u>. This interim ordinance will replace Ordinance 2018-041 and shall be in effect for one year beginning on July 9, 2019, and ending on July 9, 2020, unless another ordinance is adopted amending the Whatcom County Code and rescinding this interim ordinance before July 9, 2020.

Section 11. <u>Work Plan.</u> During the interim ordinance period, County staff will study the issues concerning the establishment and operation of temporary homeless facilities. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations; perform SEPA review of the draft ordinance, and conduct the public review process, including public hearings before the County's Planning Commission and County Council, as required for amendments to the County's development regulations.

Section 14. <u>Conflict with other Whatcom County Code Provisions.</u> If the provisions of this Ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this Ordinance shall control.

Section 15. <u>Severability.</u> If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

ADOPTED this day of	, 2019.
ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, Council Clerk	Rud Browne, Chairperson
APPROVED as to form:	() Approved () Denied
Civil Deputy Prosecutor	Jack Louws, Executive
	Date:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-021

File ID:	AB2019-021	Version:	1	Status:	Held in Council
File Created:	12/27/2018	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance		
First Assigned to: Council					
Agenda Date:	07/09/2019	Next Mtg. Da	te: 03/26/2019	Hearing	Date: 03/12/2019

TITLE FOR AGENDA ITEM:

Ordinance granting Deer Creek Water Association a franchise and the right, privilege, and authority thereunder to located, 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:
01/15/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council
03/12/2019	Council	HEARD PUBLIC TESTIMONY	
06/04/2019	Council Public Works & Health Committee	HELD IN COMMITTEE	Council Committee of the Whole-Executive Session
06/18/2019	Council Special Committee of the Whole	RECOMMENDED FOR ADOPTION	

Attachments: PW Memo dated 12/27/18, Ordinance, Application for franchise, Maps-Deer Creek, Brenner

Questions

Final Action: Enactment Date: Enactment #:

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



CIVIC CENTER 322 N. Commercial Street, Suite 210 Bellingham, WA 98225-4042 Telephone: (360) 778-6200 FAX: (360) 778-6201

MEMORANDUM

TO:	The Honorable Jack Louws, County Executive, Honorable Members of the Whatcom County Council	
THROUGH:	Jon Hutchings, Director	11
FROM:	Andrew Hester, Public Works Real Estate Coordinator	H
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: <u>Executive</u>

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.

T.

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 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

Page 12

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 () Denied

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

Page 14

APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

Water Accor COMES NOW

who respectfully petitions the Whatcom County Council for a twenty-five (25) year

Mains

franchise to lay, construct, maintain, and repair

and all necessary appurtenances along, over, and across the following roads situated

in Whatcom County, Washington: re, 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:

Company Name

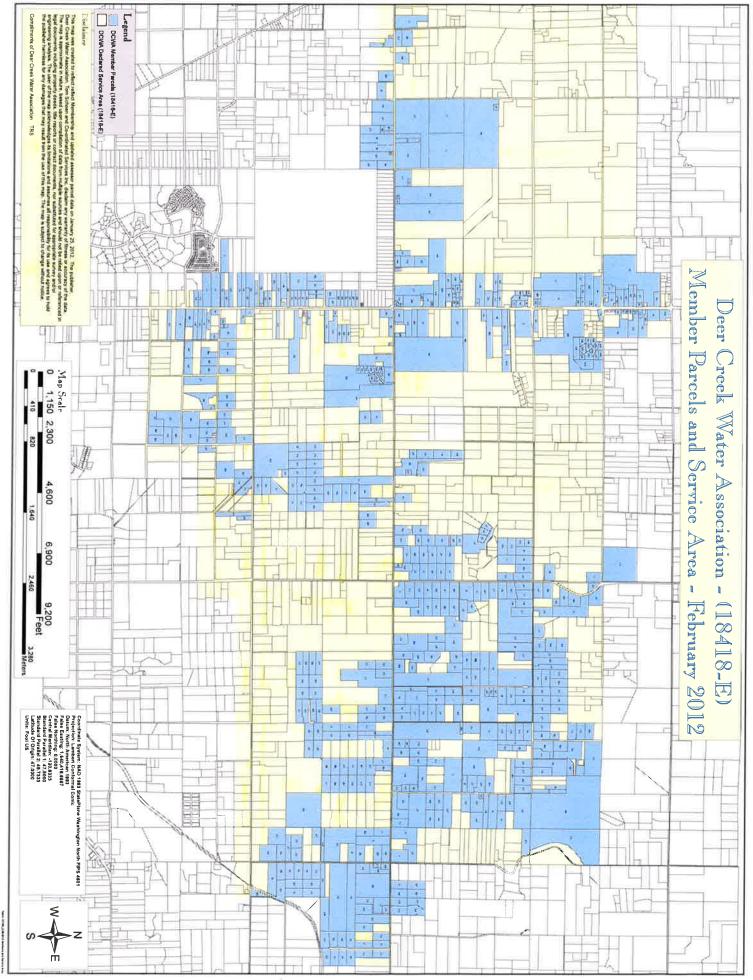
Mailing Address City State Zip

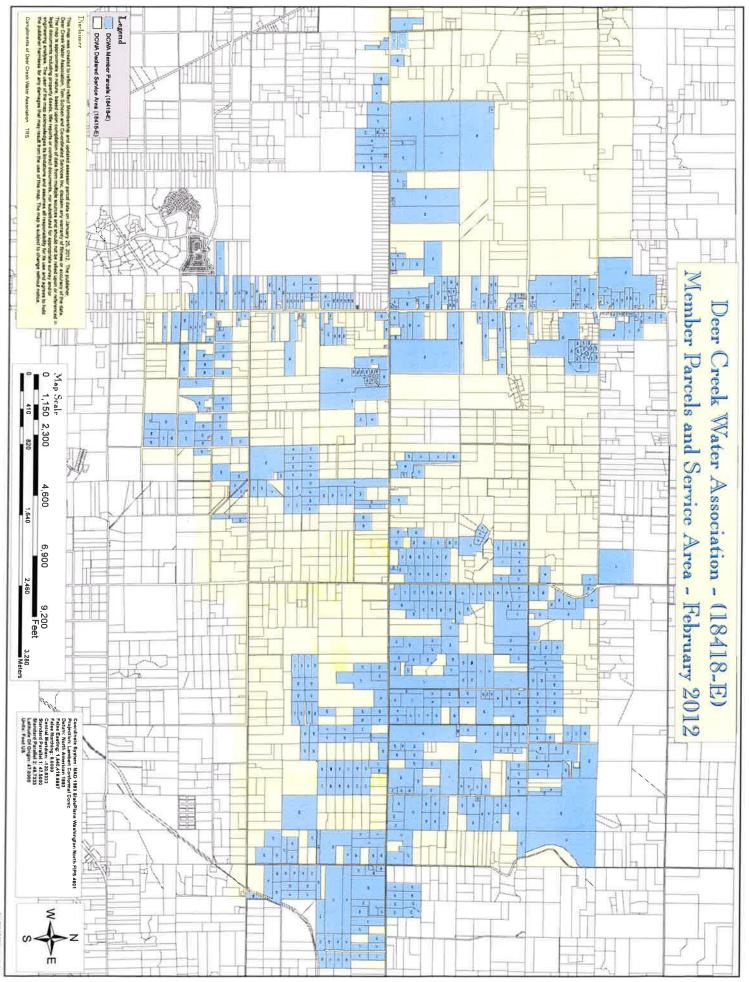
Phone Number

Signature of authorized agent/owner

Print or type name

C:\DOCUME~1\jnixon\LOCALS~1\Temp\XPgrpwise\2. APPLICATION FOR FRANCHISE.doc





Have a current water system plan that lists policies and must be updated every three years or as their policies change

Subject to release of information when requested in writing within the previous five years including agreements, denials, easements etc

Notification and public hearings for landowners if an association is expanding into an area

Appeal process through the county council

DISTRIBUTED TO

JUN 04 2019

ALL COUNCIL MEMBERS WHATCOM COUNTY COUNCIL

Barban Brenn



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-167

File ID:	AB2019-167	Version:	1	Status:	Held in Council
File Created:	03/07/2019	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance		
First Assigned to: Council					
Agenda Date:	07/09/2019	Next Mtg. Da	te: 05/07/2019	Hearing	Date: 05/07/2019

TITLE FOR AGENDA ITEM:

Ordinance granting Glenhaven Lakes Club Inc. 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:
03/26/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council
05/07/2019	Council	HELD IN COUNCIL	Council
06/04/2019	Council Public Works & Health Committee	HELD IN COMMITTEE	Council Committee of the Whole-Executive Session
06/18/2019	Council Special Committee of the Whole	RECOMMENDED FOR ADOPTION	

Attachments: Memo from PW March.7.19, Ordinance, Franchise application

Final Action: Enactment Date: Enactment #:

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



MEMORANDUM

TO:	The Honorable Jack Louws, County Executive, Honorable Members of the Whatcom County Council
THROUGH:	Jon Hutchings, Director
FROM:	Andrew Hester, Public Works Real Estate Coordinator AH
RE:	Franchise for Glenhaven Lakes Club Inc.
DATE:	March 7, 2019

Requested Action

Adopt an ordinance that grants a franchise to Glenhaven Lakes Club Inc., 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

Glenhaven Lakes Club Inc. 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: <u>Executive</u> INTRODUCTION DATE: _____

ORDINANCE NO.

GRANTING GLENHAVEN LAKES CLUB INC. 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, Glenhaven Lakes Club Inc. (hereinafter referred to as "Glenhaven Lakes"), 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, Glenhaven Lakes has operated a system of water mains and water distribution lines and other facilities within a portion of Whatcom County under a previous twenty five-year franchise ordinance, adopted by the County Council on October 5, 1993 and approved by the County Executive;

WHEREAS, Glenhaven Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes intend that the previous franchises granted to Glenhaven Lakes 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 Glenhaven Lakes, 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 "Glenhaven Lakes" means Glenhaven Lakes Club, Inc., and its successors and assigns.

1.1.3 "Franchise Area" means all public county roads, county public ways, county property, and platted right of way as dedicated within the following plats: Glenhaven Lakes, according to the plat thereof, recorded in Volume 9 of Plats, Pages 35 and 36; Glenhaven Lakes Division Number 2, according to the plat thereof, recorded in Volume 9, Pages 39 and 40; Glenhaven Lakes Division Number 3, according to the plat thereof, recorded in Volume 9 of Plats, Pages 47 and 48; Glenhaven Lakes Division Number 4, according to the plat thereof, recorded in Volume 9, Pages 51 and 52; Glenhaven Lakes Division Number 5, according to the plat thereof, recorded in Volume 9, Pages 55, 56, and 57; Glenhaven Lakes Division Number 6, according to the plat thereof, recorded in Volume 9, Pages 62 and 63; Glenhaven Lakes Division Number 7, according to the plat thereof, recorded in Volume 9, Pages 66 and 67; Glenhaven Lakes Division Number 8, according to the plat thereof, recorded in Volume 9, Pages 69 and 70; Glenhaven Lakes Division Number 9, according to the plat thereof, recorded in Volume 9, Pages 73 and 74; Glenhaven Lakes Division Number 10, according to the plat thereof, recorded in Volume 9, Pages 77 and 78; Glenhaven Lakes Division Number 11, according to the plat thereof, recorded in Volume 9, Pages 83 and 84; Glenhaven Lakes Division Number 12, according to the plat thereof, recorded in Volume 9, Pages 80 and 81; Situate in Whatcom County, Washington. Plat maps Exhibits A through M inclusive.

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;

<u>1.1.7</u> "Relocation": As used herein shall mean to protect, support, temporarily disconnect, relocate and/or remove Glenhaven Lakes facilities within or from within the County right-of-way.

Section 2. Facilities Within Franchise Area.

2.1 The County does hereby grant to Glenhaven Lakes 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, Glenhaven Lakes' 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, Glenhaven Lakes 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 will not unreasonably interfere with the free and safe passage of traffic.

If Glenhaven Lakes 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 Glenhaven Lakes which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Glenhaven Lakes 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 Glenhaven Lakes by such County codes and

ordinances.

4.2 Glenhaven Lakes' 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 Glenhaven Lakes which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Glenhaven Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes shall have preference as to the positioning and location of such utilities so installed with respect to Glenhaven Lakes. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Glenhaven Lakes shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Glenhaven Lakes' Facilities.

4.4 The locating, laying, construction, operation and maintenance of Glenhaven Lakes' 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 Glenhaven Lakes' Facilities, provided that Glenhaven Lakes and the County shall first check with the locator service to determine whether or not any of Glenhaven Lakes' lines are located in the proposed work area. Upon finding from the locator service that Glenhaven Lakes does have lines located within the proposed work area, the County shall provide Glenhaven Lakes with seventy-two (72) hours notice of proposed work, except if a lesser time for notice is warranted by emergency, in order that the Glenhaven Lakes may protect its Facilities. Failure of Glenhaven Lakes to properly notify the locator service of the location of its lines and Facilities shall relieve County of its duty to provide Glenhaven Lakes the otherwise-required advance notice of proposed work.

4.5 Glenhaven Lakes 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, Glenhaven Lakes shall provide a clear zone of five (5) feet on all sides of such aboveground Facilities. If Glenhaven Lakes fails to comply with this provision, and by its failure, property is damaged, then Glenhaven Lakes 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, Glenhaven Lakes 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 Glenhaven Lakes first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to Glenhaven Lakes. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. Glenhaven Lakes 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 Glenhaven Lakes' 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, Glenhaven Lakes shall be governed by and conform to the general rules adopted by the County Engineer; and Glenhaven Lakes 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. Glenhaven Lakes 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 Glenhaven Lakes or its agents in a condition dangerous to life or property, and Glenhaven Lakes upon demand shall pay to the County all costs of such work, the County having first provided notice of such condition to Glenhaven Lakes and a reasonable time to cure such unsafe condition, provided however, in the event of damage to the Franchise Area caused

by Glenhaven Lakes that necessitates immediate repair by the County or its agents on an emergency basis where notice to Glenhaven Lakes 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 Glenhaven Lakes.

5.4 In preparing plans and specifications for the installation of Facilities within the Franchise Area, Glenhaven Lakes shall reasonably conform to the standards and specifications established by the County Engineer. Glenhaven Lakes 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 Glenhaven Lakes 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, Glenhaven Lakes 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, Glenhaven Lakes 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). Glenhaven Lakes 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 Glenhaven Lakes.

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, Glenhaven Lakes shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during Glenhaven Lakes' 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 Glenhaven Lakes. 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 Glenhaven Lakes 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. Glenhaven Lakes 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 Glenhaven Lakes, such relocation or adjustment of Glenhaven Lakes' Facilities will not impede or delay pending changes to the Franchise Area. 6.2 Glenhaven Lakes 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 Glenhaven Lakes of such alternatives in writing, the County shall evaluate such alternatives and shall advise Glenhaven Lakes in writing if one or more of such alternatives are suitable to accommodate the work that would otherwise necessitate relocation of Glenhaven Lakes' Facilities. In evaluating such alternatives, the County shall give each alternative proposed by Glenhaven Lakes 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, Glenhaven Lakes 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) Glenhaven Lakes from future relocation or adjustment of Glenhaven Lakes' 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 Glenhaven Lakes' Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the County requires the relocation of Glenhaven Lakes' Facilities within the Franchise Area for the benefit of any person or entity other than the County, then Glenhaven Lakes shall have the right as a condition of such relocation to require such person or entity to:

6.3.1 Make payment to Glenhaven Lakes, at a time and upon terms acceptable to Glenhaven Lakes, which acceptance shall not be unreasonably withheld, for any and all costs and expenses incurred by Glenhaven Lakes in the relocation of Glenhaven Lakes' Facilities; and

6.3.2 Indemnify and save Glenhaven Lakes 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 Glenhaven Lakes' Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Glenhaven Lakes' Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Glenhaven Lakes' Facilities.

6.4 Any condition or requirement imposed by the County upon any person or entity, other than Glenhaven Lakes 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 Glenhaven Lakes' Facilities shall be a required relocation for purposes of Section 6.3; provided, however:

6.4.1 If the County notifies Glenhaven Lakes 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 Glenhaven Lakes shall relocate its Facilities within the Franchise Area in accordance with Section 6.1.

6.4.2 If the County notifies Glenhaven Lakes 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 Glenhaven Lakes agrees to bear a portion of its costs and expenses to relocate its Facilities to accommodate such grading or widening, such portion borne

by Glenhaven Lakes 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 Glenhaven Lakes exceed the dollar amount of such County Contribution. "Project" shall mean that work directly bearing on the area that necessitates relocation by Glenhaven Lakes, 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, Glenhaven Lakes shall have the right as a condition of such relocation to require such person or entity to pay to Glenhaven Lakes all relocation costs and expenses in excess of the portion borne by Glenhaven Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes 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, Glenhaven Lakes 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 Glenhaven Lakes, its agents, servants or employees in exercising the rights granted to Glenhaven Lakes 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 Glenhaven Lakes thereof, and Glenhaven Lakes 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 Glenhaven Lakes thereof, and Glenhaven Lakes 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 Glenhaven Lakes and the County, Glenhaven Lakes 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, Glenhaven Lakes shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Glenhaven Lakes' 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 Glenhaven Lakes 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 Glenhaven Lakes proposes to acquire easements for the location or relocation of its Facilities outside of, and adjacent to the Franchise Area, Glenhaven Lakes shall notify the County of the same and the County shall have the option, with the concurrence of Glenhaven Lakes, to acquire in place of such Glenhaven Lakes proposed easements, additional public rights-of-way or equivalent public utility easements for use by Glenhaven Lakes. 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 Glenhaven Lakes' use of such public utility easements. Provided the above section does not apply to Glenhaven Lakes' 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 Glenhaven Lakes, 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 Glenhaven Lakes allegedly incurred by reason of such termination. Nothing herein shall limit or prevent Glenhaven Lakes from exercising its powers of eminent domain. Should Glenhaven Lakes 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 Glenhaven Lakes, reserve an easement to Glenhaven Lakes for Glenhaven Lakes' 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 Glenhaven Lakes for the temporary

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.

adjustment of Glenhaven Lakes' Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to Glenhaven Lakes, not less than fourteen (14) days prior to the moving or removal of such building or other object. In such event, Glenhaven Lakes 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 Glenhaven Lakes 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, Glenhaven Lakes shall have no rights under this Franchise nor shall Glenhaven Lakes be bound by the terms and conditions of this Franchise unless Glenhaven Lakes 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 Glenhaven Lakes 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, Glenhaven Lakes shall be deemed to have rejected the same. In case of Glenhaven Lakes' 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., Glenhaven Lakes' Facilities, which was granted by the County and accepted by Glenhaven

Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes, 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 Glenhaven Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes, 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 Glenhaven Lakes:

Office Manager Glenhaven Lakes Club, Inc. 664 Rainbow Dr. Sedro Woolley, WA 98284

Page 12

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 Glenhaven Lakes shall keep in effect, a liability insurance policy covering all liability of Glenhaven Lakes to the County, including any assumed by contract between Glenhaven Lakes and any other party, with limits at least in the amount of \$1,000,000. In lieu of the insurance requirement of this Section, Glenhaven Lakes may self-insure against such risks. At the time of Glenhaven Lakes 'acceptance of this Franchise and otherwise upon the County's request, Glenhaven Lakes 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 Glenhaven Lakes 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 Glenhaven Lakes' 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 Glenhaven Lakes cannot be corrected with due diligence within said sixty (60) day period (Glenhaven Lakes' obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Glenhaven Lakes may so comply shall be extended for such time as may be reasonably necessary and so long as Glenhaven Lakes 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

3/14/19

Civil Deputy Prosecutor

Jack Louws, County Executive

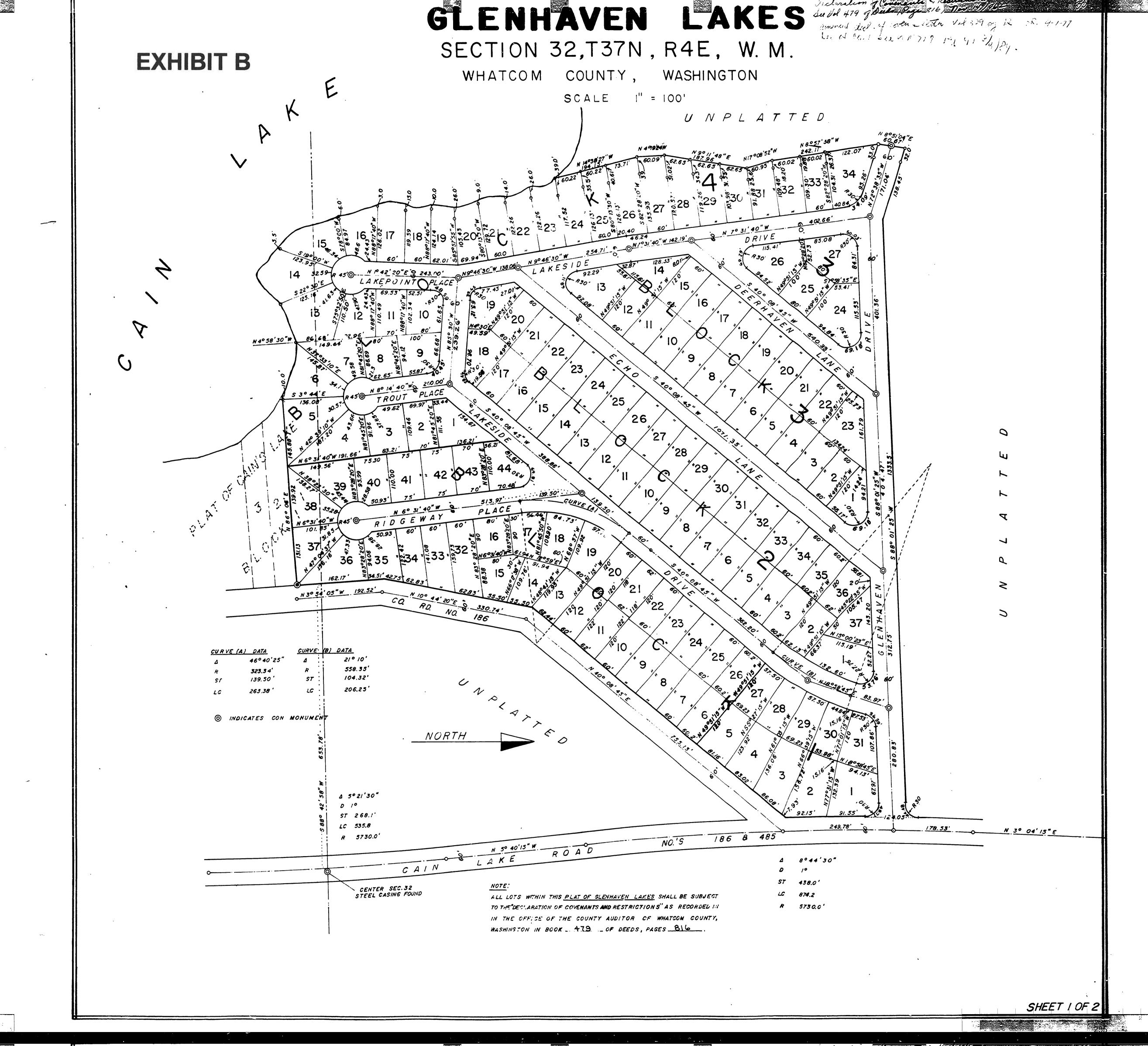
EXHIBIT A

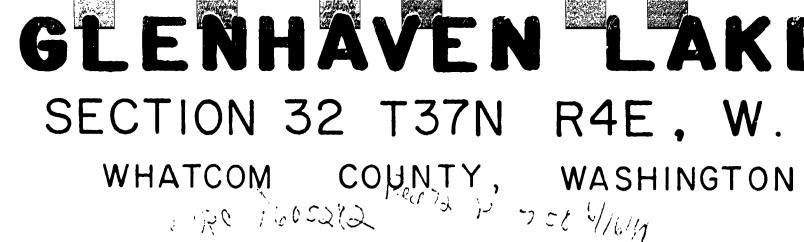
GLENHAVEN LAKES CLUB INC. FRANCHISE

Exhibits B through K are identified as follows:

Exhibit B	Plat Map of Glenhaven Lakes
Exhibit C	Plat Map of Glenhaven Lakes, Division Number 2
Exhibit D	Plat Map of Glenhaven Lakes, Division Number 3
Exhibit E	Plat Map of Glenhaven Lakes, Division Number 4
Exhibit F	Plat Map of Glenhaven Lakes, Division Number 5
Exhibit G	Plat Map of Glenhaven Lakes, Division Number 6
Exhibit H	Plat Map of Glenhaven Lakes, Division Number 7
Exhibit I	Plat Map of Glenhaven Lakes, Division Number 8
Exhibit J	Plat Map of Glenhaven Lakes, Division Number 9
Exhibit K	Plat Map of Glenhaven Lakes, Division Number 10
Exhibit L	Plat Map of Glenhaven Lakes, Division Number 11
Exhibit M	Plat Map of Glenhaven Lakes, Division Number 12

Page 15





DESCRIPTION

BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW, THAT ALL DISTANCES, COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON; THAT ALL MONUMENTS AND STAKES HAVE BEEN ACCURATELY PLACED ON THE GROUND; AND THAT THE PLAT COVERS AND EMBRACES ALL OF LOT I, BLOCK I OF THE PLAT OF CAINS LAKE AS RECORDED IN VOLUME 7 OF PLATS. PAGES 61 AND 62, WHATCOM COUNTY AUDITOR'S OFFICE AND ALSO OF THAT PORTION OF THE NW 1/4 OF SECTION 32, T37N, R4E, W.M. DESCRIBED AS FOLLOWS! BEGINNING AT THE NE CORNER OF LOTI, BLOCK I, PLAT OF CAIN'S LAKE; THENCE S 86 ° 06' W - 426.93' TO THE PRESENT SHORE LINE OF CAIN LAKE; THENCE WESTERLY AND NORTHERLY ALONG SAID SHORELINE OF CAN LAKE TO THE SW CORNER OF LOT 24, SLOCK 4 OF GLENHAVEN LAKES PLAT; THENCE N 14" 38'27" W - 194.15 FT; THENCE N 4" 19' 24" W - 60.09 FT.; THENCE N 9" 11' 48" E - 187.96' FT; THENCE N 17" 08' 52" W -60.95 FT. ; THENCE N 8º 57'38"W - 242.11 FT.; THENCE N 8º 51' 04" E - 60.67 FT.; THENCE S 72º 38' 35" E - 170.45 FT.; THENCE N 88" 01' 25" E - 1333.50 FT.; THENCE 44.48 FT. ALONG A CURVE TO THE LEFT, RADIUS OF 30.00 FT TO THE WESTERLY RIGHT-OF-WAY LINE OF THE CAIN LAKE ROAD (CO. RC. NO. 186 AND 485); THENCE SOUTHERLY 307.75.FT. ALONG SAID WESTERLY RIGHT-OF-WAY LINE ON A CURVE TO THE LEFT, RADIUS OF 5760.00 FT., CENTRAL ANGLE OF 8º 44'30" TO AN INTER-SECTION WITH THE WEST LINE OF THE OLD CAIN LAKE ROAD (CO. RD. NO. 186) THENCE S 40 " OB" 45" W -740.39 FT.; THENCE S 10" 44'20" W - 342.24 FT.; THENCE S 3" 54'05" E - 196.68 TO THE POINT OF BEGINNING.

(SEAL)

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED, GLEN E. CORNING AND ELIZABETH CORNING HIS WIFE _____ BEING OWNERS IN FEE SIMPLE OF THE LAND HEREIN PLATTED, (TOGETHER WITH ALLAN THOMSON AND MATTIE THOMSON HIS WIFE BEING MORTGAGEES OF RECORD OF SAID LAND ; HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES SHOWN ON THE PLAT; ALSO, THE RIGHT TO MAKE AL' NECESSARY SLOPES FOR CUTS AND FILL UPON THE LOTS BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL CURSE AFTER THE GRADING. ALL LOTS, TRACTS OR PARCELS OF LAND EMBRACED WITHIN THIS PLAT SHALL BE SUBJECT TO THE FOLLOW RESTRICTIONS FOR A PERIOD OF _____ /O ____ YEARS FROM THE DATE OF RECORDING OF THIS PLAT OR UNTIL SUCH TIME AS COUNTY ZONING COMES INTO FORCE AND APPLIES TO THIS PLAT : AND ALL SALES OR TRANSFERS OF OWNERSHIP OF THE LOTS, TRACTS OR PARCELS SHALL BE SUBJECT TO THESE RESTRICTIONS AS FOLLOWS :

- I. NO LOT, TRACT, OR PORTION OF A LOT OR TRACT SHALL BE SUBDIVIDED.
- 2. NO STRUCTURE OR BUILDING SHALL BE CONSTRUCTED ON ANY LOT, TRACT OR PARCEL OF THIS PLAT CLOSER THAN __ 20 FEET TO THE FRONT PROPERTY LINE AND IN THE CASE OF CORNER LOTS, NO STRUCTURE OR BUILDING SHALL BE CONSTRUCTED CLOSER 15 FEET TO THE SIDE PROPERTY LINE ABUTTING THE ROAD RIGHT - OF - WAY.
- 3. CONSTRUCTION ON ANY LOT SHALL REQUIRE A BUILDING PERMIT AND A SEWAGE DISPOSAL PERMIT FROM THE RESPECTIVE COUNTY AGENCIES.

IN WITNESS WHEREOF. WE HAVE SET HEREUNTO OUR HANDS AND SEALS THIS OF This Carlier 1962

(SEAL)

OWNER IN FEE SIMPLE A Thoman . Mattieth ORTGAGEE OF RECORD

REGISTERED PROFESSIONAL ENGINEER

ACKNOWLEDGEMENT

STATE OF WASHINGTON) COUNTY OF WHATCOM

DAY OF towhere . 1962 BEFORE ME, THE UNDERSIGNED, A NOTARY allen & Thethe Thomson (HIS WIFE), TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE DEDICATION HEREIN, AND ACKNOWLEDGED THAT THEY SIGNED AND SEALED THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PUR-THEREIN MENTIONED.

GLENHAVEN LAKES SECTION 32 T37N R4E, W.M.

ENGINEER'S APPROVAL

EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS 30th DAY OF November, 1962.



ENGINEER WHATCOM COUNTY, WASHINGTON

(SEAL)

PLANNING COMMISSION APPROVAL

EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS ____ DAY OF Norember, 1962.

CHAIRMAN, WHATCOM COUNTY PLANNING COMMISSION

COMMISSIONER'S APPROVAL

APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY, THI 3. VA DAY OF November, 1962.

ATTEST: CLERK OF THE BOARD CHAIRMAN . WHATCOM COUNTY (SEAL)

TREASURER'S CERTIFICATE

BY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRESCRIBED BY LAW AND AS SHOWN BY THE RECORDS IN MY OFFICE.

WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS. DAY OF 1600 . 1962

(SEAL)

AUDITOR'S CERTIFICATE

Н	EREBY	CERTIF	Y THAT	THIS PLAT	WAS F	ILED FOR	RECORD	IN THE O	FFICE OF T	THE AUDIT	OR
OF	WHATC		JNTY, WA	SHINGTON,	AT THE	REQUEST	OF	n' ia	+,	ON TH	IS
	302	DAY	OF	<u>v.</u> ,.	191	AT	10	MINUT	ES PAST _		
AN	D RECO	RDED IN	VOLUME		OF	PLATS, P	AGE 35	4.36	- OF THE	RECORDS	OF
SAI	D COUN	ITY.									

AUDITOR, WHATCOM COUNTY, WASHINGTON

(SEAL)



EXHIBIT C



DESCRIPTION

DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES, DIVISION 2, IS BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW; THAT ALL DISTANCES, COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON; THAT ALL MONUMENTS AND STAKES HAVE BEEN ACCURATE-LY AND DULY PROVIDED FOR; AND THAT THE PLAT COVERS AND EMBRACES THAT PORTION OF THE SW 1/4 OF SEC. 32, T37 N R4E, W. M. DESCRIBED AS FOLLOWS: BEGINNING AT THE N.E. CORNER OF THE PLAT OF GLENHAVEN LAKES AS FILED ON PAGES 35 8 36, VOL. 9 OF THE BOOK OF PLATS IN THE WHATCOM COUNTY AUDITORS OFFICE, AND THE WEST RIGHT-OF-WAY LINE OF COUNTY ROAD NO'S. 186 8 485 (CAIN LAKE ROAD); THENCE NORTHERLY ALONG A CURVE TO THE RIGHT, RADIUS 5760.00 FT. CENTRAL ANGLE OF 8"-44-30" A DISTANCE OF 119.24' FT; THENCE N 3"04'15" E A DISTANCE OF 1068.90 FT; THENCE S88" OI 25" W - 1492.51 ; THENCE SOUTH 4"54 OO WEST A DISTANCE OF 1167.51 " TO NORTH R/W OF GLENHAVEN DRIVE : THENCE \$ 72°38'35"W-170.84', THENCE N 88°01'25" E- 1333.50' ; THENCE EASTERLY ALONG A CURVE TO THE LEFT, RADIUS 34,33 : CENTRAL ANGLE OF 86°08' 20". A DISTANCE OF SLEI FT. TO THE TRUE POINT OF BEGINNING.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED GEORGE COBELENS, WALLACE WINTER, CARL MILLER AND HILDA MILLER. SUCCESSORS IN INTEREST TO GENERAL BUILDING, INC. AND FEE SIMPLE OWNERS OF A PORTION OF SAID LAND, BY RICHARD J. WATERS, OUR ATTORNEY - IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY RECORDED UNDER AUDITORS FILE NO. 942475 IN VOL. 36, PG. 196, OF POWERS OF ATTORNEY, RECORDS OF WHAT-COM COUNTY; AND ALLAN THOMSON AND MATELE THOMSON, HIS WIFE, FEE SIMPLE OWNERS OF THE REMAINDER OF SAID LAND; AND GLEN CORNING, ABNER LUDTKE, A.J. MCMILLAN, MOKSHAW. SMITH, A.J. HUTTON, JR. AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP-AS GLENHAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND ATTORNEY-IN-FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITOR'S FILE NO. 942089 IN VOLUME 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, HEREBY DEC-LARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES SHOWN ON THE PLAT; ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES, AND ALSO THE RIGHT TO DRAIN ALL ROADS, ALLEYS AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER THE GRADING.

										2 C. Ti:		Let al	
IN	WITNESS	WHEREOF	WE	HAVE	HEREUNTO	SET	OUR	HANDS	THIS	25.00	DAY	OF 2 CAtua	±4, 19

FEE SIMPLE OWNER

MATTIE THOMSON FEE SIMPLE OWNER

A. J. MCMILLAN, MOKSHA W. SMITH, A.J. HUTTON, JR. AND LAWRENCE CANGELL, D. B. A. GLENHAVEN LAKES

ATTORNEY - IN - FACT

GEORGE COBELENS, WALLACE WINTER CARL MILLER, AND HILDA MILLER, FEE SIMPLE OWNERS

AT TORNEY . IN . FACT

BY Sichard U. Maters RIGHARD J. WATERS

SS

GLENHAVEN LAKES **DIVISION NUMBER 2** SECTION 32 T37N R4E, W.M. WHATCOM COUNTY WASHINGTON ENGINEERS APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS ______ HAY OF ______ DAY OF ______ MARCH 1963. ENGINEER, WHATCOM COUNTY WASHINGTON PLANNING COMMISSION APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS _____ DAY OF March , 1963 Patrick Swin CHAIRMAN, WHATCOM COUNTY PLANNING COMMISSION COMMISSIONER'S APPROVAL APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY THIS March 1963. ATTEST : CHAIRMAN, WHATCOM COUNTY COMMISSIO TREASURER'S CERTIFICATE OLAND , COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON DO HEREBY CERTIFY THAT ALL REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRESCRIBED BY LAW AND AS SHOWN BY THE RECORDS IN MY OFFICE. Jahan I WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS _____ - DAY OF March **63**. TREASURER, WHATCOM COUNTY (SEAL) AUDITOR'S CERTIFICATE GLEN CORNING, ABNER LUDTKE I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY. WASHINGTON, AT THE REQUEST OF Glen Corning ON THIS 18th Day OF MARCH, 1963 MINUTES PAST _____ A M_ AND RECORDED IN VOLUME _____9 _OF PLATS, PAGE CONTRACT PURCHASERS 39 4 4 0 OF THE RECORDS OF SAID COUNTY. GLEN CORNING, PARTNER AND AUDITOR, WHATCOM COUNTY, WASHINGTON Restrictions See Val 482 Page 58 CIBP 1647817 RILLPIS98 5-17-59 (13P # 920928110 vol 274 19 535 335 1-258 239 5/19/71 Ass. an # Per 7D Page 766 3 P 163830 RICH P1353 SIJUL STATE OF WASHINGTON) (SEAL) (SEAL) STATE OF WASHINGTON)) SS COUNTY OF WHATCOM COUNTY OF WHATCOM ON THIS 28th ON THIS _28th DAY OF TED JUNG 1963, BEFORE ME PERSONALLY APPEARED GLEN CORNING, TO _ DAY OF The is 1963, BEFORE ME PERSONNALLY ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXEGUTED THE WITHIN DEDICATION FOR APPEARED ALLAN THOMSON AND MATTLE THOMSON, HIS WIFE, TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE HIMSELF AND AS A PARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CORNING, ABNER LUDTKE A. J. MCMILLAN, MOKSHA W. SMITH, A. J. HUTTON, JR. AND LAWRENCE C. ANGELL, WHO WITHIN DEDICATION, AND ACKNOWLEDGED THAT THEY SIGNED THE SAME AS ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THEREIN DESCRIBED, AND ACKNOWLEDGED TO THEIR FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES ME THAT HE SIGNED THE SAME AS A FREE AND VOLUNTARY ACT AND DEED OF HIMSELF, AND SAID THEREIN MENTIONED. PARTNERSHIP AND THE SAID PRINCIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED, AND WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDIC-IN THIS CERTIFICATE FIRST ABOVE WRITTEN ATION #HAS: NOT BEEN REVOKED AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING NOTARY PUBLIC IN AND EOR THE STATE OF WITNESS ME NAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE WASHINGTON, RESIDING AT BELLINGHAM ARST ABOVE-WRITTEN. NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

DIRC ILESIS (SEAL)

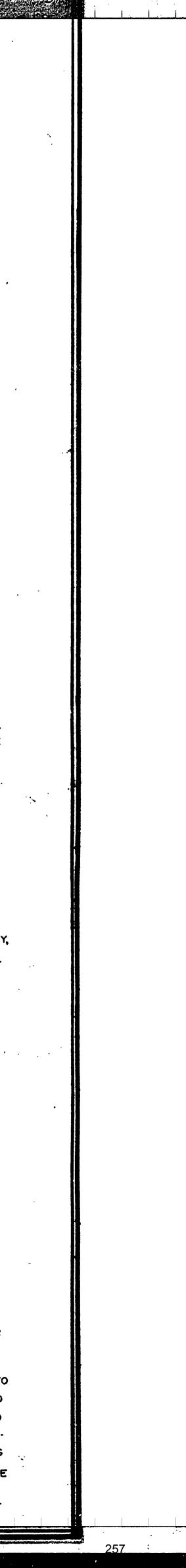
STATE OF WASHINGTON COUNTY OF WHATCOM

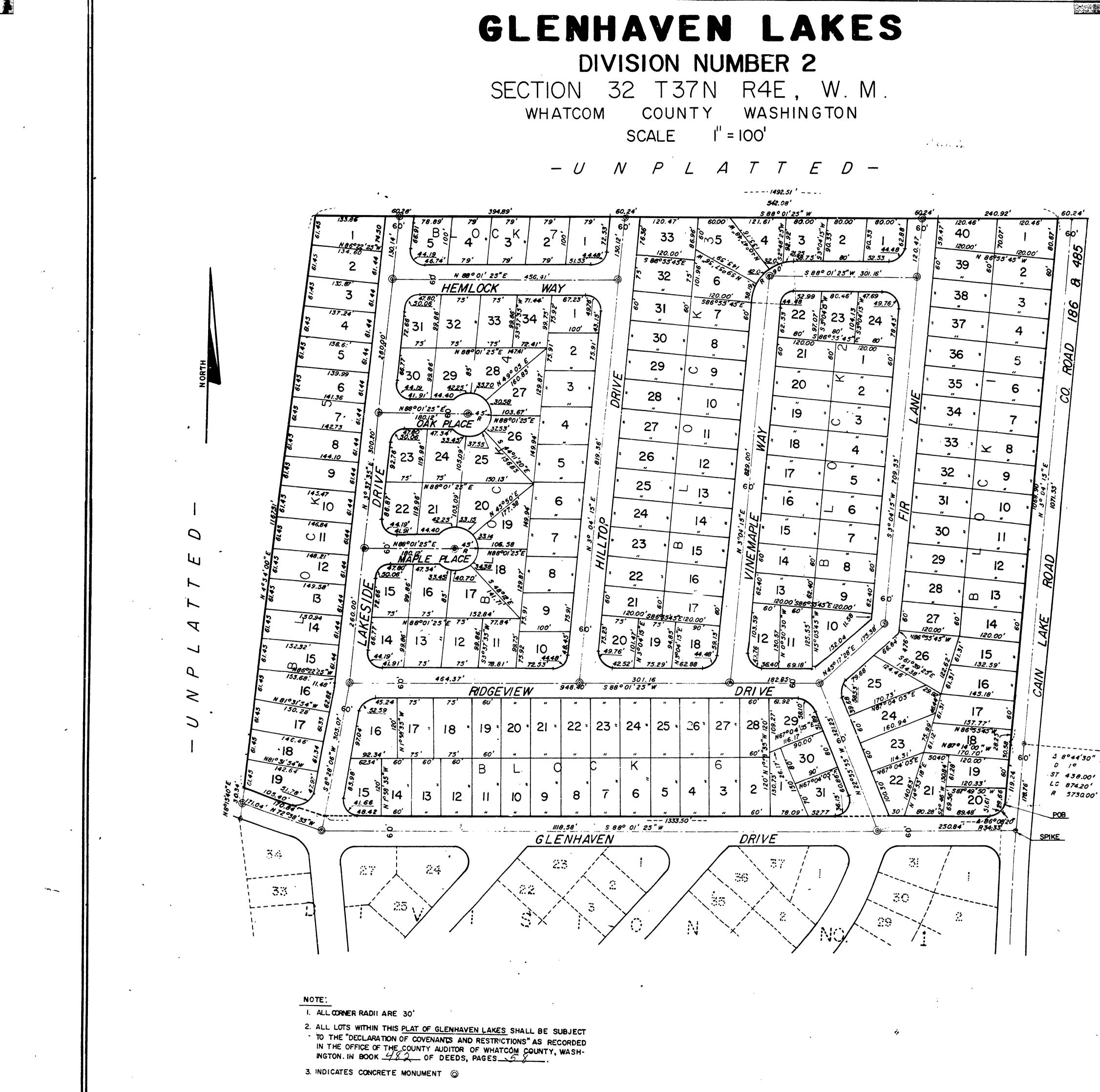
ON THIS _28 Th _DAY OF ______, 1963, BEFORE ME PERSONALLY APPEARED RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE WITH-IN DEDICATION AS ATTORNEY-IN-FACT FOR GEORGE COBELENS, WALLACE WINTER, CARL MILLER AND HILDA MILLER, THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT, HE SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SAID PRINCIPALS, FREELY AND VOLUN-TARILY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICATION HAS NOT BEEN REVOKED THAT THE SAID PRINCIPALS ARE NOW LIVING.

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS SER-TIPICATE FIRST-ABOVE WRITTEN.

RESIDING AT BELLINGHAM.

NOTART PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM





258

ينهو بالموجودية. العربي في العربي

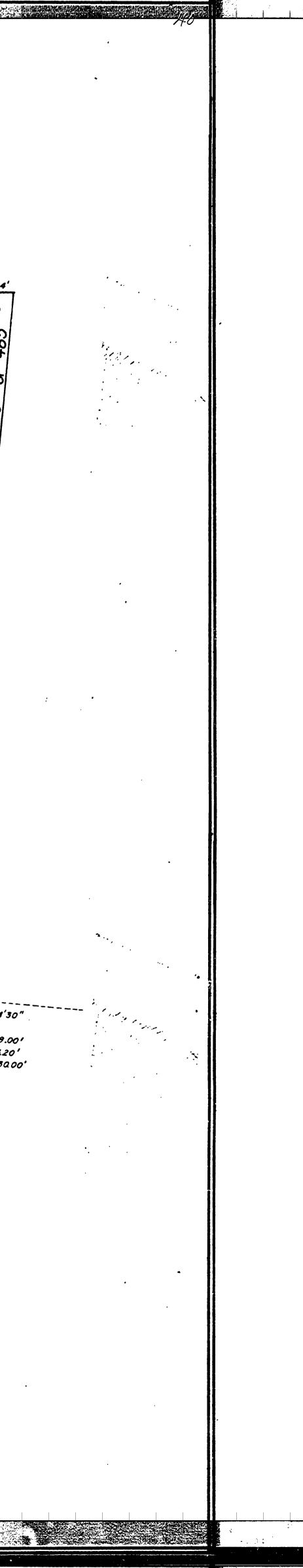


EXHIBIT D

DESCRIPTION

_ DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES, DIVISI BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW: THAT ALL D COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON; THAT ALL MONUMENTS AND STAKES HAVE BEEN ACC AND DULY PROVIDED FOR: AND THAT THE PLAT COVERS AND EMBRACES THAT PORTION OF THE SW 1/4 & SE 29 & THE NW 1/4 OF SEC. 32, T. 37 N., R.4 E., W. M., DESCRIBED AS FOLLOWS: BEGINNING AT THE N.E. COR GLENHAVEN LAKES, DIVISION 2, (AS FILED ON PAGES 39 & 40, VOL. 9 OF THE BOOK OF PLATS IN THE WHAT COUNTY AUDITORS' OFFICE, AND THE WEST R/W LINE OF COUNTY ROAD NO'S 186 & 485; THENCE S.88" AND FOLLOWING THE NORTH BOUNDARY OF DIVISION 2, A DISTANCE OF 1492.49 FT. TO THE N.W. CORNER (PLAT; THENCE N. 6" 57'23" E., A DISTANCE OF 352.06 FT, THENCE N. 9"27'45" E., A DISTANCE OF 182.48 FT; N. 40" 01' 50" E., FOR 326.50 FT; THENCE N. 85" 45' 50" E., A DISTANCE OF 541.52 FT; THENCE N. 68" 37'45" E 246.98 FT; THENCE N.58" 34'13"E., FOR 210.95 FT; THENCE N.15"08'38"E., A DISTANCE OF 260.17 FT; S 86º 55' 45" E., FOR 256.00 FT. TO AN INTERSECTION WITH THE WEST R/W LINE OF THE SAID GAIN LA THENCE S. 3" 04' 15" W. FOLLOWING THE SAID WEST R/W LINE A DISTANCE OF 1207.01 FT. TO THE TR POINT OF BEGINNING.



KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED GEORGE COBELENS, WALLACE WINTER, CARL MILLER AND HILDA MILLER, SUCCESSORS IN INTEREST TO GENERAL BUILDING, INC. AND FEE SIMPLE OWNERS OF A PORTION OF SAID LAND, BY RICHARD J. WATERS, OUR ATTORNEY -IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY RE-CORDED UNDER AUDITORS' FILE NO. 942475 IN VOL. 36, PG. 196 OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY: AND GLEN CORNING, ABNER LUDTKE, A.J.McMILLAN, MOKSHA W. SMITH, A.J.HUTTON, JR. AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP AS OMENHAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND ATTORNEY-IN-FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITORS' FILE NO. 942089 IN VOL. 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM CO., HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASE-PUBLIC SITES SHOWN ON THE PLAT: ALSO, THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS, BLOCKS AND TRAFTS IN ANY REASONABLE GRADING OF ROADS, ALLEYS, EASE-MENTS AND PUBLIC SITES, AND ALSO THE RIGHT TO DRAIN ALL ROADS, ALLEYS AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER GRADING; EXCEPT THAT TRACT "A" AS SHOWN HEREON SHALL BE RESERVED FOR THE MEMBERS OF GLENHAVEN LAKES CLUB, INC.

DEDICATION

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS _ 22 d DAY OF July

GEORGE COBELENS, WALLACE WINTER CARL MILLER, AND HILDA MILLER,

FEE SIMPLE OWNER RICHARD J. WATERS ATTORNEY-IN-FACT

GLEN CORNING, ABNER LUDTKE, A.J.MCMILLAN, MOKSHA W. SMITH, A.J.HUTTON, JR. AND LAWRENCE C. ANGELL, D.B.A. GLENHAVEN LAKES CONTRACT PUR CHASERS

REGISTERED PROFESSIONAL ENGINEER

rnu GLEN CORNING, PARTNER AND ATTORNEY-IN-FACT

STATE OF WASHINGTON) COUNTY OF WHATCOM

ON THIS 220 DAY OF Unly , 1963, BEFORE ME PERSONALLY APPEARED RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE WITHIN DEDICATION AS ATTORNEY-IN-FACT FOR GEORGE COBELENS, WALLACE WINTER, CARL MILLER AND HILDA MILLER, THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SAID PRINCIPALS, FREELY AND VOLUNTARILY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDI-CATION HAS NOT BEEN REVOKED AND THAT THE SAID PRINCIPALS ARE NOW LIVING.

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.



NOTARY RUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

DIVISION NUMBER 3 SECTIONS 29832, T.37N., R.4E., W. M. COUNTY, WASHINGTON.

<u>on 3</u> , Is
ISTANCES,
URATELY
E 1/4 OF SEC.
NER OF
ATCOM
' OI' 25" W.
OF SAID
THENCE
E., FOR
THENCE
KE RD;
UE

WHATCOM

, 1963.

EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS 232 DAY OF Sa

(SEAL)

PLANNING COMMISSION APPROVAL

ENGINEER'S APPROVAL

EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS _ 23 __ DAY OF July __ 1963.

CHAIRMAN, WHATCOM COUNTY PLANNING COMMISSION

ENGINEER WHATCOM COUNTY WASHINGTON

COMMISSIONER'S APPROVAL

APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY THIS 23 2 DAY OF July 1983.

(SEAL)

TREASURER'S CERTIFICATE

COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW! TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRESCRIBED BY LAW AND AS SHOWN BY THE RECORDS IN MY OFFICE.

WITNESS MY OFFICIAL SIGNATURE AND SEAL, THIS 23 The DAY OF When

(SEAL)

AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF fler Corning ON THIS 23 DAY OF _, 1963. AT______MINUTES PAST 3 P.M. AND RECORDED IN VOLUME. OF THE RECORDS OF SAID COUNTY.

AUDITOR, WHATCOM COUNTY, WASHINGTON

WHATCOM COUNTY, WASHINGTON

(SEAL)

بالمرجع المرجع

STATE OF WASHINGTON)

PRINCIPALS ARE NOW LIVING.

COUNTY OF WHATCOM

ACKNOWLEDGEMENTS

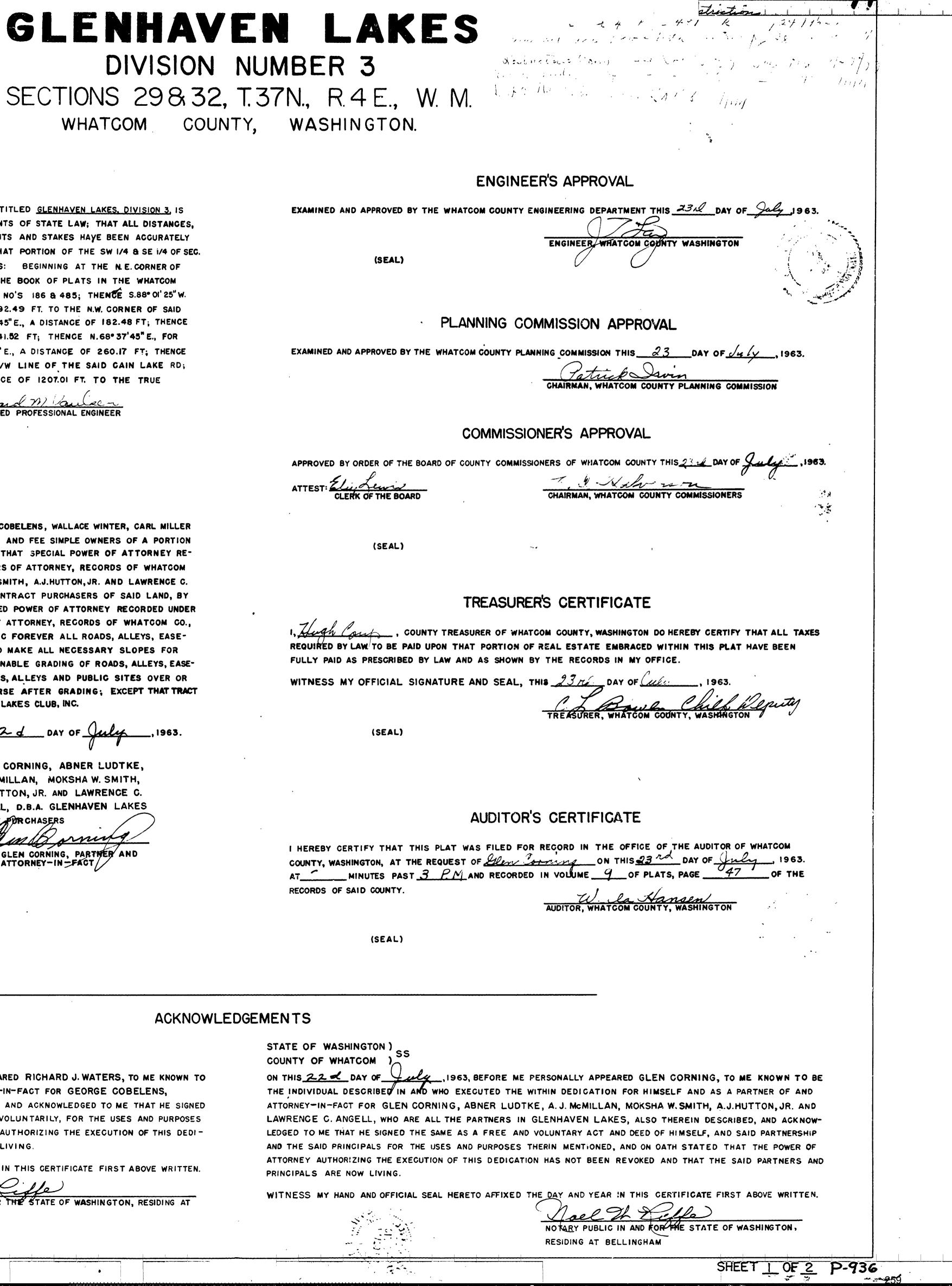
5

6

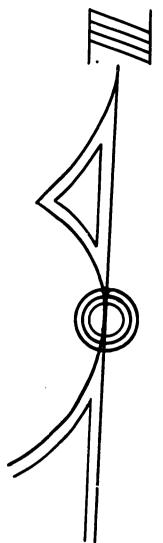
WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NO TARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

SHEET







•

CURVE DATA

ST = 384.17 R = 423.35 LC = 623.90

R = 245.85

LC= 211.71

ST = 110.02 R = 437.56LC = 215.56

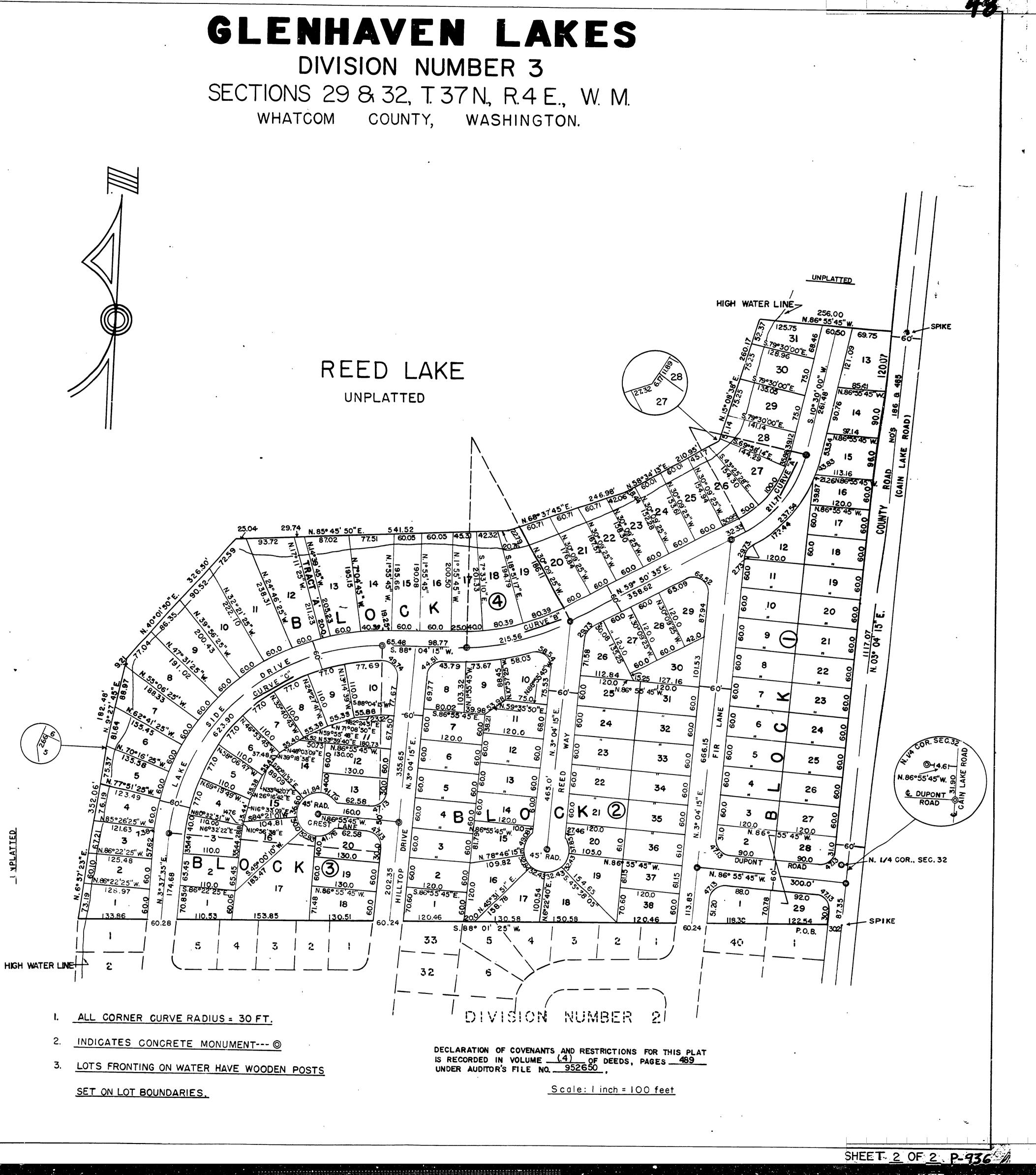
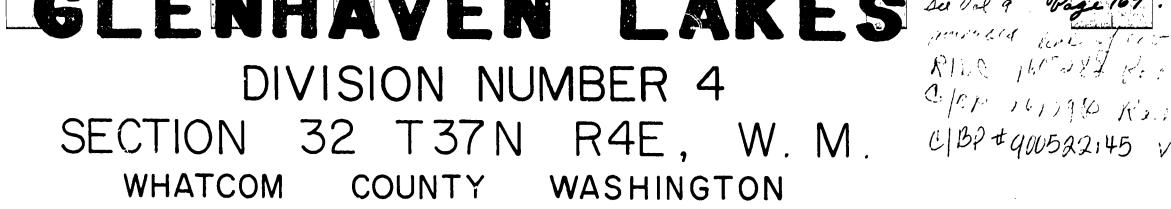


EXHIBIT E



DESCRIPTION

I EDWARD M. PAULSEN DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES, DIVISION 4, IS BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW, THAT ALL DISTANCES. COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON, THAT ALL MONUMENTS AND STAKES HAVE BEEN ACCURATE LY AND DULY PROVIDED FOR; AND THAT THE PLAT COVERS AND EMBRACES THAT PORTION OF THE NW 1/4 OF SEC. 32, T37N, R4E, W.M. DESCRIBED AS FOLLOWS : BEGINNING AT THE WEST 1/4 CORNER OF SAID SEC. 32; THENCE N88 580.27 FT.; THENCE NI9 45 28 W. 348.18 FT.; THENCE N 3 46 17 E. 1. 2 23 FT.; THENCE S81 43 E. 144.40 FT. TO PRESENT SHORE LINE OF CAIN LAKE; THENCE NORTHERLY AND EASTERLY ALONG SAID SHORELINE OF CAIN LAKE SHOWN ON THE PLAT OF GLENHAVEN LAKES DIVISION NO. 4 TO THE SW CORNER OF LOT 24, BLOCK 4 OF THE OF GLENHAVEN LAKES; THENCE N 14 38 27 W. 194.15 FT.; THENCE N.4 19 24 W. 60.09 FT.; THENCE N 9 11 48 E 187.96 FT.; THENCE N 17°08'52"W. 60.95 FT.; THENCE N 8°57'38"W. 242.11 FT.; THENCE N 8°51'04"E. 60.67 FT.; " N 4 54 00"E. 30.72 FT.; THENCE N 72 38 35"W. 186.56 FT.; THENCE S 17 21 25"W. 30.00 FT.; THENCE N 72 38 3 507.63 FT.; THENCE N 86°13'43"W. 576.39 FT.; THENCE S 2°33'35"E. ALONG THE WEST LINE OF SAID NW 1/4 SEC. 32 1617.69 FT. TO THE POINT OF BEGINNING .

REGISTERED PROFESSIONAL ENGINEER

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED TOM J. DAVES AND BLANCHE M. DAVES, HIS WIFE TOGETHER WITH , Den Corning and Conus BEING OWNERS IN FEE SIMPLE OF THE LAND HEREIN PLATTED, (TOGETHER and Mattie V. Thomas BEING MORTGAGEES OF RECORD OF SAID LAND), HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS AND ALLEYS; THE COUNTY WILL MAINTAIN THE SURFACE OF THE ROADWAY OF GLENHAVEN DRIVE WHERE IT CROSSES THE DAM IN "TRACT A" AS SHOWN ON THE PLAT BUT WILL HAVE NO INTEREST, CONTROL OR LIABILITY OVER THE DAM, ITS APPURTENANCES AND THE WATER LEVEL OF REED LAKE, ALSO, ALL LOTS, TRACTS, OR PARCELS OF LAND EMBRACED WITHIN THIS PLAT SHALL BE SUBJECT TO THE FOLLOWING RESTRICTIONS FOR A PERIOD OF _____YEARS FROM THE DATE OF RECORDING OF THIS PLAT OR UNTIL SUCH TIME AS COUNTY ZONING COMES INTO FORCE AND APPLIES TO THIS PLAT; AND ALL SALES OR TRANSFERS OF OWNERSHIP OF THE LOTS, TRACTS OR PARCELS SHALL BE SUBJECT TO THESE RESTRI IONS AS FOLLOWS:

I. NO LOT, TRACT, OR PORTION OF A LOT OR TRACT SHALL BE SUBDIVIDED.

- 2. NO STRUCTURE OR BUILDING SHALL BE CONSTRUCTED ON ANY LOT, TRACT OR PARCEL OF THIS PLAT CLOSER THAN __ 20 FT.____ TO THE FRONT PROPERTY LINE; AND IN THE CASE OF WATER FRONT LOT, N STRUCTURE OR BUILDING SHALL BE CONSTRUCTED CLOSER THAN 50 FT. TO THE FRONT PROPERTY LIN ABUTTING THE ROAD RIGHT - OF - WAY.
- 3. CONSTRUCTION ON ANY LOT SHALL REQUIRE A BUILDING PERMIT AND A SEWAGE DISPOSAL PERMIT FROM THE RESPECTIVE COUNTY AGENCIES

4. TRACTS A & B ARE HEREBY DEDICATED TO THE GLENHAVEN LAKES COMMUNITY CLUB. IN WITNESS WHEREOF, WE HAVE SET HEREUNTO OUR HANDS AND SEALS THIS 9 TH DAY OF DEC.

Jon J. Daven Lils. 12 Marin - 10. 11. 1. 2022

STATE OF WASHINGTON)

(SEAL)

ACKNOWLEDGEMENTS

STATE OF WASHINGTON)

COUNTY OF WHATCOM) ON THIS PURPOSES THEREIN MENTIONED.

COUNTY OF WHATCOM

1963 .

ON THIS 13th DAY OF December, 1963, BEFORE ME PERSONALLY APPEARED TOM J. DAVES AND BLANCHE M. DAVES, HIS WIFE TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN DEDICATION AND ACKNOWLEDGED THAT THEY SIGNED THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN MENTIONED,

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

> all al Kille NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM.

/ISION 32 T3 coun	NUMBER 4 B7N R4E, W.M. CIBP # 900522145 VISO P1833 L445 B4 TY WASHINGTON
	ENGINEER'S APPROVAL
- 48'02 [°] E THE E AS 2LAT	EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS _23 DAY OF 1963
THENCE 5"W. OF	PLANNING COMMISSION APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS <u>23</u> DAY OF <u>December</u> , 1963 <u>Patrick</u> <u>Juin</u> CHAIRMAN, WHATCOM COUNTY PLANNING COMMISSION
ST	COMMISSIONER'S APPROVAL APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY THIS 24- th Day OF , 1963.
	ATTEST: <u>Wella Hansen</u> CLERK OF THE BOARD CHAIRMAN, WHATCOM COUNTY COMMISSIONERS
ст-	TREASURER'S CERTIFICATE 1, <u>buge</u> , <u>county</u> , county treasurer of whatcom county, washington do hereby certify that al taxes required by law to be paid upon that portion of real estate embraced within this plat hav been fully paid as prescribed by law and as shown by the records in my office WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS <u>23</u> day of <u>becember</u> , 1963
10 IE M	(SEAL)

AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY WASHINGTON, AT THE REQUEST OF Glentraven Lakes ON THIS 24th DAY OF Dec. , 1963 AT _____ MINUTES PAST 101 MAND RECORDED IN VOLUME 9 51452 OF THE RECORDS OF SAID COUNTY.

Dec.

1963, BEFORE ME PERSONNALLY APPEARED ALLAN THOMSON AND MATTIE THOMSON, HIS WIFE TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN DEDICATION AND ACKNOWLEDGED THAT THEY SIGNED THE SAME

AS THEIR FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED

THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

PUBLIC IN AND FOR STATE OF WASHINGTON, RESIDING AT BELLINGHAM.

STATE OF WASHINGTON)

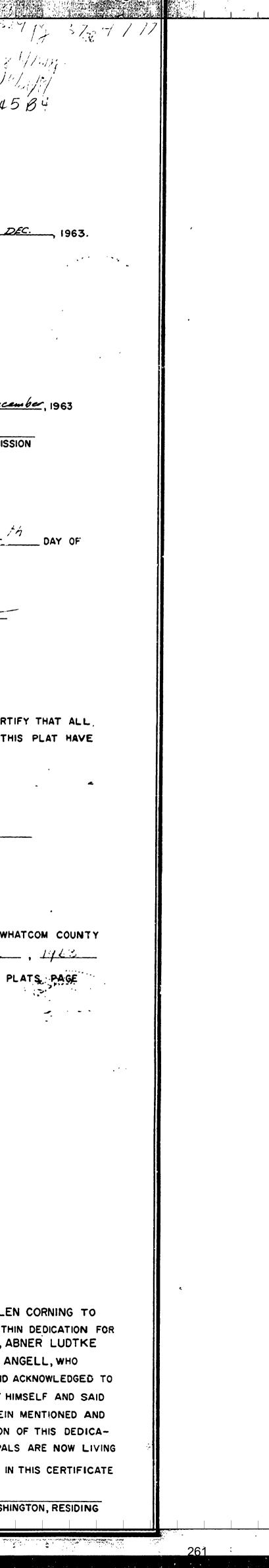
COUNTY OF WHATCOM

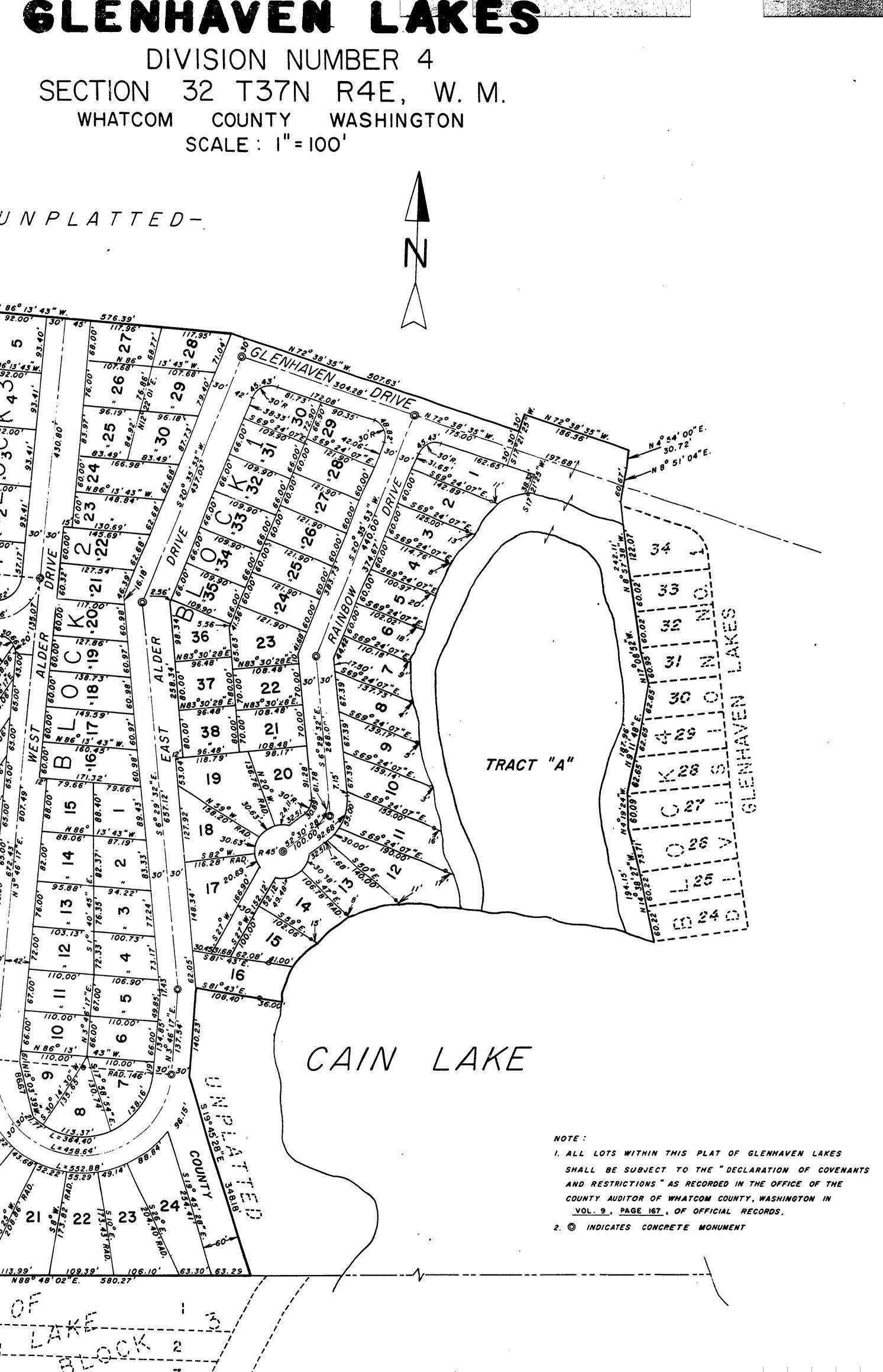
ON THIS 200 1963, BEFORE ME PERSONALLY APPEARED GLEN CORNING TO DAY OF ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE WITHIN DEDICATION FOR HIMSELF AND AS A PARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CORNING, ABNER LUDTKE A.J. MCMILLAN, MOKSHA W. SMITH, A.J. HUTTON JR., AND LAWRENCE ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS A FREE AND VOLUNTARY ACT AND DEED OF HIMSELF AND SAID PARTNERSHIP AND THE SAID PRINCIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICA-TION HAS NOT BEEN REVOKED AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING

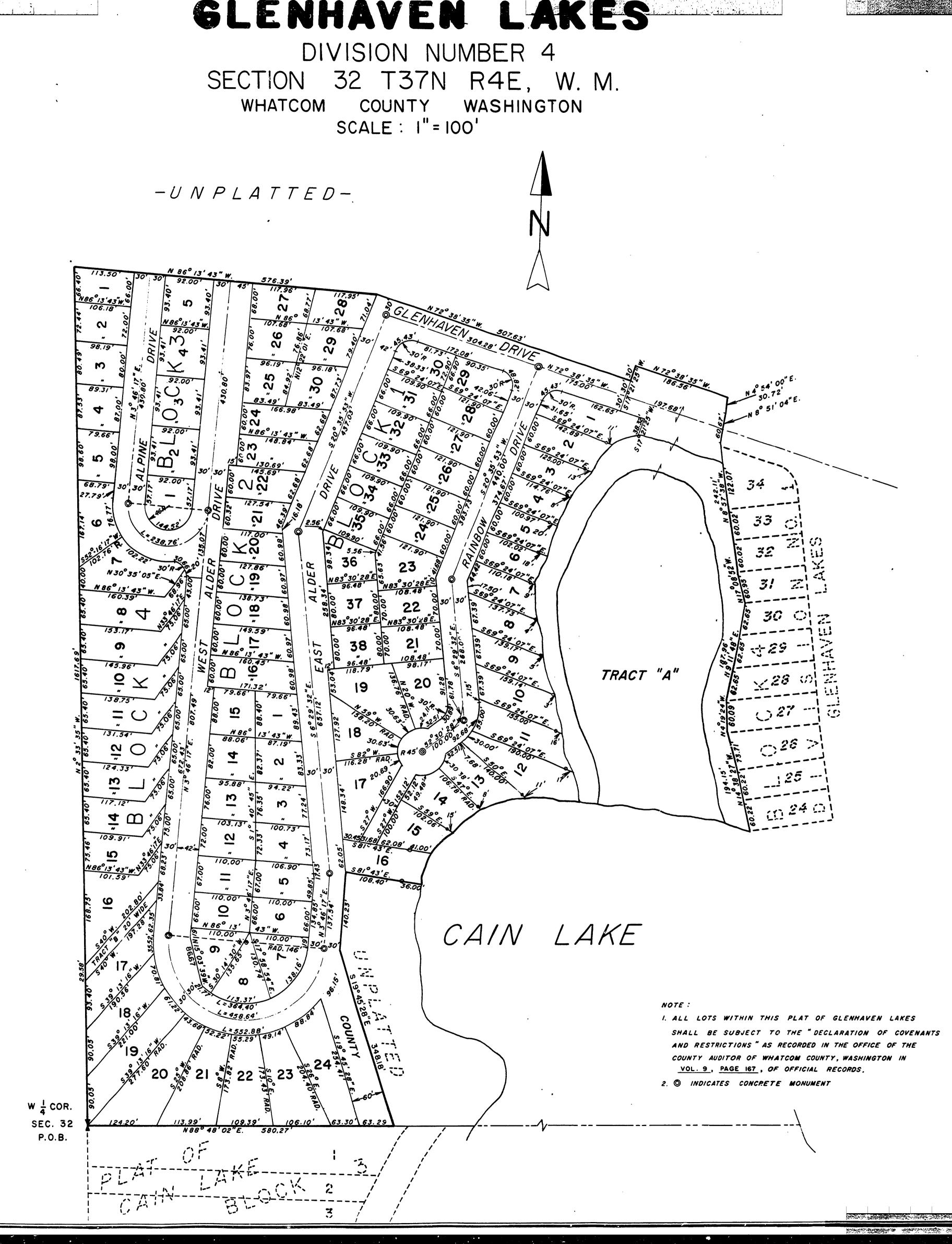
WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

(SEÁL)







 \geq

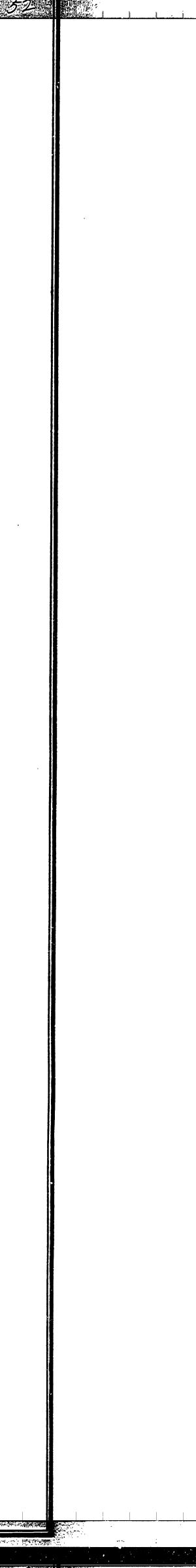


EXHIBIT F



DESCRIPTION

: EDWARD M. PAULSEN DOHEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES, BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STAT THAT ALL DISTANCES, COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON; THAT ALL AND STAKES HAVE BEEN ACCURATELY PLACED ON THE GROUND; AND THAT THE PLAT COVER EMBRACES THAT PORTION OF THE NW 1/4 SEC. 32, T37N, R4E, W.M. AND THAT PORTION SW 1/4 SEC. 29, T37N, R4E, W.M. DESCRIBED AS FOLLOWS; COMMENCING AT THE NW CO OF SEC. 32, T37N, R4E, W.M., THENCE NORTH AND FOLLOWING THE WEST BOUNDARY O SW 1/4 SEC. 29; T37N, R4E, W.M. 1331.52'; THENCE EAST 148.76'; THENCE N 67"10'00" THENCE SI5" 00' 00"E - 50.00"; THENCE N80" 26' 15"E, BEING RADIAL, 254.46"; THENCE EASTERLY ON A CURVE HAVING A RADIUS OF 153.58" AND A CENTRAL ANGLE OF 86º16'15 DISTANCE OF 231.23'; THENCE N84º 10' 00"E - 121.97'; THENCE ON A CURVE TO THE RIGH A RADIUS OF 90.68' AND A CENTRAL ANGLE OF 117º 30'00", A DISTANCE OF 185.95'; THE 3 68° 20' 00" E-168.72'; THENCE S29º 48' 00" W- 78.86'} THENCE S60º 12' 00" E- 595.16 A POINT ON THE BOUNDARY OF THE PLAT OF GLENHAVEN LAKES, DIVISION 3; THENCE . S40" OI' 50" W AND FOLLOWING THE BOUNDARY OF SAID DIVISION 3, 326.50'; THENCE S 9" 2" 182.48'; THENCE S6º 57' 23" W- 352.06' TO THE SW CORNER OF SAID DIVISION AND T CORNER OF THE PLAT OF GLENHAVEN LAKES, DIVISION 2; THENCE S 4.54'00" W AN FOLLOWING THE WESTERLY BOUNDARY OF SAID DIVISION 2 1136.79' TO A POINT BE NE CORNER OF THE PLAT OF GLENHAVEN LAKES, DIVISION 4: THENCE N72º 38' 35" W FOLLOWING THE NORTHERLY BOUNDAPY OF SAID DIVISION 4-186.52'; THENCE SI7º21'2 30.00'; THENCE NT2" 38'35" W- 507.63'; THENCE N86"13'43" W- 576.41' M/L TOA PO ON THE WESTERLY BOUNDARY OF THE NW 1/4 SEC. 32, T37N, R4E, W.M. BEING THE CORNER OF SAID DIVISION 4; THENCE N 2º 33' 35" W AND FOLLOWING THE WESTERLY BOUNDARY OF SAID NW 1/4 SEC. 32, 935.47' M/L TO THE TRUE POINT OF BEGINNING.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED, ALLAN THOMSON AND MAT TROMSON HIM NUME FRE SIMPLE OWNERS OF A PORTION OF SMID LAND AND LAND AND TA WHITT TRUDELL WHO ACQUIRED THIS PROPERTY AS ... VA WHITTAKEN FOX AS HER SEPARATE FEE SIMPLE OWNER OF THE BALANCE OF SAID LAND, BY RICHARD J. WATERS, MY ATTORNE FACT UNDER THAT SPECIAL POWER OF ATTORNEY RECORDED UNDER AUDITOR'S FILE NO. VOLUME 8, PAGES 133 AND 134 OF HOWERS OF ATTURNEY, RECORDS OF WHATCOM COU WASHINGTON; AND GLEN CORNING, ABNER LUDTKE, A. J. MCMILLAN, MOKSHA W. SMITH, A HUTTON, JR., AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP AS GLEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND IN-FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITOR'S FILE IN VOLUME 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATGOM COUNTY INGTON, HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS. ALLEYS, EASEMENTS, AND PUBLIC SITES SHOWN ON THE PLAT; ALSO, THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES, AND ALSO THE RIGHT TO DRAIN ALL ROADS, ALLEYS, AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER GRADING; EXCEPT THAT TRACTS "A,B+C"AS SHOWN THEREON SHALL BE RESERVED FOR THE MEMBERS OF GLENHAVEN LAKES CLUB, INC.

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS 21 DAY OF MA Man A Thomson

GLEN CORNING, ABNER LUDTKE,

GLEN CORNING, PARTNER

ATTORNEY-IN-FACT

(SEAL)

A. J. MCMILLAN, MOKSHA W. SMITH,

A. J. HUTTON, JR. AND LAWRENCE C. ANGELL, D.B.A. GLENHAVEN LAKES

CONTRACT PURCHASERS

ALLAN THOMSON FEE SIMPLE OWNER

(SEAL)

FEE SIMPLE OWNER

IVA WHITTAKER TRUDE. FEE SIMPLE OWNER

BY Notard RICHARD J. WATERS, ATTORNEY-IN-FACT

)SS

STATE: OF WASHINGTON)

COUNTY OF WHATCOM DAY OF March, 1964, BEFORE ME, PERSONALLY APPEARED ON THIS 21 RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE WITHIN DEDICATION AS ATTORNEY-IN-FACT FOR IVA WHITTAKER TRUDELL. THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY-IN FACT FOR SAID PRINCIPAL, FREELY AND VOLUNTARILY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE DEDICATION HAS NOT BEEN

REVOKED AND THAT THE PRINCIPAL IS NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED. THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

NHAV	EN		AK	E
DIVISION	NUMBER	2 5)	

X, Cov to Bind AF# 100102001 27/B1 + 1-1/BI Dirts : IBP Lts 38+39 BIK 3 920824124

SECTION 29 & 32, T37N, R4E, W.M.

Μ	COUNTY,	WASHINGTON
	,	ENGINEER'S APPROVAL
<u>DIV.</u> 5 IS Te '_aw,		EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS
MONUMENT S AND OF THE	. 5	ENGINEER, WHATCOM COUNTY, WASHINGTON
0HNER F TH E E-260.00 South-) [*] ;	(ŞEAL)
", A T, HAVING	:	PLANNING COMMISSION APPROVAL
ENCE MIL TO		EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS
7'45" W- HE NW D		CHAIRMAN, WHATCOM COUNTY FLANNING COMMISSION
EING THE V AND E" W-		COMMISSIONER'S APPROVAL
NW		APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNT THIS DAY OF, 1964.
• ·	•	ATTEST: CLERK OF THE BOARD ALL CLUT COMMISSIONERS
	•.	(SEAL)
TJE V		TREASURER'S CERTIFICATE
AKER PROPERT	7.	1. Hugh Cory GOUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL.
EY-IN- 955118 IN INTY,	,	ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRESCRIBED BY LAW AND A Shown by the records in my office.
4. J. Maver		WITNESS MY OFFICIAL SIGNATIONE AND SEAL THUS JOTK DAY OF April , 1964.
D ATTORNE NO. 94208		TREASURER, WHATCOM DOUNTY, WASHINGTON
, WASH-		

(SEAL)

Wella Hansen OR WHATCOM COUNTY, WAS

AUDITOR'S CERTIFICATE

I. HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF Edward Paulsen ON THIS + 10th DAY OF April _ 1964 AT 30 MINUTES PAST 2 P.M. AND RECORDED IN MOLUME 9 OF PLATS, PAGES 55-56-57 OF THE RECORDS OF SAID COUNTY.

STATE OF WASHINGTON) SS

COUNTY OF WHATCOM

(SEAL)

Correnanto see Val 331 Buge 911 CUNTY OF WHATCOM ON THIS 21 DAY OF March, 1964, BEFORE ME PERSONALLY

APPEARED ALLAN THOMSON AND MATTIE THOMSON, HIS WIFE, TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN DEDICATION, AND ACKNOWLEDGED THAT THEY SIGNED THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN MENTIONED.

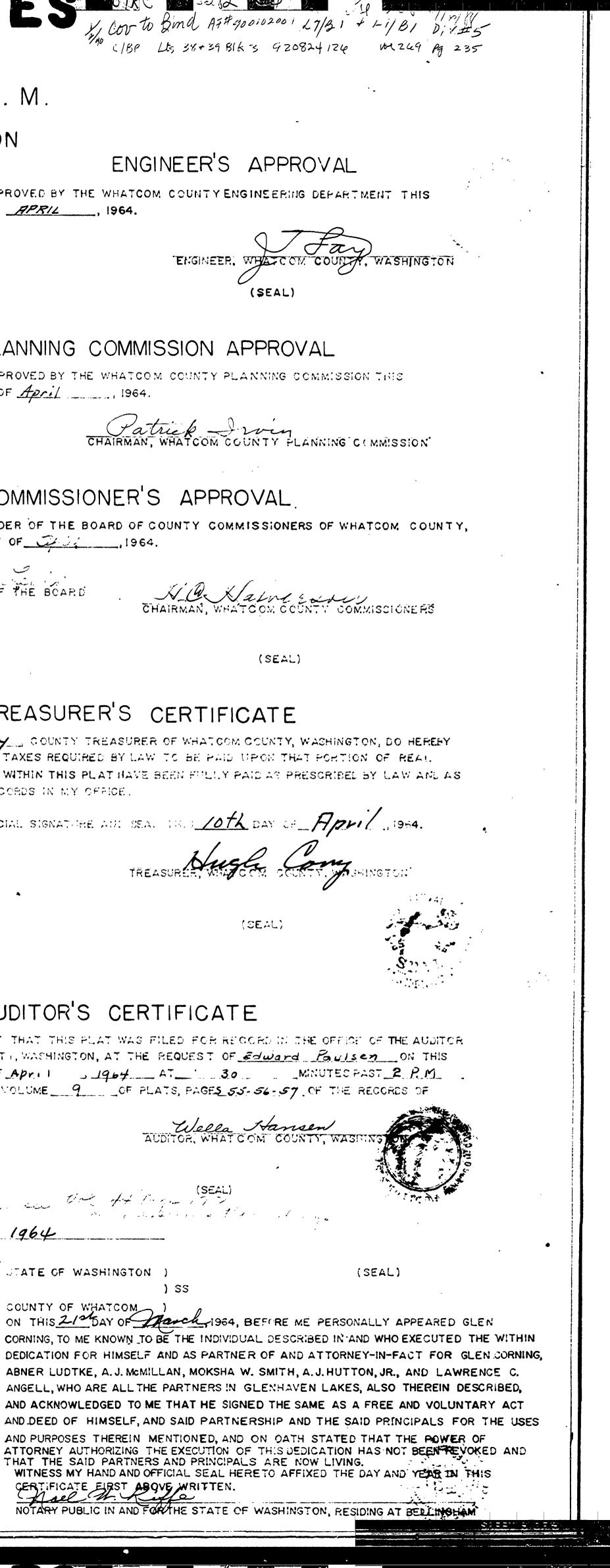
VITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED, THE DAY .. ND YEAR IN THIS CERTIFICATE FIRST ABOVE WR

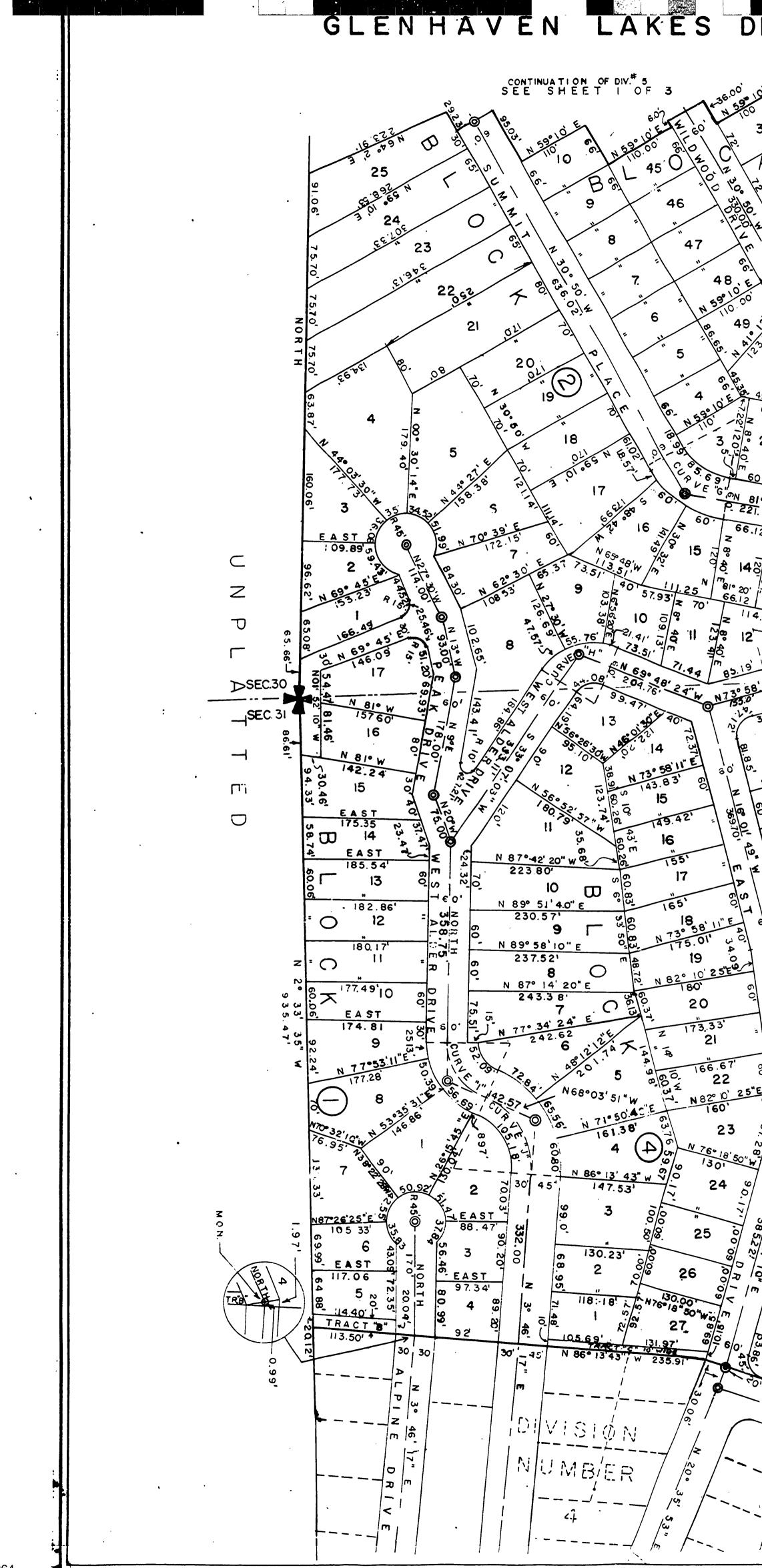
PUBLIC IN AND FOR THE STATE OF WASHINGDON, RESIDING AT

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND

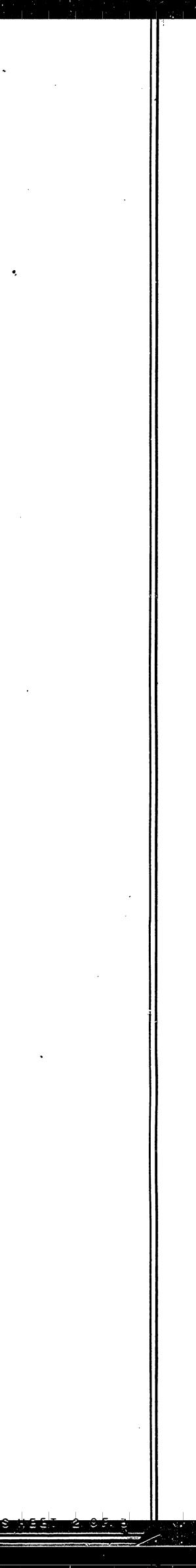
THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING.

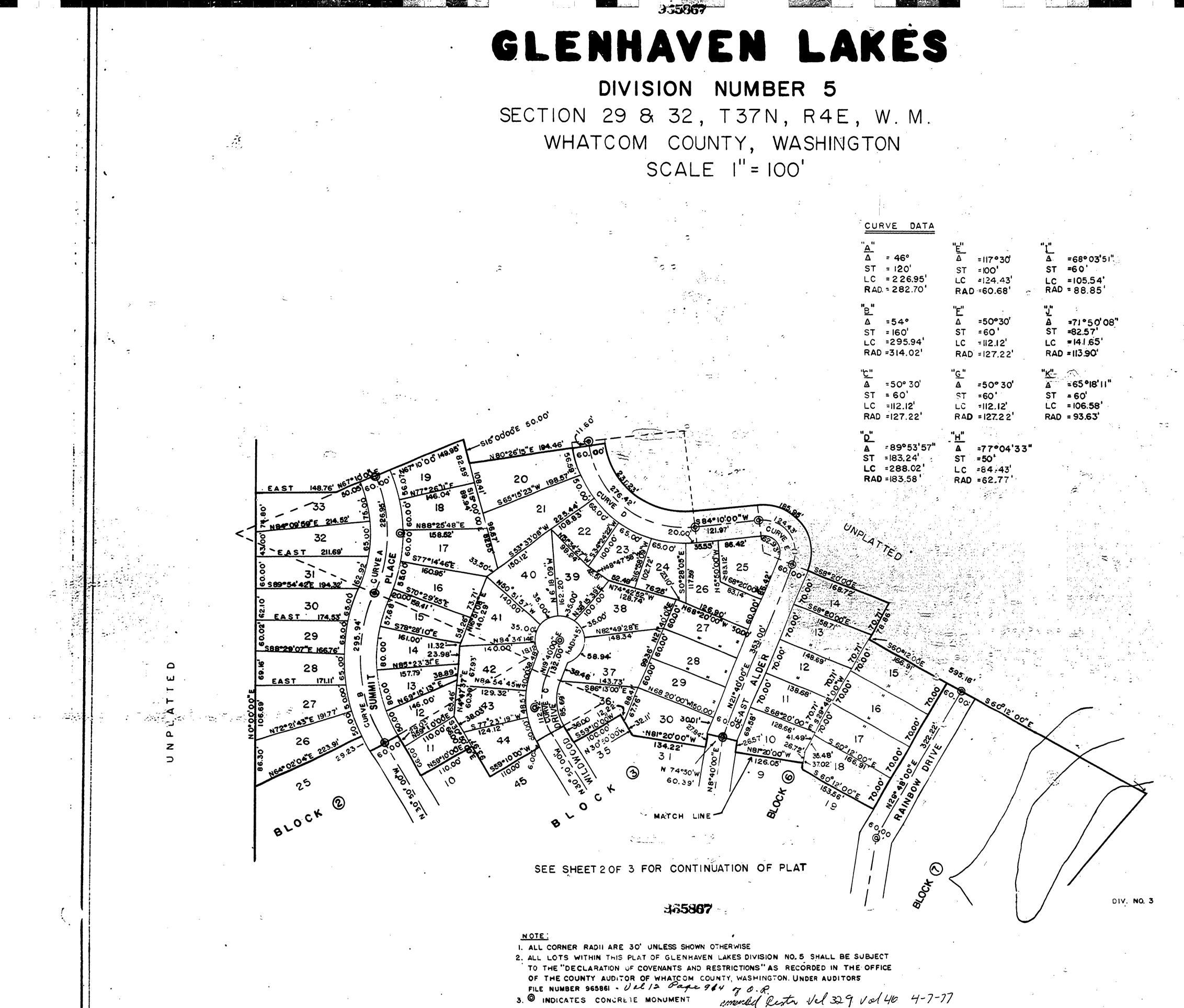
OR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

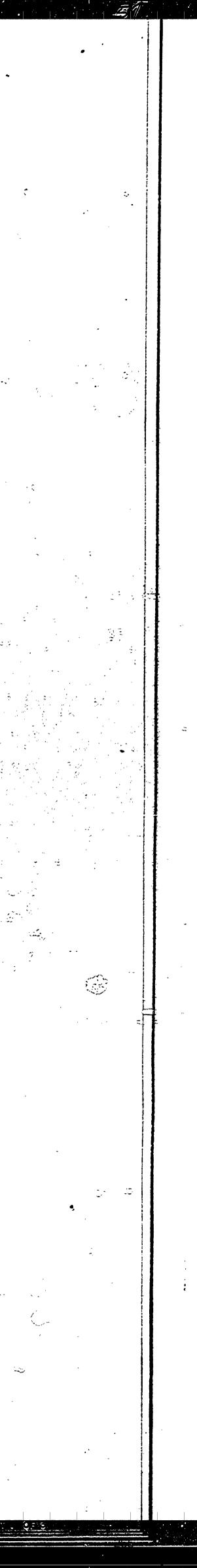


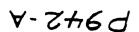


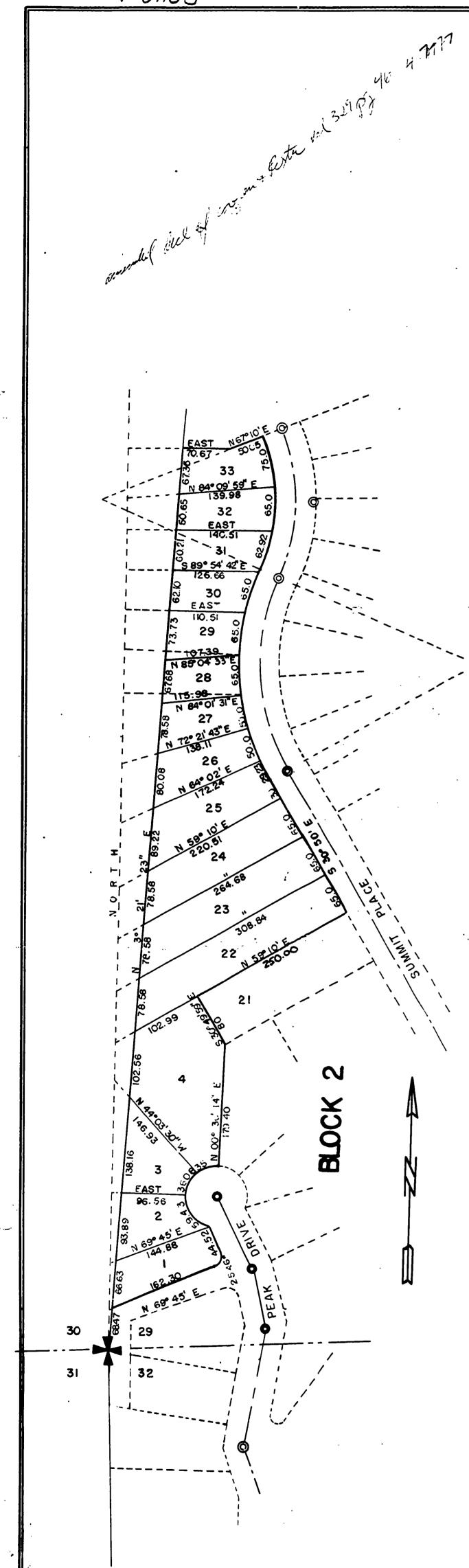
NUMBER S O N 5 |¹¹ ·= $| \bigcirc \bigcirc |$ SCALE MATCH LINE 33 **د**وک ·3012 32 N 81 20'W 9 W 34 \mathbf{r} 0 J 31 19 81-10 18 7 O 8/ ²⁶.05 20 6. 6. 9. 9. 81° 20' 120' 6 0 156.06 50 21 60, 105.33 W ⁵ス 28 12 22 150 27 4 51 .4 80 23 2 454 40' E 300.00' ৰ্বচ 26 60 66.12 0 0 24 150 06 25 8 2 25 24 126.05 õ 610' 2 26.06' J P. 221. 121 W --- \subset 96.05' 60' SUMMITOPLACE <[®] U 23 \leq زىز) \mathcal{O} \square · ⁻ 22 140 4 13 g - - -96.06 21 \bigcirc 240 [7] 12 22 20 20 2 126.05 20' W • O 21 12 26.06 23 |ð τ 20 SE C. 29 19 N 86° 57' 08" 24 [•] ک آ9 SEC 32 25 A i N 60 18 B 26 $\overline{ }$ 17 126.06' 27 Z z — 16 ر____ - - - -6 10,036 154.89⁺ 28 10 ŏ と , 7 14 <<u>.</u> |__ |= æ 15 w D 62.46 ---145.40[,] 29 **ï**3 \mathcal{O} \mathfrak{O} 14 < ---3 \bigcirc 2 S 81° 20' II ID 77.23 12 \triangleright 31 185° 45'24 2. 10 1 112.52 32 3 ·---9 0 15 .82 \leq 10 107.82 U) 8 0 8 33 18 9 [7] 氾 8 34,5 N 44 N 85º 45'24" E $\sum_{m=1}^{N}$ 100 6 ⁹⁹⁰ **3**5 ND 90. 60 5(7) 120 36 13 41 6 0 4 37 5 s_ /o 3 130 41 38 4 × 5367 2 . |ō 39 3 ရေ 19.90' A 57 19.90' A 19.90' A 2 N 76º 18 N 72° 300.64' 309.36W 309.28' 120 3006. 1 76.931 NIZ 21'25"E ۍ 0.











WHATCOM

I, EDWARD M. PAULSEN, DO HEREBY CERTIFY THAT THIS REPLAT OF DIVISION NUMBER 5 OF GLENHAVEN LAKES, IS BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIRMENTS OF STATE LAW, THAT ALL DISTANCES. COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON; THAT PROVISION FOR ALL MONUMENTS HAVE BEEN PROVIDED ON THE GROUND; AND THAT THE REPLAT COVERS THAT PORTION OF THE NWA SEC. 32, T 37 N, R 4 E; W.M. AND THAT OF THE SWX SEC. 29. T 37 N. R 5 E, W. M., DESCRIBED AS FOLLOWS; COMMENCING AT A POINT N 3° 21' 23" E AND 68.47' FROM THE NW CORNER OF SEC. 32, T37N, R4E, W.M. THENCE N 3º 21' 23" E - 1265.34"; THENCE EAST - 70.67"; THENCE N 67º 10' 00" E 50.05'; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 252.70' AND A CENTRAL ANGLE OF 46° 00'00" A DISTANCE OF 202.87', THIS BEING THE MOST WESTERLY RIGHT OF WAY LINE OF SUMMIT PLACE ROAD; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT HAVING A RADIUS OF 344.02' TO THE MOST WESTERLY RIGHT OF WAY LINE AND HAVING A CENTRAL ANGLE OF 54° 00'00" FOR A DISTANCE 324.21'; THENCE S 30° 50' 00" E - 225.00'; THENCE S 59° 10' 00" W - 250.00'; THENCE S 30° 49 59" E - 80.00': THENCE S 00° 30' 14" W - 179.40'; THENCE WESTERLY ON A CURVE TO THE LEFT HAVING A RADIUS OF 45.00' FOR A DISTANCE OF 130.51, WHICH IS THE WESTERLY RIGHT OF WAY LINE OF PEAK DRIVE ROAD: THENCE S 27° 30' 00" E - 44.52"; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 15 00' FOR A DISTANCE OF . 25.46': THENCE S 69º 45' 00" W - 162.30' TO THE TRUE POINT OF BEGINNING.



KNOW ALL MEN BY THESE PRESENTS THAT I, THE UNDERSIGNED, IVA WHIT-TAKER TRUDELL WHO ACQUIRED THIS PROPERTY AS IVA WHITTAKER FOX AS HER SEPARATE PROPERTY, FEE SIMPLE OWNER OF THE BALANCE OF SAID LAND, BY RICHARD J. WATERS, MY ATTORNEY-IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY RECORDED UNDER THE AUDITOR'S FILE NO. 958118 IN VOLUME 8, PAGES 133 AND 134 OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON; AND GLEN CORNING, ABNER LUDTKE, A. J. MACMILLAN, MOKSHA W, SMITH, A.J. HUTTON JR., AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP AS GLENHAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND ATTORNEY-IN-FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITOR'S FILE NO. 942089 IN VOLUME 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON, HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASE MENTS, AND PUBLIC SITES SHOWN ON THE PLAT; ALSO, THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THELOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES. AND ALSO THE RIGHT TO DRAIN ALL ROADS, ALLEYS, AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE FOR GRADING; EXCEPT THAT TRACTS "A, B, &C" AS SHOWN THEREON SHALL BE RESERVED FOR THE MEM-BERS OF GLENHAVEN LAKES, INC. IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS July DAY OF GLEN CORNING, ABNER LUDTKE, 1964.

IVA WHITTAKER TRUDELL FEE SIMPLE OWNER

, waters BY XCUARO RICHARD J. WATERS, ATTORNEY-IN-FACT

STATE OF WASHINGTON) COUNTY OF WHATCOM ___, 1964, BEFORE ME. PERSONALLY AP-ON THIS ____ DAY OF ___ PEARED RICHARD J. WATERS, TO ME KNOWN AS INDIVIDUAL WHO EXECUTED THE WITHIN DEDICATION AS ATTORNEY - IN - FACT FOR IVA WHITTAKER TRUDELL. THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY - IN - FACT FOR SUCH PRINCIPAL, FREELY AND VOLUNTARILY, FOR THE PURPOSES AND USES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE DEDICATION THE NOT BEEN REVOKED AND THAT THE PRINCIPAL IS NOW LIVING WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

meser NOTARY PUBLIC-IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

. I ^{cw} 5 | 3 | 4 | 2 | 6 | 2 | 8 | 6 | 10 | 11 | 15 | 13 | 7 | 7 |

GLENHAVEN LAKES

REPLAT OF DIVISION ⁴⁵, BLOCK 2

SECTION 29 8 32, T37N, R4E, W. M.

COUNTY, WASHINGTON

DESCRIPTION OF REPLAT OF GLENHAVEN LAKES DIV. 5

ENGINEER

DEDICATION

A.J. MCMILLAN, MOKSHA W. SMITH, A.J. HUTTON JR., AND LAWRENCE C. ANGELL, D.B.A. GLENHAVEN LAKES

GLEN CORNING, PARTNER AND ATTORNEY-IN-FACT

ACKNOWLEDGEMENTS

CONTRACT PURCHASERS

No.18

ENGINEER'S APPROVAL

EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS 21 DAY OF JULY_, 1964.

COMMISSION APPROVAL PLANNING EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS _____ DAY OF July_

COMMISSIONER'S APPROVAL

HATCOM COUNTY

APPROVED BY ORDER OF THE BOARD OF COUNSY CON MISSIONERS OF WHATCOM COUNTY, DAY OF

ATTEST

CHAIRMAN, WHATCOM COUNTY COMMISS

TREASURER'S CERTIFICATE

_, COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON; DO HEREBY CERT-IFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRE-SCRIBED BY LAW AND AS SHOWN BY THE RECORDS M MY OFFICE.

WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS 21 st DAY OF July 1964.

TREASURER, WHATCOM COUNTY, WASHINGTON

AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF _ ON THE 27 DAY OF July MINUTES PAST ____ **1964.** AT RECORDED IN VOLUME _____ OF PLATS, PAGES OF THE RECORDS OF THE 60 RECORDS OF SAID COUNTY.

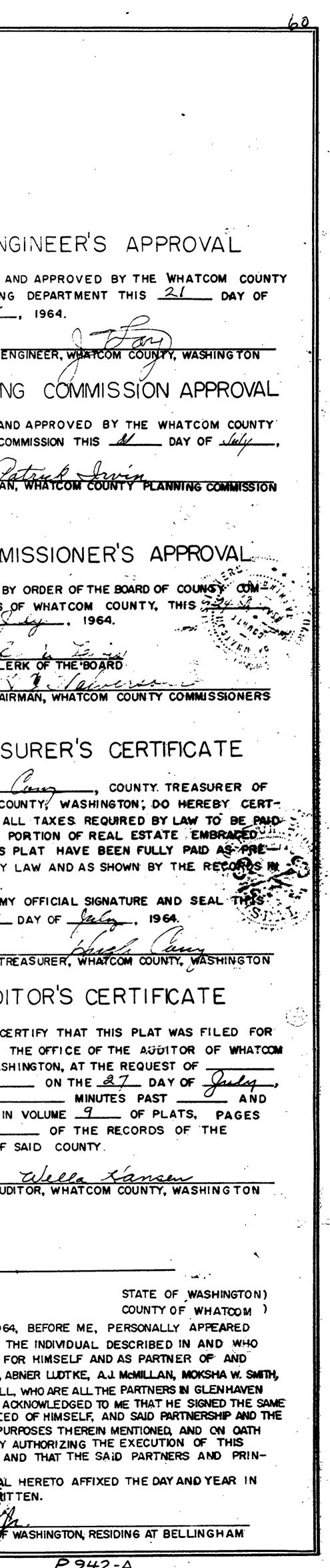
Jansen AUDITOR, WHATCOM COUNTY, WASHING TON

STATE OF WASHINGTON) COUNTY OF WHATCOM

ON THIS ____ DAY OF _____, 1964, BEFORE ME, PERSONALLY APPEARED GLEN CORNING. TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE WITHIN DEDICATION FOR HIMSELF AND AS PARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CORNING, ABNER LUDTKE, A.J. MCMILLAN, MOKSHA W. SMITH, A.J. HUTTON, JR., AND LAWRANCE C. ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THEREIN DESCRIBED, AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME FREE AND VOLUNTARY ACT AND DEED OF HIMSELF, AND SAID PARTNERSHIP AND THE SAID PRINCIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICATION HAS NOT BEEN REVOKED AND THAT THE SAID PARTNERS AND PRIN-CIPALS ARE NOW LIVING WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN

THIS CERTIFICATE EIRST BOVE WRITTEN. NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

P942-A



		*	GLEN
	EXHIBIT G	en an	DIVIS
•		SECTION	29
		WHATC	:OM
	DESCRIPTION		
	I EDWARD M. PAULSEN DO HEREBY CERTIFY THAT THIS PLAT, TH BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE THAT ALL DISTANCES, COURSES AND ANGLES ARE CORRECTLY SHO AND STAKES HAVE BEEN ACCURATELY PLACED ON THE GROUND, AN EMBRACES THAT PORTION OF THE SW 1/4 SEC. 29, T37N, R4E, W COMMENCING AT A POINT BEING THE INTERSECTION OF THE CENT AND THE NORTH BOUNDARY OF THE PLAT OF GLENHAVEN LAKES AND FOLLOWING THE NORTH BOUNDARY OF SAID PLAT 196.91'; THENCE N 68° 20'00" W BEING RADIAL, 168.72' TO THE INT BOUNDARY OF EAST ALDER DRIVE; THENCE NORTHWESTERL A RADIUS OF 90.68' AND A CENTRAL ANGLE OF 117° 30'00", A D 10'00" W, 12197'; THENCE ON A CURVE TO THE RIGHT HAVING TRAL ANGLE OF 86° 16' 15", A DISTANCE OF 231.23', THENCE S TO A POINT BEING AN INTERSECTION OF THE WESTERLY BOUNDA NOR THERLY BOUNDARY OF SAID PLAT; THENCE ON A CURVE OF 213.58' AND A CENTRAL ANGLE OF 3° 37' 15", A DISTANCE OF 484.91', THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 14" 21' 08", A DISTANCE OF 38.08'; THENCE N 69° 42' 22" E SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 75° 38' 52" A DISTANCE OF 39.61', THENCE N 69° 42' 22" E SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 75° 38' 52" A DISTANCE OF 39.61', THENCE N 69° 42' 22" E SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 75° 38' 52" A DISTANCE OF 39.61', THENCE N 69° 42' 22" E SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 75° 38' 52" A DISTANCE OF 39.61', THENCE N 69° 42' 22" E SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 75° 38' 52" A DISTANCE OF 39.61', THENCE S 60° 42' 00" W, 251. THENCE S 29° 48' 00" W, 75.32' MORE OR LESS TO AN INTER BOUNDARY OF RAINBOW DRIVE AND THE NORTHERLY BOUNDA OO' W, 30.00' TO THE TRUE POINT OF BEGINNING.	REQUIREMENTS C WN HERE ON, THAT ID THAT THE PLA M. DESCRIBED A FER LINE OF RAIN 5 DIV. 5; THENCE THENCE N 29° ERSECTION WITH Y ON A CURVE TO STANCE OF 185.9 A RADIUS OF 153 80° 26' 15" W BEIN RY OF EAST ALD TO THE RIGHT HA 5 13.50'; THENCE 152.02' AND A CE BEING RADIAL 60 US OF 30.00' AND 42.75'; THENCE S 91'; THENCE S IG RECTION OF THE ARY OF SAID PLAT	ALL MONI T COVERS S FOLLOWS S FOLLOWS BOW DRIVE AB'00" E, THE EAST THE EAST O THE LEFT S', THENCE AVING A N 5° 56' 30" ENTRAL A D.OO'; THEN D A CENTRA D A
	REGISTERED DEDICATION	PROFESSIONAL	ENGINEE
•	KNOW ALL MEN BY THESE PRESENT THAT I, THE UNDERSIGN ACQUIRED THIS PROPERTY AS IVA WHITTAKER FOX AS HER S HOLDER OF THE BALANCE OF SAID LAND, BY RICHARD J. WATERS THAT SPECIAL POWER OF ATTORNEY, RECORDED UNDER THE VOLUME 8, PAGES 133 AND 134 OF POWERS OF ATTORNEY, WASHINGTON; AND GLEN CORNING, ABNER LUDTKE, A.J. Mel HUTTON JR., AND LAWRENCE C. ANDELL, DOING BUSINESS I LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN O ATTORNEY-IN-FACT UNDER THE LIMITED POWER OF ATTORNE FILE NO. 942089 IN VOLUME 36, PAGES 189 - 191, OF POWER WHATCOM COUNTY, WASHINGTON, HEREBY DECLARE THIS PLA THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASEMENTS AND PLAT; ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING SITES OVER ORACROSS ANY LOT OR LOTS WHERE WATER MIC AFTER GRADING.	EPARATE PROPER S, MY ATTORNEY AUDITOR'S FILE RECORDS OF WHA MILLAN, MOKSHA N CO-PARTNERS ORNING, OUR PA EY RECORDED UN RS OF ATTORNEY T AND DEDICATE PUBLIC SITES, FOR CUTS AND I OF ROADS, ALL	RTY, FEE -IN-FACT NO. 958118 TCOM COUN W. SMITH, SHIP AS GLI ARTNER AN NDER AUDIT , RECORDS TO THE U SHOWN ON FILLS UPO EYS, AND
• • • • •	IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HAND		•
<u>ن</u>	FEE SIMPLE OWNER MOKSHAWS C. ANGELL, D	NG, ABNER LUDTKE MITH, A.J. HUTTO B.A. GLENHAVEN PURCHASERS	N JR. AND I LAKES COM
	GLEN COR IN-FA	NING, PARTNER AND CT /	ATTORNEY-
	For Declar Brownded itel of	tion Cover	ianto &
•	STATE OF WASHINGTON) COUNTY OF WHATCOM) ON THIS <u>12</u> DAY OF <u>Luguet</u> , 1964, BEFORE ME PERSON TO ME KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE WI FACT FOR IVA WHITTAKER TRUDELL, THEREIN DESCRIBED A SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SAID FOR FOR THE USES AND PURPOSES THEREIN MENTIONED AND O ATTORNEY AUTHORIZING THE DEDICATION HAS NOT BEEN R LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE FIRST ABOVE WRITTEN.	8697 Rev 46 0 NALLY APPEARED THIN DEDICATIO ND ACKNOWLEDG RINCIPAL, FREELY N OATH STATED EVOKED AND THA	RICHARD N AS ATT SED TO ME AND VOLU THAT THE AT THE PRIN
	Moel at Riffe		
•	NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING	5 AI BELLINGHAM	-

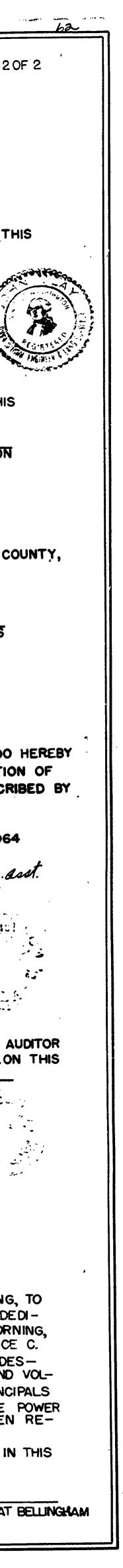
- '

ه مر

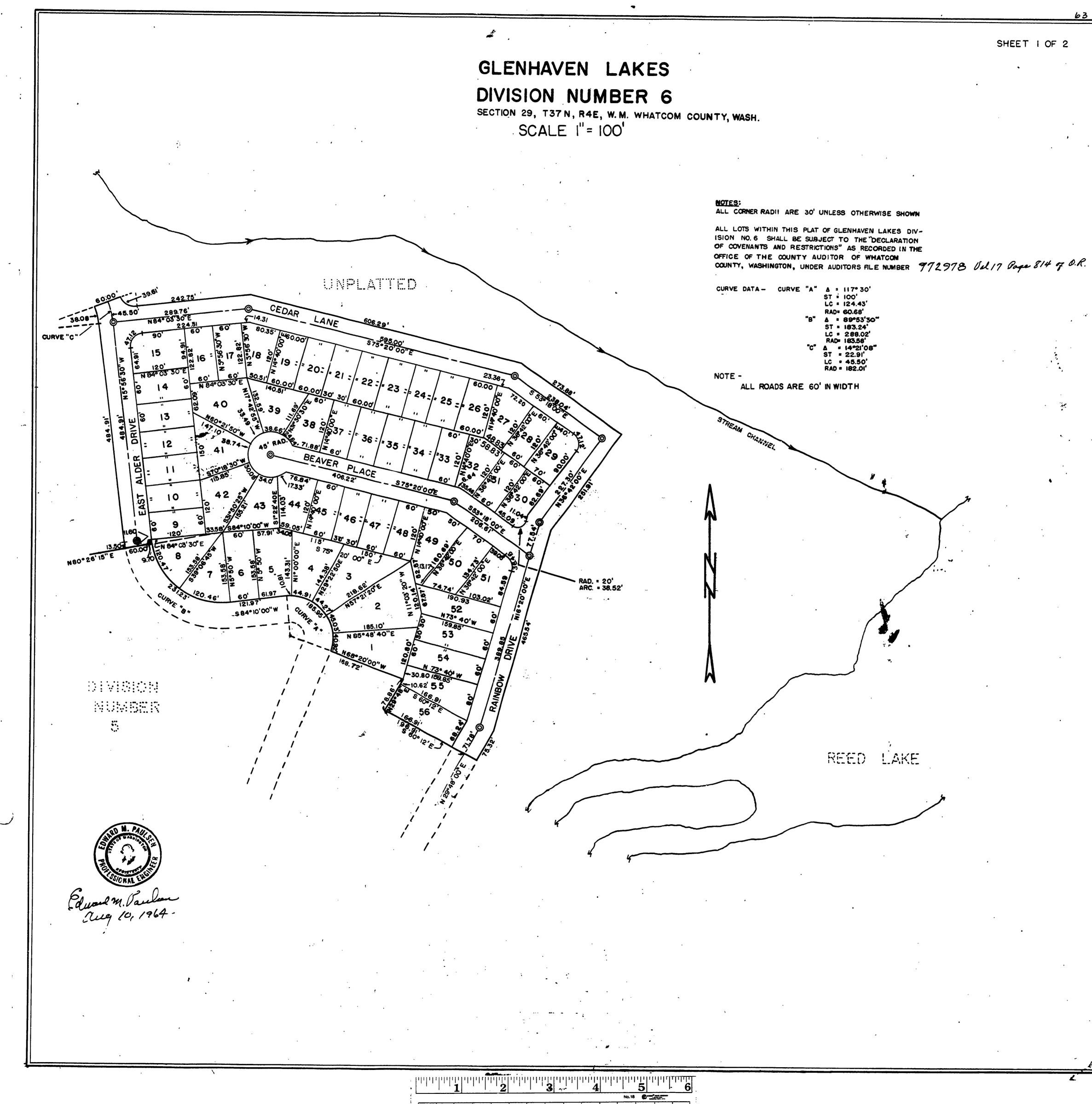
D/RC 1115282 der 12 64 758 Graff SHEET 20F2 NHAVEN LAKES ION NUMBER 6 T37N, R4E, W. M. COUNTY, WASHINGTON ENGINEER'S APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS .6 IS 14 DAY OF august. _, 1964. WA. UMENTS AND ENGINEER, WHATCOM COUNTY, WASHINGTO 00' W (SÉAL) 78.86'; TERLY HAVING PLANNING COMMISSION APPROVAL E S 84° EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS A CEN-60.00 - DAY OF <u>August</u> 1964. AND THE CHAIRMAN, WHATCOM COUNTY PLANNING COMMISSION RADIUS W, NGLE NCE AL ANGLE COMMISSIONER'S APPROVAL 'E, 606.29'; 465.54'; APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY, Y N 60° 12' THIS 14 14 DAY OF ANILIST, 1964. ATTEST: Wella Hannen CLERK OF THE BOARD Y COMMISSIONERS CHAIRMAN, WHATCOM TREASURER'S CERTIFICATE ELL, WHO SIMPLE ___,COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON, DO HEREBY UNDER CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF 3 IN REAL ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRESCRIBED BY NTY, LAW AND AS SHOWN BY THE RECORDS IN MY OFFICE A. J. ENHAVEN WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS 14th DAY OF 1D TORS S OF SE OF SURER WHATCOM COUNT THIS N THE (SEAL) PUBLIC RSE quet, 1964. AILLAN, AUDITOR'S CERTIFICATE LAWRENCE NTRACT I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF ____ _DAY OF Inquat____, 1964 AT ____ MINUTES PAST _ 1417 AND RECORDED IN VOLUME _____OF PLATS, PAGES 62463 OF THE RECORDS OF. SAID COUNTY. Wella No roes AUDITOR, WHATCOM COUNTY, WASHINGTON (SEAL) Restriction Lee Vol 17 Page 814 4-7-77 CR ACKNOWLEDGEMENTS 103/00 STATE OF WASHINGTON) COUNTY OF WHATCOM) ON THIS 12 Th DAY OF Juguet, 1964, PERSONALLY APPEARED GLEN CORNING, TO J. WATERS. ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN WHO EXECUTED THE WITHIN DEDI-TORNEY-IN-CATION FOR HIMSELF AND AS PARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CORNING. E THAT HE ABNER LUDTKE, A.J. M.MILLAN, MOKSHA W. SMITH, A.J. HUTTON JR., AND LAWRENCE C. UNTARILY, ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THEREIN DES-POWER OF CRIBED, AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS A FREE AND VOL-ICIPAL IS NOW UNTARY ACT AND DEED OF HIMSELF, AND SAID PARTNERSHIP AND THE SAID PRINCIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THE POWER ERTIFICATE OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICATION HAS NOT BEEN RE-VOKED AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN. PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

I (w) T : 21 : 1 1 0 1 ; 6 : 8 · 2 | 9 ; 2 | 7 1 8 ; 3 ; 10 ; 1] . A product of the sector of the

No.18



267



· • •

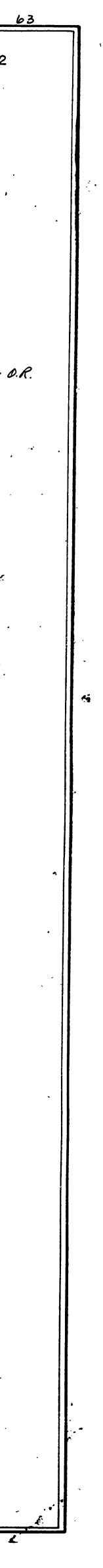


EXHIBIT H

DIVISI SECTION 29 WHATCOM

DESCRIPTION

-' •

I EDWARD M. PAULSEN DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES DIV. 7 IS BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW THAT ALL DISTANCES, COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON, THAT ALL MONUMENTS AND STAKES HAVE BEEN ACCURATELY PLACED ON THE GROUND; AND THAT THE PLAT COVERS AND EMBRACES THAT PORTION OF THE SW 1/4 SEC. 29, T37N, R4E, W. M. DESCRIBED AS FOLLOWS; COMMENCING AT A POINT ON THE WEST BOUNDARY OF THE SW 1/4 SEC. 29, T37N, R4E, W.M. BEING THE NW CORNER OF THE REPLAT OF GLENHAVEN LAKES DIV. 5 BLOCK 2; THENCE N 3º 21'23"E AND FOLLOWING THE WEST BOUNDARY OF SAID SW 1/4 800.00'; THENCE N47º 43' 20"E, 180.13'; THENCE EAST, 250.00'; THENCE S49° 31' 00" E, 159.64'; THENCE S29° 30' 00" W, 10.00'; THENCE S60° 30'00"E, 122.35'; THENCE S87° 00'00"E, 509.33'; THENCE S64°11'10"E, 275.48'; THENCE \$55° 19' 00"E, 247.85'; THENCE \$36° 42' 00" W, 90.73'; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00' AND A CENTRAL ANGLE OF 90° A DISTANCE OF 47.12' TO A POINT ON THE NORTH BOUNDARY OF THE PLAT OF GLENHAVEN LAKES DIV. 6 ; THENCE N53º 18' 00"W AND FOLLOWING THE NORTH BOUNDARY OF SAID PLAT 183.88'; THENCE N75º 20' 00"W, 606.29'; THENCE S84º 03' 30"W, 242.75'; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00' AND A CENTRAL ANGLE OF 75° 38' 52" FOR A DISTANCE OF DISTANCE OF 39.61'; THENCE S69° 42' 22"W BEING RADIAL 60.00' TO A POINT ON THE WEST BOUNDARY OF SAID PLAT; THENCE SOUTHERLY AND FOLLOWING THE WEST BOUNDARY OF SAID PLAT ON A CURVE TO THE LEFT HAVING A RADIUS OF 152.02' AND A CENTRAL ANGLE OF 14° 21'08" A DISTANCE OF 38.08'; THENCE S5º 56' 30"E, 484.91'; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 213.58' AND A CENTRAL ANGLE OF 3° 37' 15" A DISTANCE OF 13.50' TO A POINT BEING , THE SW CORNER OF THE SAID PLAT; THENCE S80° 26' 15W AND FOLLOWING THE NORTH BOUNDARY OF THE PLAT OF GLENHAVEN LAKES DIV. 5, 194.46'; THENCE N 15° 00'00" W, 50.00'; THENCE S67º 10' 00"W, 260.05; THENCE EAST, 70.67' MORE OR LESS TO THE POINT OF BEGINNING



Edward M REGISTERED PROFESSIONAL ENGINEER

DEDICATION

KNOW ALL MEN BY THESE PRESENT THAT I, THE UNDERSIGNED, IVA WHITTAKER TRUDELL, WHO ACQUIRED THIS PROPERTY AS IVA WHITTAKER FOX AS HER SEPARATE PROPERTY, FEE SIMPLE HOLDER OF THE BALANCE OF SAID LAND, BY RICHARD J. WATERS, MY ATTORNEY-IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY, RECORDED UNDER THE AUDITOR'S FILE NO. 958118 IN VOLUME 8, PAGES 133 AND 134 OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON, AND GLEN CORNING, ABNER LUDTKE, A.J. MCMILLAN, MOKSHA W. SMITH, A.J. HUTTON JR. AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP AS GLENHAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND ATTORNEY-IN-FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITOR'S * FILE NO. 542089 IN VOLUME 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON, HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES, SHOWN ON THIS PLAT; ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUT AND FILLS UPON THE LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROAD, ALLEYS, AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER GRADING

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS 28 DAY OF August IVA WHITTAKER TRUDELL

FEE SIMPLE OWNER

RICHARD J. HATERS, ATTORNEY-IN-FACT

GLEN CORNING, ABNER LUDTKE, A.J. MCMILLAN, MOKSHA W. SMITH, A. J. HUTTON JR. AND LAWRENCE C. ANGELL, D. B.A. GLENHAVEN LAKES CONTRACT PURCHASERS

mul GLEN CORNING, PARTNER AND ATTORNEY-IN - FACT

ACKN

STATE OF WASHINGTON) COUNTY OF WHATCOM

ON THIS 25th DAY OF Lugust , 1964, BEFORE ME PERSONALLY APPEARED RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE WITHIN DEDICATION AS ATTORNEY-IN-FACT FOR IVA WHITTAKER TRUDELL, THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SAID PRINCIPAL, FREELY AND VOLUNTARILY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE DEDICATION HAS NOT BEEN REVOKED AND THAT THE PRINCIPAL IS NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE

FIRST ABOVE WRITTEN.

.

Moel the Sife

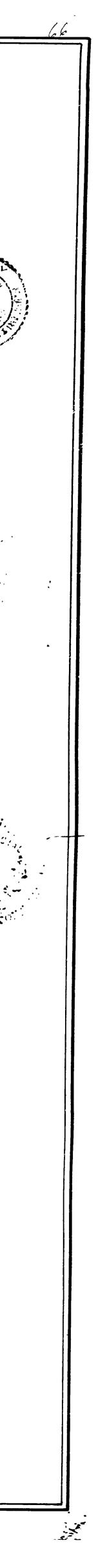
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

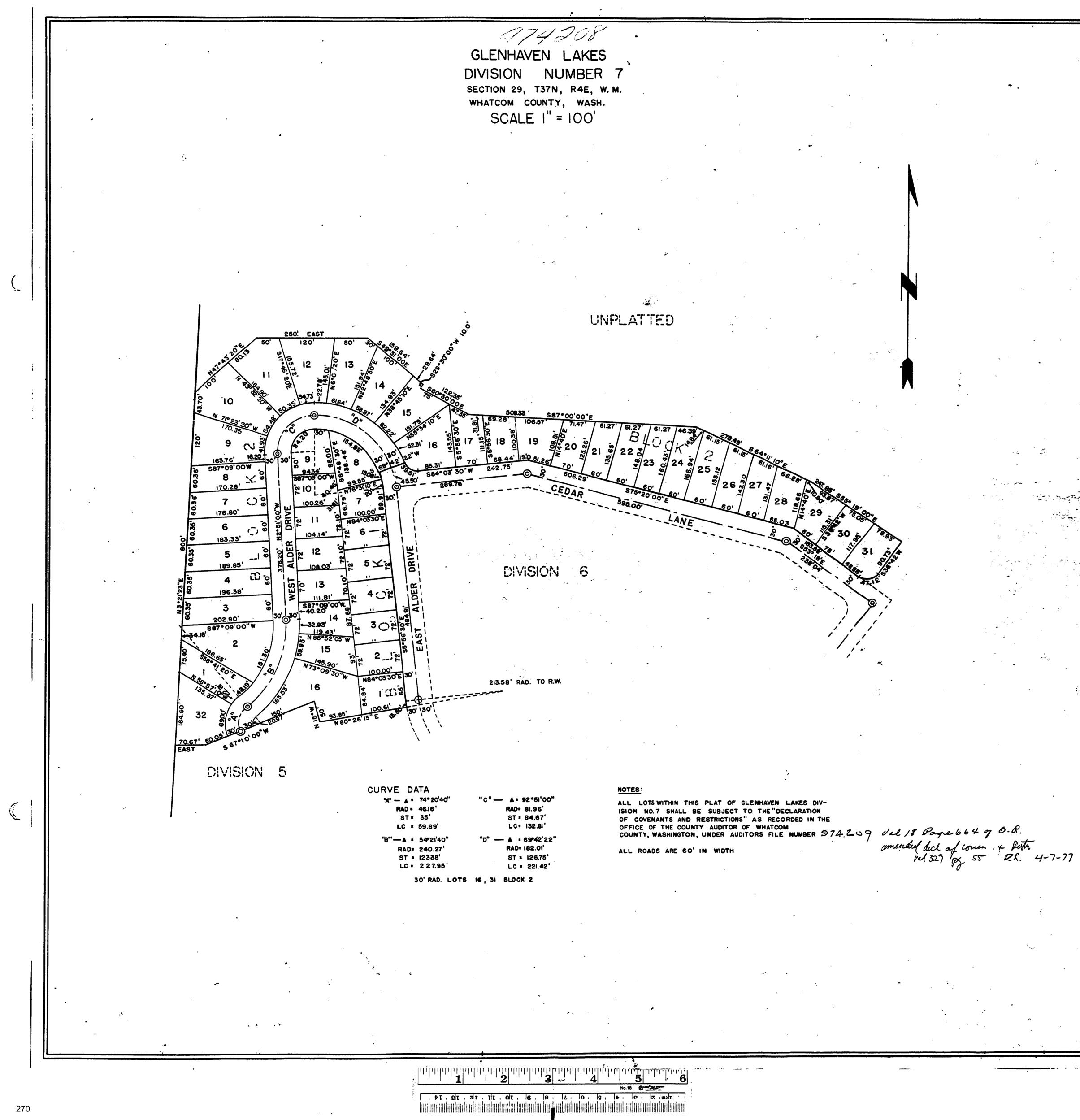
GLENHAVEN LA DIVISION NUMBI	44413	
29 T37N, R4E,		
M COUNTY, W	VASHINGTON	
	ENGINEER'S APPROVAL	
7 IS	EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS	
LAW IUMENTS RS AND	100 to Burde # 900 529041 1151 P1230 L12413 B1	1. 4 1
NS; M.	(tru)	
47° 43' 20"E, THENCE	- MIJA 11500 (11) JAP 158 4/1411 (SEAL)	
NCE HAVING	- 15 p 162366 Rev 70 p 465 12/2/1/21 1623857 Rev 70 P 466 12/2/1/21	
ON THE THENCE	PLANNING COMMISSION APPROVAL	
AND A ' 22''W	EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS 	
ERLY A	CHAIRMAN WHATCOM COUNTY PLANNING COMMISSION	
ND JER		
	COMMISSIONER'S APPROVAL	
	APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY,	• • • •
•	CLERK OF THE BOARD	* *
	CHAIRMAN, WHATCOM COUNTY COMMISSIONERS	
	TREASURER'S CERTIFICATE I, <u>Juch</u> , county treasurer of whatcom county, washington, do hereby certify that all taxes required by law to be paid upon that portion of real estate embraced within this plat have been fully paid as prescribed by law and as shown by the records in my office. WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS <u>Juc</u> day of <u>September</u> , 1964.	٢
	- Hugh Com	·
	TREASURE, WHATCOM COUNTY, WASHINGTON (SEAL)	<form><form><form><form><form></form></form></form></form></form>
	AUDITOR'S CERTIFICATE	مد ند ند . ۲
	I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR	
=	OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF JEdward Paulsen ON THIS	
54.	AND RECORDED IN VOLUME 9_OF PLATS, PAGES 66467 OF THE RECORDS OF SAID COUNTY.	
	AUDITOR, WHATCOM COUNTY, WASHINGTON	
	(SEAL)	
ACKNOWLEDGEME	INTS	
NATERS,	ON THIS 28 DAY OF Juguet, 1964, PERSONALLY APPEARED GLEN CORNING, TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN WHO EXECUTED THE WITHIN DEDI- CATION FOR HIMSELF AND AS PARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CORNING, ABNER LUDTKE, A.J. McMILLAN, MOKSHA W. SMITH, A.J. HUTTON JR. AND LAWRENCE C. ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THEREIN DES- CRIBED, AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS A FREE AND VOL- UNTARY ACT AND DEED OF HIMSELF, AND SAID PARTNERSHIP AND THE SAID PRINCIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICATION HAS NOT BEEN REVOKED AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING.	
	CERTIFICATE FIRST ABOVE WRITTEN	

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM **.** .

 $1 \quad 2 \quad 3 \quad 4 \quad 5 \quad 6$

No.18





· .



EXHIBIT I

DIVIS SECTION 29

WHATCOM

DESCRIPTION

I EDWARD M. PAULSEN DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES DIV. 8 IS BAS UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW THAT ALL DISTANCES, COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON, THAT ALL MONUMENTS AND STAKE HAVE BEEN ACCURATELY PLACED ON THE GROUND; AND THAT THE PLAT COVERS AND EMBRACES THA PORTION OF THE SW 1/4 SEC. 29, T37N, R4E, W.M. DESCRIBED AS FOLLOWS; COMMENCING AT THE SE. CORNER OF THE PLAT OF GLENHAVEN LAKES DIV. 6; THENCE N29°48'00"E AND FOLLOWING THE EASTE BOUNDARY OF SAID PLAT 75.32'; THENCE NI6º 20'00"E 465.54' THENCE N 36º 42'00"E 251.91' TO THE M CORNER OF SAID PLAT; THENCE N53º18'00"W AND FOLLOWING THE NORTHERLY BOUNDARY OF SAID PLA 90.00' TO A POINT BEING THE INTERSECTION OF THE NORTH BOUNDARY OF SAID PLAT AND EASTERLY BOUNDARY OF THE PLAT OF GLENHAVEN LAKES DIV. 7; THENCE NORTH EASTERLY AND FOLLOWING THE EASTERLY BOUNDARY OF SAID PLAT ON A CURVE TO THE LEFT HAVING A RADIUS OF 30.00' AND A CENT ANGLE OF 90" A DISTANCE OF 47.12"; THENCE N36"42'00"E 90.73" TO THE N.E. CORNER OF SAID PLA THENCE N55° 19'00"W AND FOLLOWING THE NORTHERLY BOUNDARY OF SAID PLAT 247.85; THENCE N64"11' 1 0"W 275.48'; THENCE N87"00'00"W 342.34'; THENCE N 2"11'30"W 216.54; THENCE N87"48'3 333.82'; THENCE S59°26'30"E 764.99'; THENCE S45°42'00"W 136.93'; THENCE S36°42'00"W 47 THENCE S64+00'00"E 750.00'; THENCE S52+39'30"E 322.34' MORE OR LESS TO A POINT BEING AN ANGLE IN THE NORTHERLY BOUNDARY OF THE PLAT OF GLENHAVEN LAKES DIV. 3; THENCE SISº 08'38 AND FOLLOWING THE NORTHERLY BOUNDARY OF SAID PLAT 260.17 '; THENCE S58°34'13"W 210.95' THENCE S68" 37'45"W 246.98'; THENCE S85"45'50"W 541.52' TO AN INTERSECTION OF THE NORTHER BOUNDARIES OF THE PLATS OF GLENHAVEN LAKES DIV. 3 AND DIV. 5; THENCE N60º12'00" W AND FOLLOWING THE NORTHERLY BOUNDARY OF THE SAID PLAT OF DIV. 5 368.25' MORE OR LESS TO TH POINT OF BEGINNING.



M - durand PROFESSIONAL ENGINEER

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED GEORGE COBELENS, WALLACE WINTER, AND MARIE E. WINTER, HIS WIFE, CARL MILLER AND HELEN M. MILLER, HIS WIFE, AND HILDA MILLER, A WIDOW, SUCCESSORS IN INTEREST TO GENERAL BUILDING INC. AND FEE SIMPLE OWNERS OF A PORTION OF SAID LAND, BY RICHARD J. WATERS, OUR ATTORNEY-IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY RECORDED UNDER AUDITORS FILE NO. 942475 IN VOL. 36, PG. 196, OF POWERS OF ATTORNEY, - RECORDS - OF WHATCOM COUNTY AND THAT I, THE UNDERSIGNED, IVA WHITTAKER TRUDELL, WHO ACQUIRED THIS PROPERTY AS IVA WHITTAKER FOX AS HER SEPARATE PROPERTY, FEE SIMPLE HOLDER OF THE BALANCE OF SAID LAND, BY RICHARD J. WATERS, MY ATTORNEY-IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY, RECORDED UNDER THE AUDITOR'S FILE NO. 95818 IN VOLUME 8, PAGE 133 AND 134 OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON; AND GLEN CORNING, ABNER LUDTKE, A. J. MCMILLAN, MOKSHA W. SMITH, A. J. HUTTON JR. AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP AS GLENHAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND ATTORNEY-IN-FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITOR'S FILE NO. 942089 IN VOLUME 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON, HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES, SHOWN ON THIS PLAT; ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROADS, ALLEYS AND PUBLIC

SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER GRADING. (SEE FOOTNOTE BELOW) IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS 20 DAY OF OUT of and 1964.

IVA WHITTAKER TRUDELL FEE SIMPLE OWNER

GLEN CORNING, ABNER LUDTKE, A. J. MCMILLAN, MOKSHA W. SMITH, A. J. HUTTON JR. AND LAWRENCE C. ANGELL, D. B. A. GLENHAVEN LAKES CONTRACT PURCHASERS ~

BY Kehande Haters, ATTORNEY-IN-FACT

GLEN CORNING, PARTNER AND ATTORNEY-BY (SIM IN-FACT.

FOOTNOTE: TRACTS"A, B + C AS SHOWN THEREON SHALL BE RESERVED FOR THE MEMBERS OF GLENHAVEN LAKES CLUB, INC.

STATE OF WASHINGTON COUNTY OF WHATCOM

ON THIS 20 DAY OF <u>Ottober</u>, 1964, BEFORE ME ACK PERSONALLY APPEARED RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL DESC-RIBED IN AND WHO EXECUTED THE FOREGOING DEED AS ATTORNEY-IN-FACT OF GEORGE COBELENS, MALLACE WINTER, AND MARIE E. WINTER, HIS WIFE CARE WILLOWS MICORPORTED AND FOR IVA WHITTAKER TRUDELL, THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SAID PRINCIPAL, FREELY AND VOLUNTARILY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE DEDICATION HAS NOT BEEN REVOKED AND THAT THE PRINCIPAL IS NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE

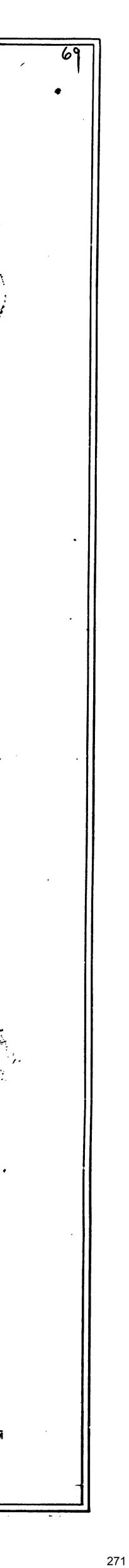
WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN

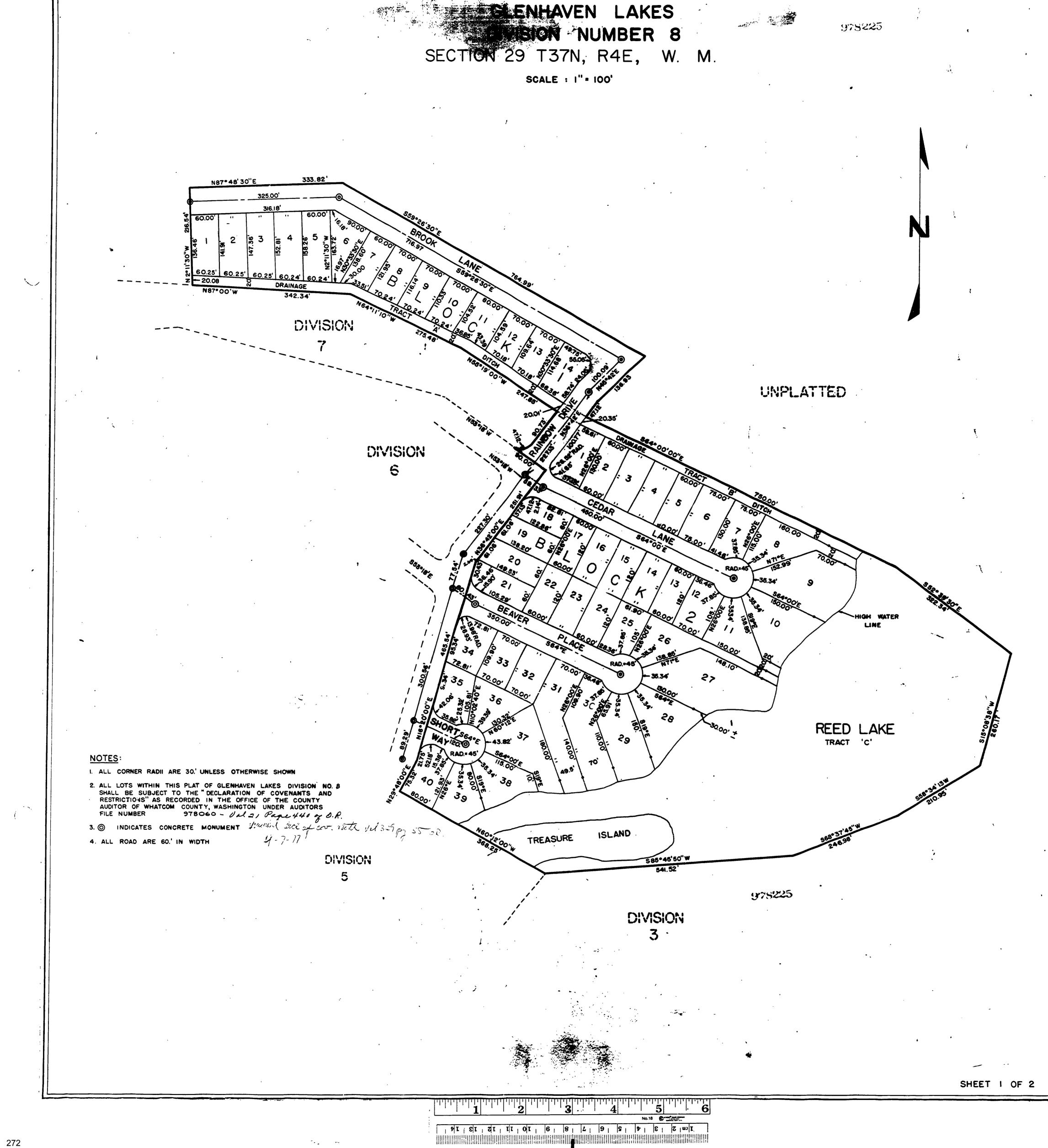
Moel The Rife NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

 $\begin{array}{c|c} 1 \\ 1 \\ 2 \end{array}$

1 (w 5 3 4 2 6 1 8 6 10 11 15 13 14

GLENHAVEN LAK	ES	
	2 (NA. A.)	
29 I <i>37</i> N, R4E,	W. M. Unit in this said to supply they a	• ,
•		
	ENGINEER'S APPROVAL	_
ID STAKES	EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT	THIS 20 DAY
HE SE.	0F	A CARACTER AND A CARA
OTHE NE.	ENGINEER, WHATCOM COUNTY, WESHINGTON	
TERLY	(SEAL)	
A CENTRAL		N. A.
-		" a manufactor of an interest
	PLANNING COMMISSION APPROVAL	
EING AN	<form></form>	
210.95';		
AND		
COM COUNTY, WASHINGTON B IS BASD AT ALL FR SE CES THAT TO THE AL SUBJECT TO THE AL SUBJECT THAT A CENTRAL SUBJECT THAT TO THE ER, CER, CER, CER, CER, CER, CER, CER		
	COMMISSIONER'S APPROVAL	
	APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM	COUNTY,
		ENCLOSE ADDROVED AND ADDROVED AND ADDROVED A
	CHAIRMAN, WHATCOM COUNTY COMMISSIONERS	
·		
	·	
- D	TREASURER'S CERTIFICATE	
	1 Hugh Corres, COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON,	DO HEREBY
		··· ····
IPLE UNDER	WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS AND OF Housenly	
		. ^
	TREASURER, WHATCOM COUNTY, WASHINGTON	
	(SEAL)	
S S		STA
IE		
E ·	AUDITOR'S CERTIFICATE	•
N, '	OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF	ON THIS
	20" DAY OF NOV AND ,1964 AT MINUTE PAST AND VOLUME 9 OF PLATS, PAGES 698 79 OF THE RECORDS OF SAID COUNTY	RECORDEDIN
	• · · · · ·	
	AUDITOR, WHAT COM COUNTY, WASHINGTON	
	ALL IT BUNK IN 1619705 IN ROX NOCTOR	t, in Ego
978225		
ACKNOWLEDGEMENTS		,
· · ·		WHATCOM)
	ON THIS 20 DAY OF Clober, 1964, PERSONALLY APPEARED GLEN COR	NING, TO
	DEDICATION FOR HIMSELF AND AS PARTNER OF AND ATTORNEY-IN-FACT FOR G	LEN CORNING,
•	ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THERIN (DES -
IS		
ICATE	FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED T	HAT THE POWER
	AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING.	
	<form></form>	
	<form></form>	
	Wall The Ile	
		IG AT BELLINGHAN
	С ^и нне в ¹¹ д. СШ	FFT 2 OF 2
2 3 4 5 No.18 @		





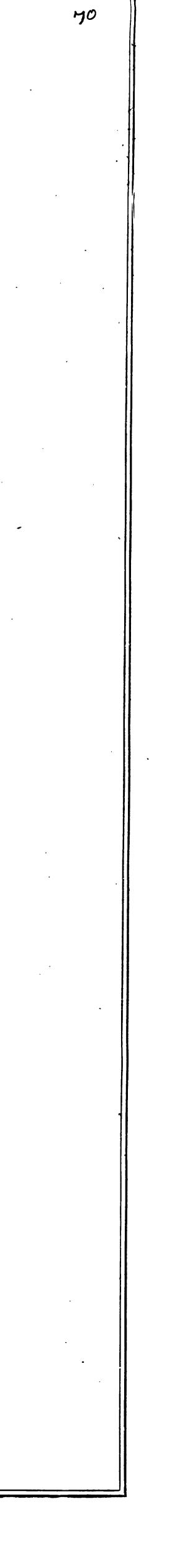


EXHIBIT J

DESCRIPTION

EDWARD M. PAULSEN AND KNUD S. KNUDSEN DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLENHAVEN LAKES DIV. 9 IS BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENT OF STATE LAW THAT ALL DISTANCE, COURSES AND ANGLES ARE CORRECTLY SHOWN HEREON, THAT ALL MONUMENTS AND STAKES HAVE BEEN ACCURATELY PLACED ON THE GROUND; AND THAT THE PLAT COVERS AND EMBRACES THAT PORTION OF THE S/W 1/4 SEC. 29, T37N, R4E, W. M. DESCRIBED AS FOLLOWS; COMMENCING AT THE N/W CORNER OF THE PLAT OF GLENHAVEN LAKES DIVISION NO. 8; THENCE S 2º11'30"E AND FOLLOWING THE WESTERLY BOUNDARY OF SAID PLAT 216.52'; THENCE N 87°00'W 166.99'; THENCE N 60° 30'W 122.35'; THENCE N 29° 30'E 20.00'; THENCE NORTH 312.31'; THENCE N 50° 48' 30"E 445.94'; THENCE N 84°51'06"E 366.95'; THENCE S 14°11'W 40.90'; THENCE S 59°26'30"E 774.38'; THENCE N 27°43'45"E 370.38'; THENCE N58° 42' 25"E 680.41'; THENCE EAST 212.85' MORE OR LESS TO AN INTERSECTION WITH THE WEST BOUNDARY OF THE CAIN LAKE ROAD; THENCE SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 2895.00' AND A CENTRAL ANGLE OF 4º15' 35" AND FOLLOWING THE WEST BOUNDARY OF THE CAIN LAKE ROAD 215.22'; THENCE NORTH WESTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 30' AND A CENTRAL ANGLE OF 95° 50' 50.18'; THENCE EAST 102.74'; THENCE \$58° 42' 25"W 580.12'; THENCE \$27° 43' 45"W 367.71'; THENCE \$37°12'00" W 215.43; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 24.64' AND A CENTRAL ANGLE OF 101º12' 43.52'; THENCE S64E 470.'; MORE OR LESS TO AN INTERSECTION WITH THE HIGH WATER LINE OF REED LAKE; THENCE SOUTHERLY AND FOLLOWING THE HIGH WATER LINE OF REED LAKE TO AN INTERSECTION WITH THE NORTH BOUNDARY OF THE PLAT OF GLENHAVEN LAKES DIVISION NO. 8; THENCE N 64°W AND FOLLOWING THE NORTH BOUNDARY OF SAID DIVISION NO. 8 670. MORE OR LESS TO AN INTERSECTION WITH THE EAST BOUNDARY OF RAINBOW DRIVE AS SHOWN ON THE PLAT OF SAID DIVISION NO. 8; THENCE N 36°42'00" E 47.12'; THENCE N45°42'E 136.93'; THENCE N59°26'30"W 764.99'; THENCE S87°48'30"W 333.82' MORE OR LESS TO THE POINT OF BEGINNING.

adward m Vantsen REGISTERED PROFESSIONAL ENGINEER (SEAL) REGISTERED PRCFESSIONAL LAND SURVEYOR (SEAL)

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED GEORGE COBELENS, WALLACE WINTER, AND MARIE E. WINTER, HIS WIFE, CARL MILLER AND HELEN M. MILLER, HIS WIFE, AND HILDA MILLER, A WIDOW. SUCCESSORS IN INTEREST TO GENERAL BUILDING INC. AND FEE SIMPLE OWNERS OF A PORTION OF SAID LAND, BY RICHARD J. WATER, OUR ATTORNEY-IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY RECORDED UNDER AUDITORS FILE NO. 942475 IN VOL. 36, PG. 196, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY; AND THAT I, THE UNDERSIGNED, IVA WHITTAKER TRUDELL, WHO ACQUIRED THIS PROPERTY AS IVA WHITTAKER FOX AS HER SEPARATE PROPERTY, FEE SIMPLE HOLDER OF THE BALANCE OF SAID LAND, BY RICHARD J. WATERS, MY ATTORNEY-IN-FACT UNDER THAT SPECIAL POWER OF ATTORNEY, RECORDED UNDER THE AUDITORS FILE NO. 95818 IN VOLUME 8, PAGES 133 AND 134 OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON; AND GLEN CORNING, ABNER LUDTKE, A. J. MCMILLAN, MOKSHA W. SMITH, A. J. HUTTON JR. AND LAWRENCE C. ANGELL, DOING BUSINESS IN CO-PARTNERSHIP AS GLENHAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, OUR PARTNER AND ATTORNEY - IN- FACT UNDER THE LIMITED POWER OF ATTORNEY RECORDED UNDER AUDITOR'S FILE NO. 942089 IN VOLUME 36, PAGES 189-191, OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COUNTY, WASHINGTON, HEREBY DECLARE THIS PLAT AND DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL ROADS, ALLEYS, EASEMENTS AND PUBLIC SITES, SHOWN ON THIS PLAT: ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF ROAD, ALLEYS AND PUBLIC SITES OVER OR ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER GRADING. TRACT A AS SHOWN THEREON SHALL BE RESERVED FOR THE MEMBERS OF GLENHAVEN LAKES CLUB INC. IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS 197 DAY OF APRIL 1965.

GEORGE COBELENS, WALLACE WINTERS, AND MARIE E. WINTERS, HIS WIFE, CARL MILLER AND HELEN M. MILLER, HIS WIFE, AND HILDA MILLER, A WIDOW, AND IVA WHITTAKER TRUDELL. FEE SIMPLE OWNERS.

ster

C. ANGELL, D.B.A. GLENHAVEN LAKE CONTRACT PURCHASERS

GLEN CORNING, PARTNER AN ATTORNEY-IN-FACT

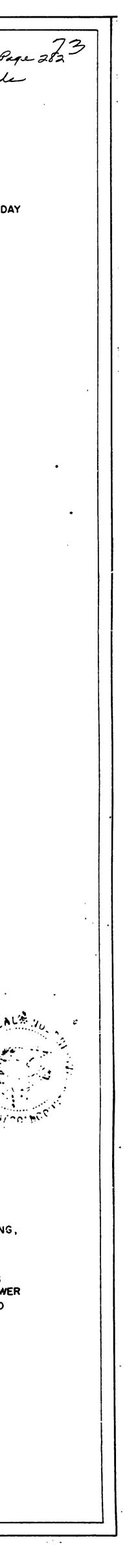
RICHARD & WATERS, ATTORNEY-IN-FACT

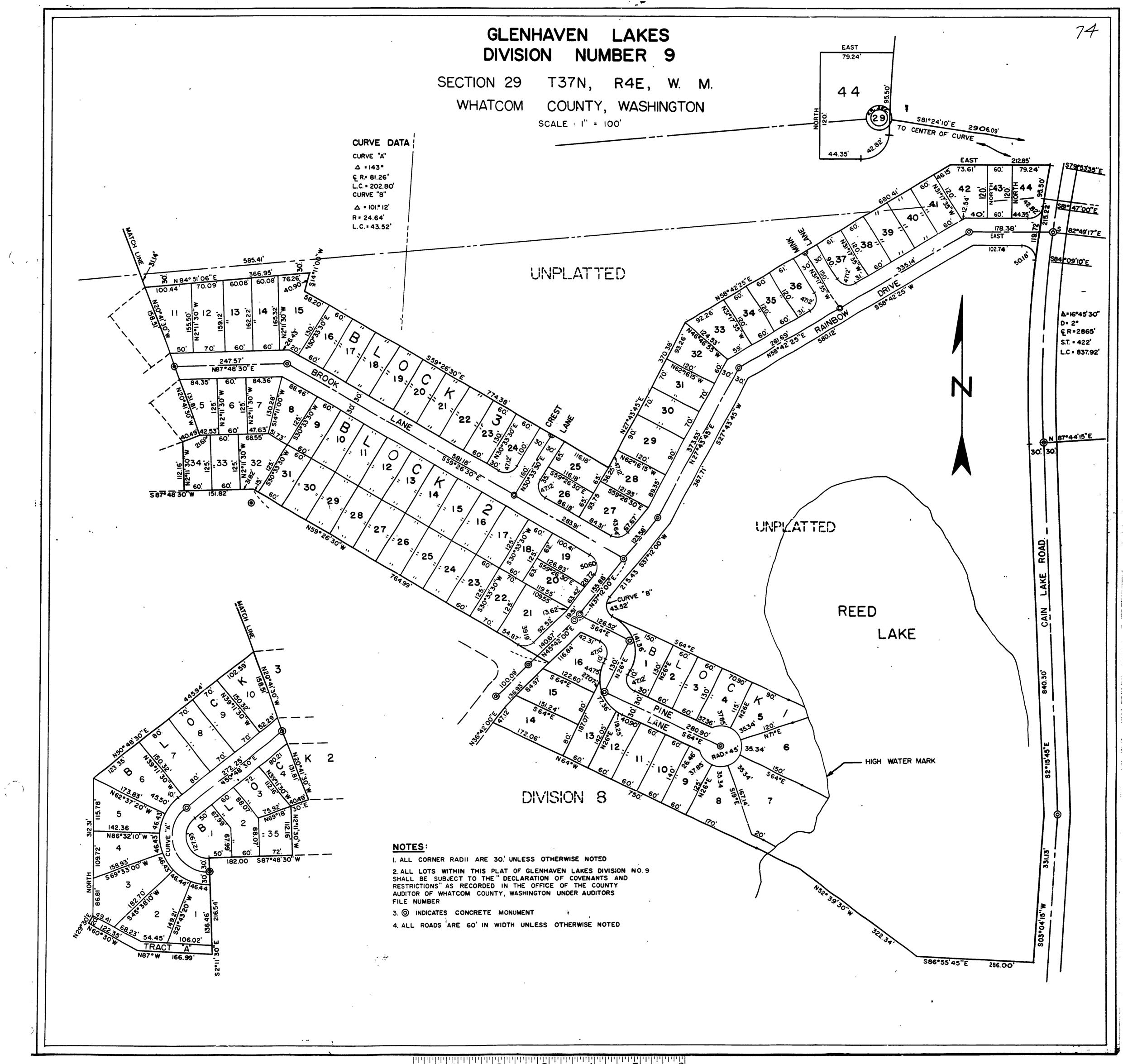
(STATE OF WASHINGTON, (COUNTY OF WHATCOM)

ON THIS _____ DAY OF _____, 1965, BEFORE ME PERSONALLY APPEARED RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEED AS ATTORNEY-IN-FACT OF GEORGE COBELENS, WALLACE WINTER, AND MARIE E. WINTER, HIS WIFE, CARL MILLER AND HELEN M. MILLER HIS WIFE, AND HILDA MILLER, A WIDOW, SUCCESSORS TO GENERAL BUILDING INCORPORATED AND FOR IVA WHITTAKER TRUDELL, THEREIN DESCRIBED AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SAID PRINCIPALS, FREELY AND VOLUNTARILY, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE DEDICATION HAS NOT BEEN REVOKED AND THAT THE PRINCIPALS ARE NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

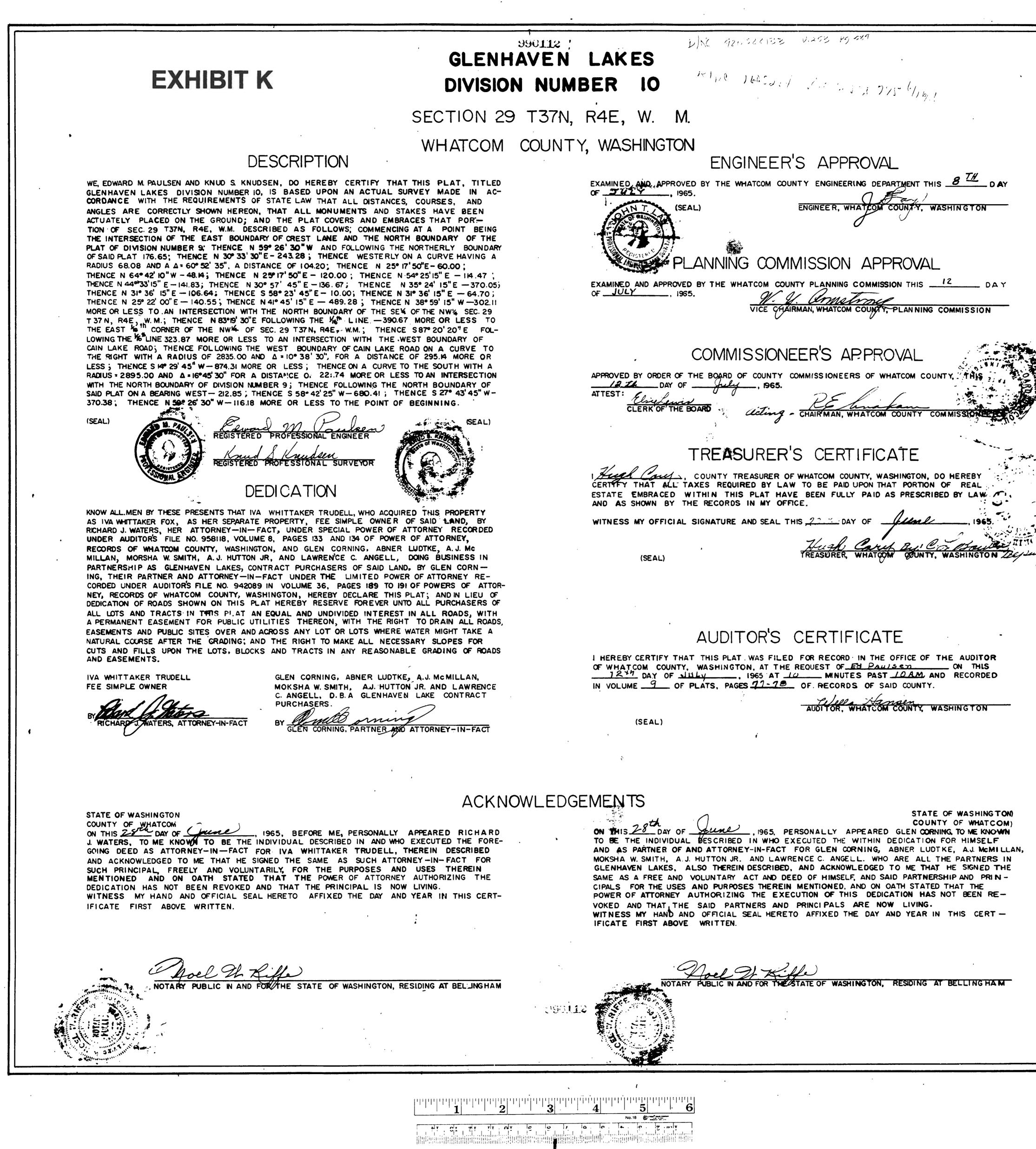
THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM NOTARY PUBLIC IN AND, FOR

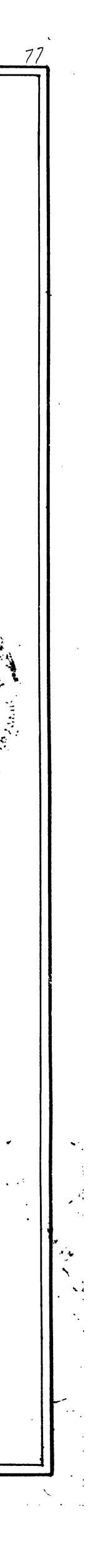
DIVISION NUMBER 9 SECTION 29 T37N, R4E, W. M. WHATCOM COUNTY, WASH. Jan Auclanation y Communication and add 26 Page 282 Jan Auclanation y Communication y Communication and add 26 Page 282 Jan Auclanation y Communication y ENGINEER'S APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS OF APRIL .1965 ENGINEER, WHATCOM COUNTY, WASHINGTON (SEAL) PLANNING COMMISSION APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS ____8__DAY OF _____ CHAIRMAN, WHATCOM COUNTY PLANNING COMMISSION COMMISSIONER'S APPROVAL APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY. THIS X MAY OF __ ATTEST: CLERK OF THE BOARD CHAIRMAN, WHATCOM COUNTY COMMISSIONERS TREASURER'S CERTIFICATE arch, COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT HAVE BEEN FULLY PAID AS PRESCRIBED BY LAW AND AS SHOWN BY THE RECORDS IN MY OFFICE. WITNESS MY OFFICIAL SIGNATURE AND SEAL THIS to DAY OF TREASURER, WHATCOM COUNTY, WASHINGTON (SEAL) AUDITOR'S CERTIFICATE I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR GLEN CORNING, ABNER LUDTKE, A. J. MCMILLAN, OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF Ed. PAUlsen ON THIS MOKSHA W. SMITH, A.J. HUTTON JR. AND LAWRENCE _____ DAY OF APRIL_____, 1965. AT 52 MINUTES PAST 11. A.M. AND RECORDED IN VOLUME 9 OF PLATS, PAGES _73 \$14 OF THE RECORDS OF SAID COUNTY. AUDITOR, WHATCOM COUNTY, WASHINGTON ACKNOWLEDGEMENTS STATE OF WASHINGTON) COUNTY OF WHATCOM) 1965, PERSONALLY APPEARED GLEN CORNING, TO __DAY OF_ ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN WHO EXECUTED THE WITHIN DEDICATION FOR HIMSELF AND AS PARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CORNING. ABNER LUDTKE, A. J. MCMILLAN, MOKSHA W. SMITH, A. J. HUTTON JR. AND LAWRENCE C. ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THERIN DES-CRIBED, AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS A FREE AND VOL-UNTARY ACT AND DEED OF HIMSELF, AND SAID PARTNERSHIP AND THE SAID PRINCIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICATION HAS NOT BEEN REVOKED AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN. Usper 1 NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM No.18





No 18 I (cu 5 3 4 2 6 1 8 6 10 1 1 1 5 1 3 14





GLENHAVEN LAKES DIVISION NUMBER 10 SECTION 29 TETN, R4E, VI. IVI.

EASEMENT PROVISIONS An easement is hereby reserved for and granted to

Puget Sound Power & Light Company

Pacific Northwest Bell Telephone Company

All permanent utility services shall be provided by under

around service exclusively

à,

•

SCALE

1"= 100'

 \sim_9

ି 🛇 _в

NOTES:

- I. ALL ROADS ARE 60' IN WIDTH.
- 2 O INDICATES CONCRETE MONUMENT

3 ALL LOTS WITHIN THIS PLAT OF GLENHAVEN LAKES DIVISION NO. 10 SHALL BE SUBJECT TO THE "DECLARATION OF COVENANTS AND RESTRICTIONS" AS RECORDED IN THE OFFICE OF THE COUNTY AUDITOR OF WHATCOM COUNTY, WASHINGTON UNDER AUDITORS FILE NO. 990114 Val 30 Page 501 of 0. p. 3 auditors rice in white wel 329 pj to DR 4-7-77

No.18

 $\langle \rangle$

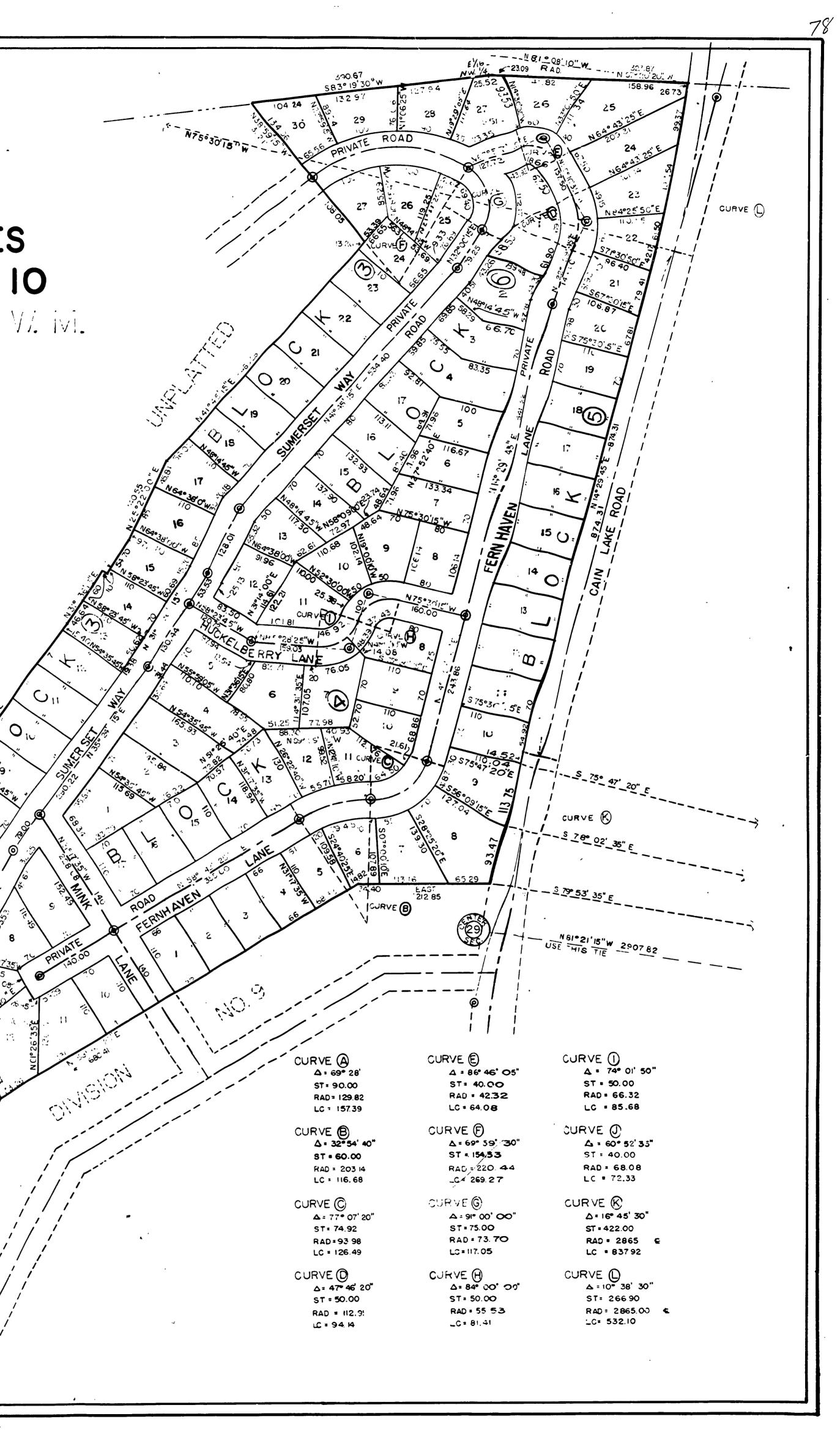


EXHIBIT L

DIVIS SECTION

WHATC

DESCRIPTION

WE, EDWARD M. FAULSEN AND KNOD IS KNODSEN, DO HEREBY CERTIFY THAT THIS PLAT, TITLED GLEN LAKED 17 II, IS BASED SHON AN ACTUAL SURVEY MADE IN ACCURDANCE WITH THE REQUIREMENTS OF ST LAW, THAT ALL DISTANCES, COURSES, AND ANGLES ARE SURRECTLY SHOWN HEREON, THAT MONUMENTS A STAKET HAVE BEEN ACCURATELY FULLEE ON THE GROUNDE AND THAT THE PLAT COVERS AND EMBRACE PUBLIC OF THE WIR SEC 29, TROM, FRE, WIR DEPARIBED AN FOLLOWS F COMMENCING AT A PUNT, BEING TH LUSNER OF THE PLAT OF REPEATED LAKES DIV. NUTURE THENDE S38"59"15"E AND FOLLOWING THE WESTER FOR DEVENION OF DEVELOPING TO BELINDE DARABY STW. 4842811 THENCE DOSPO20201W, MOISS'; THENGE (WE GARYON, THERINE MISSIENT OF A COUPLIFICEMENT OF METAL (15" WEIGUIGATE THENCE DESPERTISTIN, STODSTE THE 5. 017/45" ... IDU.U. '; THE D.E SA412'8'15" N. HE83'; DEENCES 54925'15" N. 114.42'; THENCES 2517'50 TO CONTREMOS REPARTICTE, PREMOSE FROM A BURVE TO THE LEFT RAVING A RAPIUS OF - THE MENCE OF AN THE OF A METADICE OF GARDING THENCE OF STANA 45"E, 98.08", THENCE SALACTIVE 243 SECTORES OF A REAMONDER ROLLED WITH THE NORTHER Y BOUND RY OF THE PLAT ENVIRENT ARE LITE A FOR THENRY NOW FROM TO FOR LUNING THE DURTHERLY BUDDLERY OF A 981.52 THENCE START COTAL AC 90 CHARTOLD TOP 5106"W. 366.95'; THENCE S 50°48'30"W, 445.94'; SOUTH 312.31', "HENCE S 23" 40'00" W, 10.00' MORE UK LESS TO AN INTERSECTION WITH THE NORTHERLY ARY OF THE PLAT OF GLENHA /ETHLAKES DIV. NO. 7; THENCE N 49" 31'00" W AND FOLLOWING THE NORTHER BUINDARY OF MIL FIRT 150.64'; THENCE N 33" OU'40" W. 48.48'; THENCE N 07" 29' 30" W, 216.47'; THENCE 30 30 "E, 229.41 MORE URLESS TO AN INTERSECTION WITH THE BOUTH BOUNDARY OF THE SW 4 OF THE NW SEC. 28 TOTAL, MAL, WAS, THENDE NERS 5106"E AND ALL LOW MARTHE BOUTH BUINDARY OF THE SAID SW W OF NW 14 DECLASS, 1080, HOW MORE UP LESS TO THE DINE" DUNDER OF THE NW 14 DECLAD SECTION 29: THENCE I OF OUTE ANE FOLLOWING THE WELL BOUNDARY OF THE 1844 OF THE 1844 OF SEC. 20, 1391,21 MORE OF LE THE DELITER OF WILL TWIGHTED ON DEHENCE DEPICTIVE AND FOULDWING THE DURITH BOUNDARY DETHE MEMA LET THE NWMARSHIERS, US 425' MORE OF LET. TO THE PORTE OF EERIGNING.

(SE(+.) 20 K.A

DEDICATION

REGISTERED FROMESSIONAL SURVEYOR

Jan sand

KNOW ALL MEN BY THESE PRESENTS THAT IVA WHIT TAKER TRUDELL, WHO ACQUIRED THIS PROP AS IVA WHIT TAKER FOX, AS HER SEPARATE PROPERTY, FEE SIMPLE HOLDER OF SAID LAND, BY RICHARD J. WATERS, HER ATTORNEY -IN-FACT, UNDER SPECIAL POWER OF ATTORNEY RECORDED DER AUDITOR'S FILE NO. 95818, VOLUME 8, PAGES 133 AND 134 OF POWER OF ATTORNEY, RECORDS WHATCOM COUNTY, WASHINGTON, AND GLEN CORNING, ABNER LUDTKE, A.J. MCMILLAN, MORSHA W SMITH, A.J. HUTTON JR. AND LAWRENCE C. ANGELL, DOING BUSINESS IN PARTNERSHIP AS GL HAVEN LAKES, CONTRACT PURCHASERS OF SAID LAND, BY GLEN CORNING, THEIR PARTNER AND ATTORNEY -IN -FACT UNDER THE LIMITED FOWER OF ATTORNEY RECORDED UNDER AUDITOR'S FIL NO. 942089 IN VOLUME 36, PAGES 189 TO 191 OF POWERS OF ATTORNEY, RECORDS OF WHATCOM COU WASHINGTON, HEREBY DECLARE THIS PLAT; AND IN LIEU OF DEDICATION OF ROADS SHOWN ON T PLAT HEREBY RESERVE FOREVER UNTO ALL PURCHASERS OF ALL LOTS AND TRACTS IN THIS AN EQUAL AND UNDIVIDED INTEREST IN ALL ROADS, WITH A PERMANENT EASEMENT FOR PUBLIC ITIES THEREON, WITH THE RIGHT TO DRAIN ALL ROADS, EASEMENTS AND PUBLIC SITES OVER A ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER THE GRADING AND THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS, BLOCKS AN TRACTS IN ANY RESONABLE GRADING OF BLOCKS AND EASEMENTS.

IVA WHIT TAKER TRUDELL FEE SIMPLE HOLDER

RICHARD J. WATERS, ATTORNEY-IN-FACT

GLEN CORNING, ABNER LUDKE, A.J. MCMILLAN, MOKSHA W. SMITH, A.J. HUTTON JR. AND LAWRE C. ANGELL, D.B.A. GLENHAVEN LAKE CONTRAC PURCHASERS.

GLEN CORNING, PARTNER AND ATTORNEY-IN-FACT

STATE OF WASHINGTON

 \sim

. . . .

COUNTY OF WHATCOM ON THIS - THE DAY OF _ HELINGE , 1965, BEFORE ME, PERSONALLY APPEARED RICHARD J. WATERS, TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEED AS ATTORNEY-IN-FACT FOR IVA WHITTAKER TRUDELL, THEREIN DESCRIBED AND ACKNOW-LEDGED TO ME THAT HE SIGNED THE SAME AS SUCH ATTORNEY-IN-FACT FOR SUCH PRINCIPAL, FREE-LY AND VOLUNTARILY, FOR THE PURPOSES AND USES THEREIN MENTIONED AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE DEDICATION HAS NOT BEEN REVOKED AND THAT THE PRINCIPAL IS NOW LIVING. WITNESS MY HAND AND UFFCIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

	AVEN LAKES KING 1605384 des 70 (2019)
TION 29	T37N, R4E, W. M.
ATCOM	COUNTY, WASHINGTON ENGINEER'S APPROVAL
ED GLENHAVEN ITS OF STATE MENTS AND IMBRACED THAT BEING THE NUM E WEISTHREY HENGE COMBRACH DUSIS THENGE 0.25° 17'50" M RADIUS OF CLOP THENGE SIGN A45.94"; THENCE PLAT OF A45.94"; THENCE PLAT OF A45.94"; THENCE PLAT OF THENCE NIS FTHE NUM A59 JUNTHER NOR THERLY HENGE NIS FTHE NUM KE OF LESS TO RY OF THE SAID (SEAL)	EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT THIS 30 th day of <u>AUGUST</u> , 1965. (SEAL) PLANNING COMMISSION APPROVAL EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS <u>Day</u> OF <u>Systembor</u> , 1965. COMMISSIONER'S APPROVAL APPROVED BY ORDER, OF THE BOARD OF COUNTY COMMISSIONEERS OF WHATCOM COUNTY. THIS <u>Commission</u> APPROVED BY ORDER, OF THE BOARD OF COUNTY COMMISSIONEERS OF WHATCOM COUNTY. THIS <u>Commission</u> CLERK OF THE BOARD
IS PROPERTY LAND, BY CORDED UN- ECORDS OF DRSHA W. IP AS GLEN- R AND R'S FILE COM COUNTY, WN ON THIS I THIS PLAT PUBLIC UTIL- DVER AND GRADING; ICKS AND	TREASURER'S CERTIFICATE
NLLAN, LAWRENCE CONTRACT	AUDITORS CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHAT - COM COUNTY, WASHINGTON, AT THE REQUEST OF <u>September</u> on This <u>270</u> DAY OF <u>September</u> 1965 AT <u>No</u> MINUTES PAST <u>I AND</u> RECORDED IN VOLUME <u>9</u> OF PLATS, PAGES <u>B3</u> + <u>B4</u> OF SAID COUNTY.

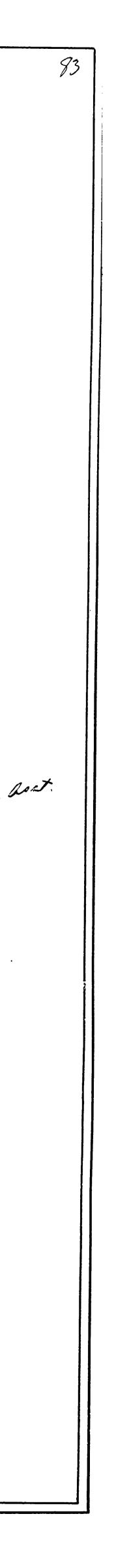
AUDITOR, WHATCOM COUNTY . WASHINGTON

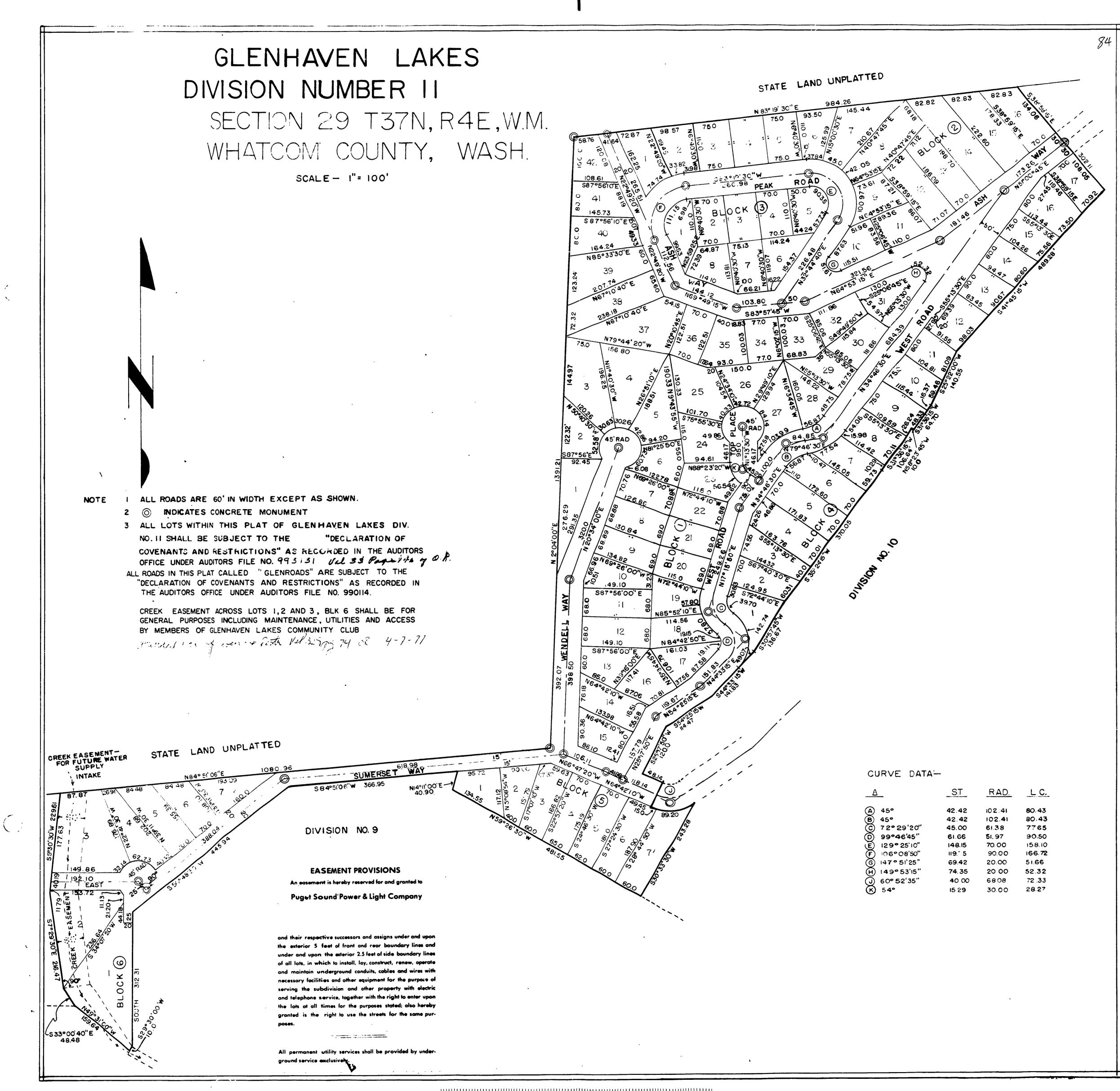
ACKNOWLEDGEMENTS

STATE OF WASHINGTON) COUNTY OF WHATCOM) ON THIS _____ DAY OF A CANCEL . 1965, PERSONALLY APPEARED GLEN CORNING, TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN WHO EXECUTED THE WITHIN DEDICATION FOR HIMSELF AND AS FARTNER OF AND ATTORNEY-IN-FACT FOR GLEN CURNING, ABNER LUDTKE, A.J. MCMILLAN, MOKSHA W SMITH, A.J. HUTTON JR. AND LAWRENCE C. ANGELL, WHO ARE ALL THE PARTNERS IN GLENHAVEN LAKES, ALSO THEREIN DESCRIBED, AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME AS A FREE AND VOLUNTARY ACT AND DEED OF HIMSELF, AND SAID PARTNERSHIP AND PRIN-LIPALS FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THE POWER OF ATTORNEY AUTHORIZING THE EXECUTION OF THIS DEDICATION HAS NOT BEEN REVOKED AND THAT THE SAID PARTNERS AND PRINCIPALS ARE NOW LIVING. WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

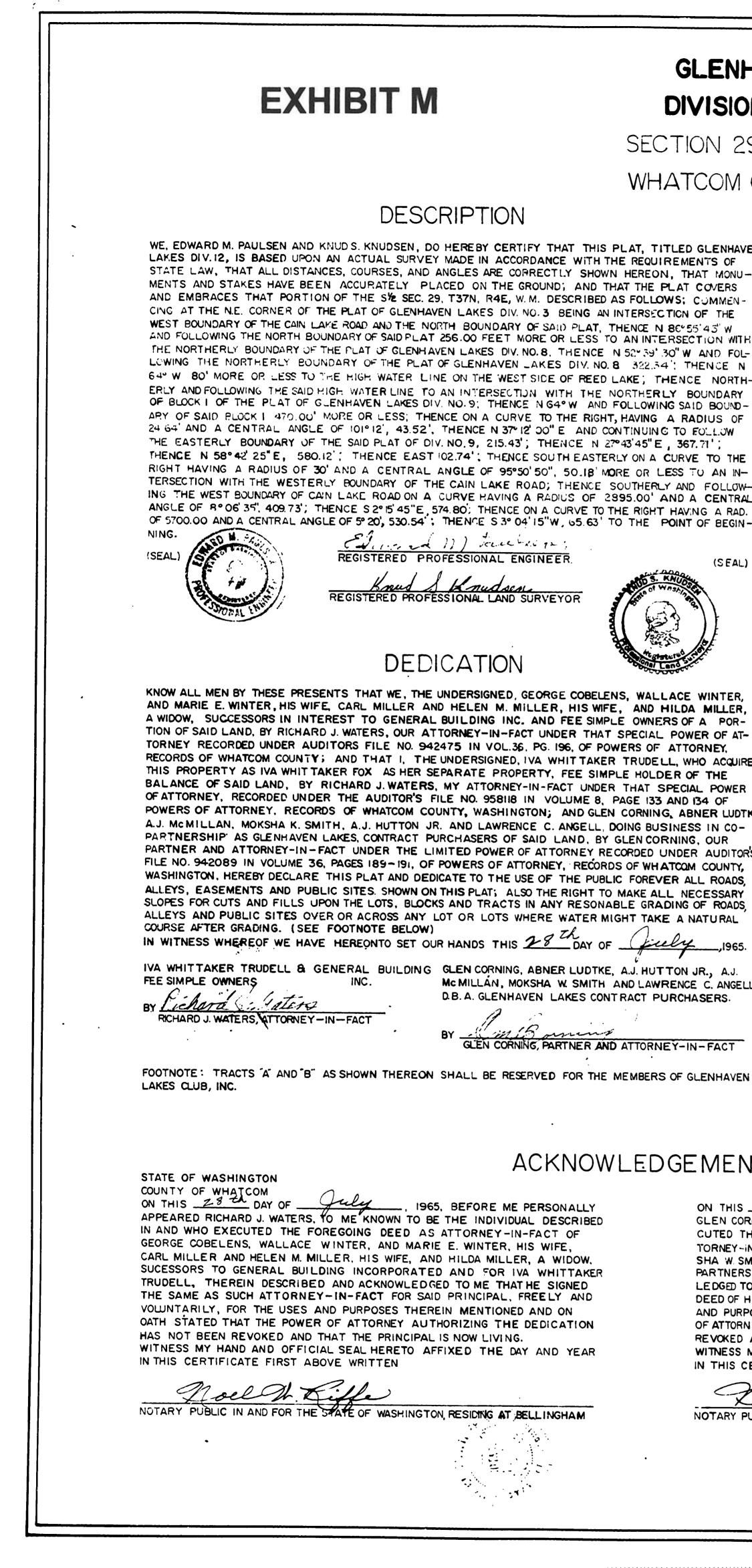
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT BELLINGHAM

No.18

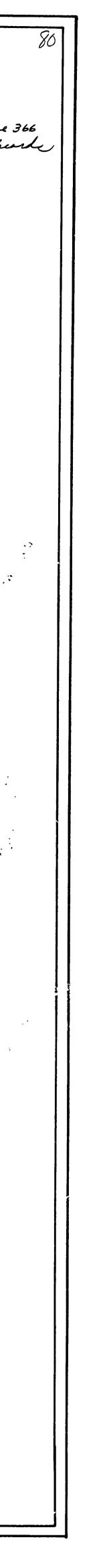


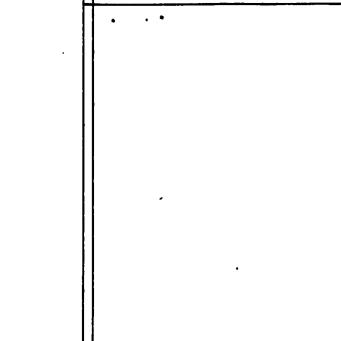


 $1 \quad 2 \quad 3 \quad 4 \quad 5 \quad 6$



N NUMBE				2 P
9 T37N, R4	4E, W. M.	For declarations	APPROVAL	ial i
COUNTY, M	ASHINGTON	Curl of instant in	the definition of the second s	
		ENGINEER'S	APPROVAL ,	
			e o th	
	UF, 19	965.	PARTMENT THIS DAY	
•	(SEAL)		ENCINEER, WHATCOM COUNTY, WASHINGTON	-
			0 –	
	PI /	ANNING COMMA	ISSIUN APPFOVAL	
			PLANNING COMMISSION THIS	
	OFduly,	1965.		
			CHAIRMAN WHATCOM COUNTY PLANNING COMMISSION	-
		COMMISSIONE	R'S APPROVAL	
	APPROVED BY ORDER OF T	HE BOARD OF COUNTY CON	MISSIONEERS OF WHATCOM COUNTY. THIS	•
	ATTEST: E	., 1965. ,		
	CLERK OF THE BOA	ARD -	CHAIRMAN, WHATCOM COUNTY COMMISSIONEERS	•
				≯ √+
•				
	The I Part		5 CERTIFICATE	
	THAT ALL TAXES REQUIRE	ED BY LAW TO BE PAID UPO	OF WHATCOM, WASHINGTON, DO HEREBY CERTIFY ON THAT PORTION OF REAL ESTATE EMBRACED WITH-	-
	OFFICE.	FULLY PAID AS PRESCRIBI	ED BY LAW AND AS SHOWN BY THE RECORDS IN MY	
	WITNESS MY OFFICIAL SIGN	IATURE AND SEAL THIS	924. DAY OF Luly	
)			Hugh Cart Ber S. Barris	 10c. i
•	(SEAL)		TREASURER. WHATCOM COUNTY. WASHINGTON	ice p
	,		· · · · · · · · · · · · · · · · · · ·	
			•	··· ₹
		AUDITOR'S C	ERTIFICATE	
	I HEREBY CERTIFY THAT		RECORD IN THE OFFICE OF THE AUDITOR OF WHATCON	
	OF, WASHINGTON, A	965 ATMII	NUTES PAST 12 CIAL AND PECCREP IN VOLUME	V
	OF PLATS,	PAGES <u>80-81</u> OF S	AID COUNTY.	
	(SEAL)		AUDITOR, WHATCOM CUUNTY. WASHING TON	•
			NOTE: ALL LOTS WITHIN THIS PLAT OF GLENHAVEN LAKE	ES
			DIV. NO. 12 SHALL BE SUBJECT TO THE "DECLARATION OF COVENANTS AND RESTRICTIONS" AS RECORDED IN THE OFFICE OF THE COUNTY AUDITOR OF WHATCOM COUNTY, WASHINGTON UNDER AUDITOR'S FILE NUMBER	
TS			EASEMENT PROVISIONS	
		ATE OF WASHINGTON) JNTY OF WHATCOM)	An easement is hereby reserved for and granted to.	•
WITHIN DEDICATION		SONALLY APPEARED CRIBED IN WHO EXE- RTNER OF AND AT-	Puget Sound Power & Light Company	•
TH, A.J. HUTTON JF N GLENHAVEN LAK	AND LAWRENCE C. ANGEL	LL, WHO ARE ALL THE BED, AND ACKNOW-	and their respective successors and assigns under and upon	
ME THAT HE SIGNED MSELF, AND SAID P	THE SAME AS A FREE AND N ARTNERSHIP AND PRINCIPA	VOLUNTARY ACT AND LS FOR THE USES	the exterior 5 feet of front and rear boundary lines and under and upon the exterior 2.5 feet of side boundary lines of all lots, in which to install, lay, construct, renew, operate	i
Y AUTHORIZING THE	ONED, AND ON OATH STATE EXECUTION OF THIS DEDIC	ATION HAS NOT BEEN	and maintain underground conduits, cables and wires with necessary facilities and other equipment for the purpose of	•
HAND AND OFFICIA	ARTNERS AND PRINCIPALS A		serving the subdivision and other property with electric and telephone service, together with the right to enter upon	:
RTIFICATE FIRST A	-		the lots at all times for the purposes stated; also hereby granted is the right to use the streets for the same pur-	, ,
oel I.	E STATE OF WASHINGTON, RE	SIDING AT BELLINGHAM	poses.	
SLIC IN AND FOR TH			All permanent utility services shall be provided by under-	
BLIC IN AND FOR TH	•		ground sarvice exclusively.	- -
LIC IN AND FOR TH	: ·	Contraction and the second		
BLIC IN AND FOR TH	1.			
BLIC IN AND FOR TH	:			





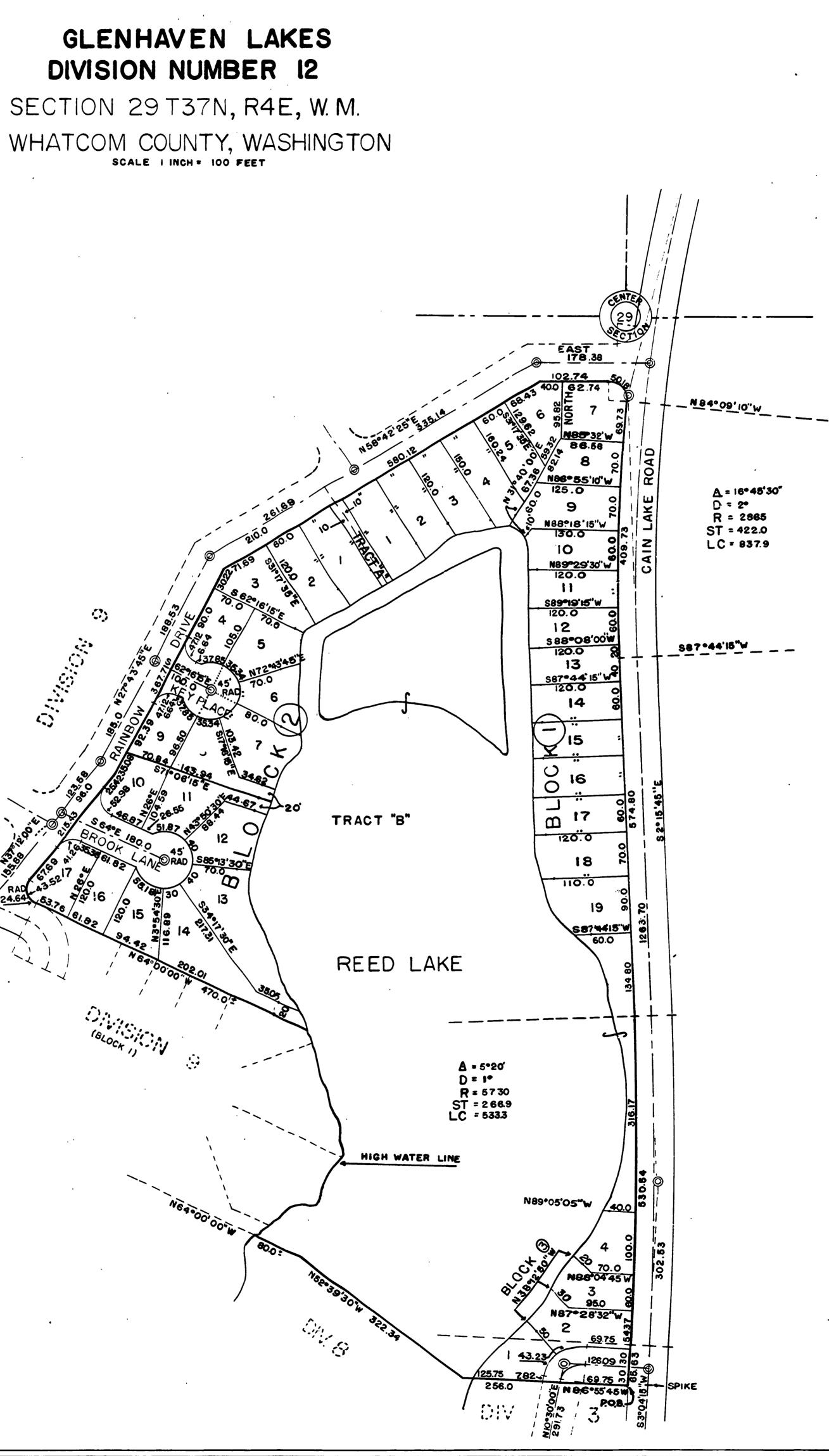
· . .

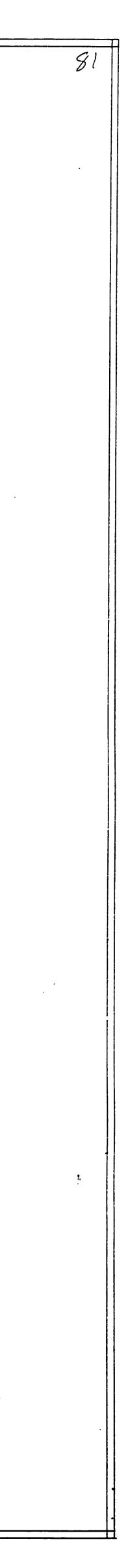
NOTE -

. •

1. ALL CORNER RADII ARE 30' UNLESS OTHERWISE SHOWN. 2. O INDICATES CONCRETE MONUMENTS. 3. ALL ROADS' ARE 60' IN WIDTH.

4. . INDICATES IRON PIPE SET ON LOT LINE.





APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

Clenhaven Lakes Club inc. COMES NOW,

who respectfully petitions the Whatcom County Council for a twenty-five (25) year

franchise to lay, construct, maintain, and repair

Waterline / water System

and all necessary appurtenances along, over, and across the following roads situated in Whatcom County, Washington:

See maps

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:

enhaven Lakes Club inc

664 Rainbow Dr. Mailing Address

Sectio Woolley

340 595-2061 Phone Number

Signature of authorized agent/owne

Crouter

Print or type name

C:\DOCUME~1\jnixon\LOCALS~1\Temp\XPgrpwise\2. APPLICATION FOR FRANCHISE.doc

RECEIVED

SEP 10 2018

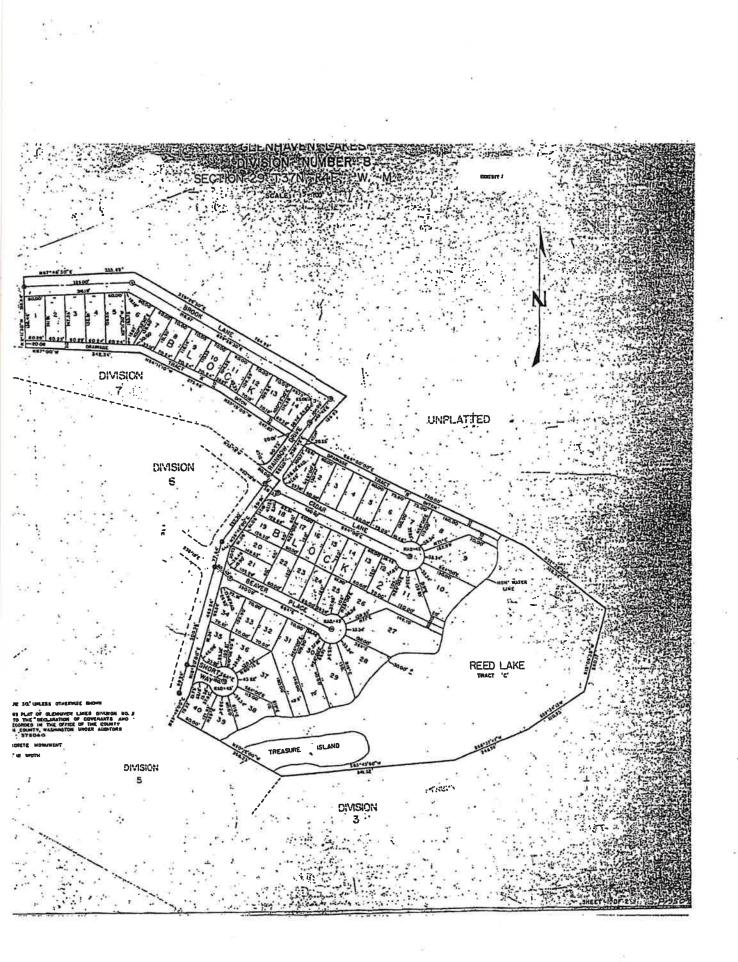
WHATCOM COUNTY

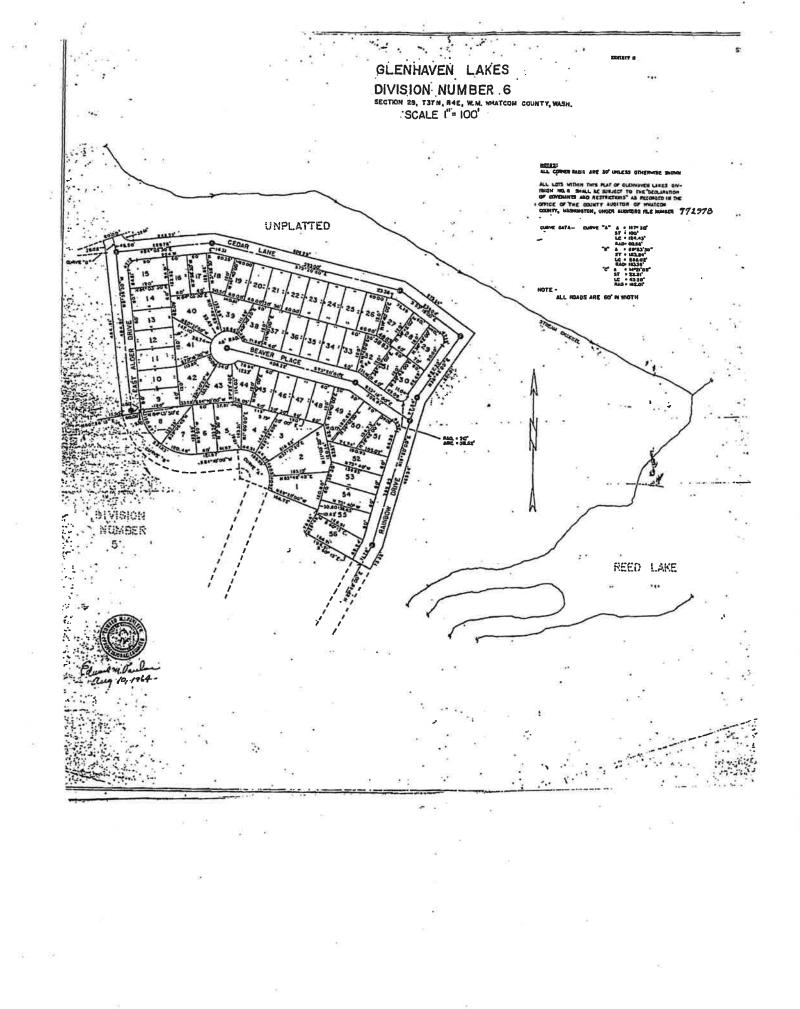
COUNCIL

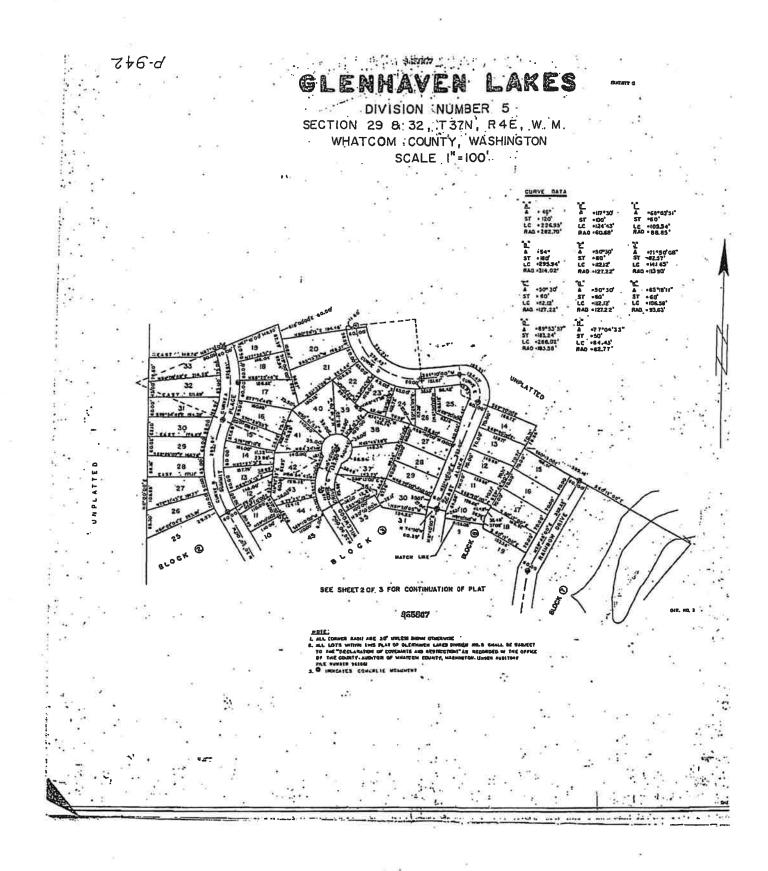
	e	
1	2	EXHIBIT A
2	9 É.	3
·3	GLENHAVEN LAKES C	LUB WATER ASSOCIATION FRANCHISE
4	Exhibits B through K are identifi	ed as follows:
5	. Exhibit B	Plat Map of Glenhaven Lakes with all roads included in the franchise so indicated
6	Fuhihit A	
7	Exhibit C	Glenhaven Lakes, Division Number 2
8	Exhibit D	Glenhaven Lakes, Division Number 3
9	Exhibit E .	Glenhaven Lakes, Division Number 4
10	Exhibit F	Glenhaven Lakes, Division Number 5
11	Exhibit G	Glenhaven Lakes, Division Number 5
12	Exhibit H	Glenhaven Lakes, Division Number 6
13.	Exhibit I	Glenhaven Lakes, Division Number 7
14	Exhibit J	Glenhaven Lakes, Division Number 8
15	Exhibit K	Glenhaven Lakes, Division Number 12
16	` Exhibit L	Glenhaven Lakes, Division Number 1
17	Exhibit M	Glenhaven Lakes, Division Number 9
18		
19		ет т. П
20		19 m
21		
22	¥1	н — — — — — — — — — — — — — — — — — — —
23		. ,
24	5	
25		ä
26		ë e
27	GHWATER.F9	
28	Drafted 12/30/92	
29		(19) =

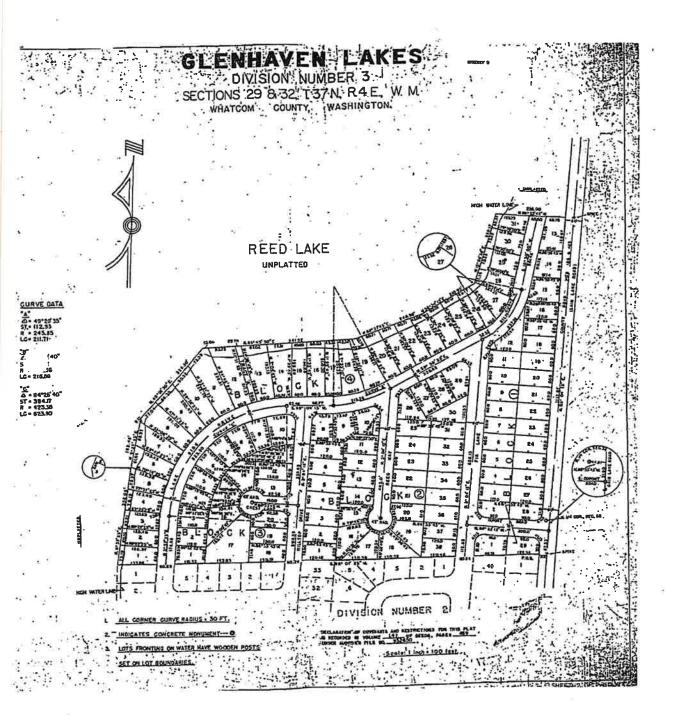
• • •



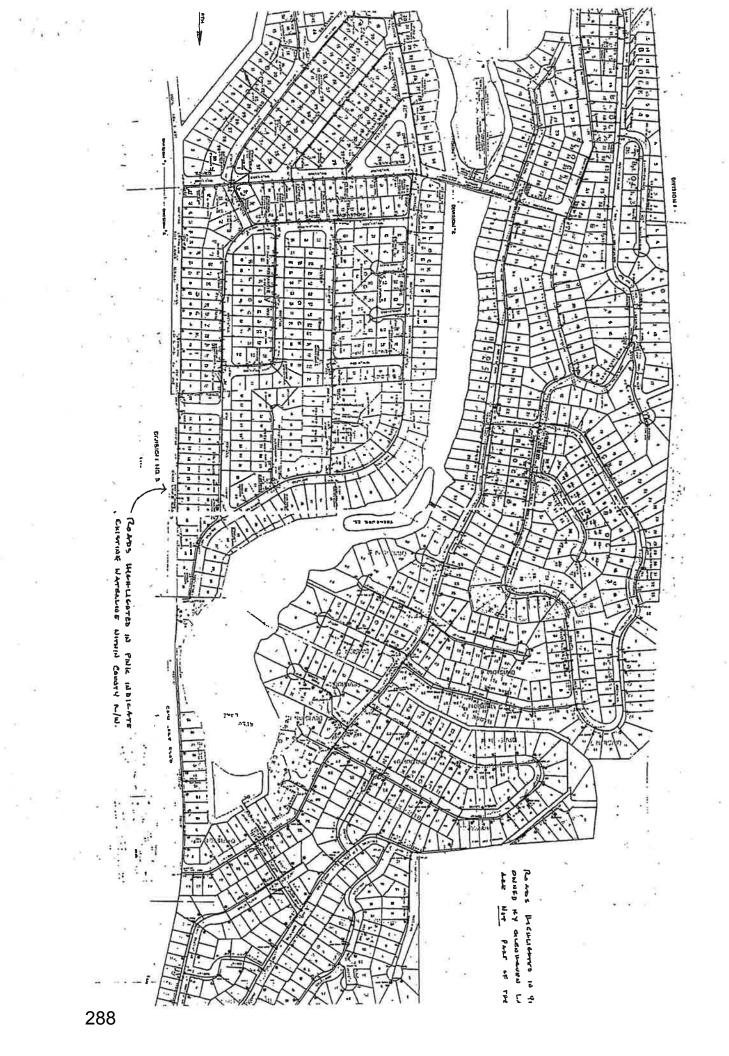








F у л 🔅





Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-374

First Assigned to: Council Agenda Date: 07/09/2019 Next Mtg. Date: Hearing Date:					
Department:	County Executive's Office	File Type:	Executive Appointment		
File ID: File Created:	AB2019-374 06/21/2019	Version: Entered by:	1 SMildner@co.whatcom.wa.us	Status:	Agenda Ready

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

TITLE FOR AGENDA ITEM:

Request confirmation of County Executive's appointment of Josh Peterson to the Behavioral Health Advisory Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached application and staff recommendation

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Action:

Sent To:

Attachments: Peterson recommend ltr BHAC 061719, BHAC applicant Peterson 050219

Final Action: Enactment Date: Enactment #:

WHATCOM COUNTY Health Department



Regina A. Delahunt, Director Greg Stern, M.D., Health Officer

planse move Jost forma.

June 17, 2019

TO:Jack Louws, County ExecutiveFROM:Anne Deacon, Human Services ManagerRE:Nomination for Appointment to the Behavioral Health Advisory Committee

I am pleased to forward a nomination for the Behavioral Health Advisory Committee (BHAC).

Josh Peterson has personal experience with substance use addiction issues and is a nominee for Substance Use Disorder Recovery Advocate. Josh is currently employed in a family business and feels a strong mission towards helping other addicts. He has experience in group settings and will provide a unique perspective to BHAC's advice to the County.

Thank you for considering this nomination for appointment.

509 Girard Street Bellingham, WA 98225-4005 360.778.6000 | FAX 360.778.6001 Wy tcomCountyHealth 290 WhatcomCoHealth



1500 North State Street Bellingham, WA 98225-4551 360.778.6100 | FAX 360.778.6101 www.whatcomcounty.us/health



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 First Name	Mr.
First Name	
	Joshua
Last Name	Peterson
Today's Date	5/2/2019
Street Address	135 Prince Avenue
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	3603194019
Secondary Telephone	Field not completed.
Email Address	joshpeterson9445@gmail.com
1. Name of Board or Committee	Behavioral Health Advisory Committee
Behavioral Health Advisory Committee Position:	Substance Use Disorder Recovery Advocate
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	Field not completed.
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Currently working with my family owned company Can-Amer Freight Inc. Spent 2 years as the president of Whatcom Community College's Honors Society before leaving school to assist in the management of my current profession, no degree obtained. Current Chairperson for the Whatcom County Public Relations Committee of Narcotics Anonymous.
10. Please describe why you're interested in serving on this board or commission	As a Drug Court alumni I sometimes stop in the office on Forrest St. to visit my old case manager Christine Furman. On such a visit Chris asked if I was interested in lending my experience to the Behavioral Health Advisory Committee. I spend a great deal of time trying to help addicts and educate myself on that process. I am not a professional I have no formal education in substance abuse, but I know addicts. I work with them on a daily basis and I definitely feel I have a valuable opinion to bring to the table. I have decided to apply because programs like drug court and other human services saved my life, anything I can do to give back to my community would be a real pleasure.
References (please include daytime telephone number):	Christine Furman, (360) 778-5625, (360) 746-4101
Signature of applicant:	Joshua Peterson
Place Signed / Submitted	Blaine, WA



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-375

First Assigned to: Council Agenda Date: 07/09/2019 Next Mtg. Date: Hearing Date:					
Department:	County Executive's Office	File Type:	Executive Appointment		
File ID: File Created:	AB2019-375 06/25/2019	Version: Entered by:	1 SMildner@co.whatcom.wa.us	Status:	Agenda Ready

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

TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's appointment of Marshall Gartenlaub to the Northwest Senior Services Board

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memorandum and application

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Action:

Sent To:

Attachments: Memo recommendation 06-21-19.pdf, NWSSB app Gartenlaub 05-21-19.pdf

Final Action: Enactment Date: Enactment #:





June 21, 2019

TO:

Whatcom County Executive Louws

Dan Murphy, Executive Director FROM:

SUBJECT: Recommendation to the NWSSB

Currently, there are three openings on the Northwest Senior Services Board (NWSSB) for Whatcom County. Recently we heard from an interested community member, Marshall Gartenlaub, who would like to serve on the board. Dr. Gartenlaub has extensive experience in engineering and adult education during his career. Since moving to Whatcom County, he has also volunteered for organizations and actively particpated in the local community.

On Wednesday, the Interview Committee met with Dr. Garenlaub and unanimously decided to recommend him for appointment to the NWSSB. Prior to the interview, he submitted the Boards and Commissions application to the County. Should Dr. Gartenlaub be appointed, Whatcom County would have two vacanacies on the NWSSB.

If I can be of further assistance, please do not hesitate to contact me.

An Association of County Governments Serving the People of Island, San Juan, Skagit and Whatcom Counties 600 Lakeway Drive, Suite 100 - Bellingham, WA 98225 - 360.676.6749- nwrcwa.org



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	Marshall
Last Name	Gartenlaub
Today's Date	5/21/2019
Street Address	1625 Britton Circle
City	BELLINGHAM
Zip	98226-359
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	YES
Mailing Address	1225 E. Sunset Dr, ste. 145-842
Primary Telephone	9513458003
Secondary Telephone	3602184519
Email Address	heypop@hotmail.com
1. Name of Board or Committee	Northwest Senior Services Board
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	<u>CV + Resume MNG.pdf</u> - attached
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Field not completed.
10. Please describe why you're interested in serving on this board or commission	I am active in my community and several senior's organizations. With the help of the Whatcom Council on Aging, I started a service group (Men's Shed) recruiting retired men who have skills and are willing to volunteer their time to help our local community through projects to build, repair or construct items for those in need or children. I have a personal interest is in seeing that seniors are fairly represented and have a voice in their community. I believe that my diversity of experience as both an educational leader, engineer, and business manager gives me a wide range of abilities to understand the interface with state and federal government programs. I have written and managed millions of dollars in federal and state grants while in the employee of the community colleges. I enjoy helping and teaching others. With the community colleges, I was responsible for developing programs and training hundreds of workers who were to be displaced or were out-of-work. I am considerate of others and the resources we in a community all share and I am willing to speak for those who are not always able to represent themselves to government and its agencies.
References (please include daytime telephone number):	Bob Myhr (360) 933-4352, romyhr@gmail.com Roger Gilman (708) 846-2039, rogergilman@icloud.com James Scott (561) 972-1616, jamesscott0623@att.net
Signature of applicant:	Marshall N. Gartenlaub
Place Signed / Submitted	1526 Britton Cr. Bellingham WA 98226

ii ii

MARSHALL N. GARTENLAUB

RESUME

Education:

B.S Industrial Engineering,	1967,	University of Oklahoma
M.B.A Finance and Management,	1974,	University of Dallas
Certificate in Community College Leadership	1999,	University of Southern California
Ph.D Higher Education Administration,	2003,	University of Southern California
	,	-

Consultive Practice:

Quality in Education Associates (QIEDU) July 2010 – June 2016 **Managing Director**

Education consultant to colleges and schools assisting with economic development, worker training and grant writing. Implemented a \$4.2 million U.S. Dept. of Labor grant for training in the logistics industry, which I authored at San Bernardino College District, also wrote curricula and taught MSSC Logistic Certification classes.

Consulted with Technical Education Training, Inc. a public/private non-profit adult school that I helped to create, that teaches: CAD, CAM, machine trades, logistics, diesel engines and welding. I wrote curricula and helped with operations, fund raising, recruiting business partners, training contracts, and grant funding. Completed a DOL partnership grant for training new hires and implementing NIMS certifications.

Assisted California community colleges, e.g. El Camino College, North Orange Community College District, and Mira Costa College, to implement nationally recognized industrial certifications, wrote curricula, taught classes, and mentored new CTE teachers. Developed curricula and trained teachers in "Design Thinking" a process improvement technique developed at Stanford University.

Work Experience:

San Bernardino Community College District & State Center Community College District October 1997 to June 2010 - retired Initiative Director, Applied Competitive Technologies

Coordinated a statewide program for economic and workforce development aimed at supporting manufacturing and technology based businesses. We had 14 centers and 26 college grants to train industry employees and faculty in the use of modern management techniques and process improvements. Our methodology used total quality principles and continuous improvement strategies. I directed strategic planning, overall instructional design, and financial control for a project of approximately \$10.0 million annually in grants and matching funds

North Orange County Community College District, Yorba Linda Center August 1993 to September 1997

Director, Office of Economic Development

Managed a number of grants and fee-based programs assisting small businesses and training employees, at a downtown location in Anaheim. Under my direction the Business Environmental Assistance Center won both national and state awards and recognition for assisting small businesses comply with tough California environmental regulations to reduce pollution. The Center of Applied Competitive Technologies assisted manufacturers in technology transfer, financing, SBIR, total quality implementations and process improvements. Our center taught short courses in business, computer and technology related subjects, and conducted on-site, for fee, counseling in related fields

Bakersfield Community College Small Business Development Centers October 1990 to July 1993

Adjunct Instructor, Business Counselor

Implemented a TQM program as consultant to Bakersfield College. Hired as an adjunct faculty member and consultant in their SBDC program. Mentored small companies and fledgling entrepreneurs to establish effective and efficient operations. Helped write business plans, developed marketing and advertising strategies, created financing opportunities, and assisted in obtaining SBA business loans. Taught courses and seminars in TQM, entrepreneurship, OSHA, finance, SPC, and marketing. Consulted with private industry and government agencies, helped to implement improvement programs in many organizations including: Scars Logistics Scrvices, Gibson Environmental, Mercy Hospital, Kern Schools Credit Union, and the City of Bakersfield

Marchelle's Manufacturing Arvin, California August 1989 to May 1992

Partner, General Manager

Purchased an existing agricultural supply business and added a division which manufactured and repaired food processing machinery and equipment. Our products were custom designed for both fresh and frozen food products. They were fabricated in our shops and installed in local farms and factories. Sold off my interest so that I could pursue other opportunities and education.

Vice President, Processed Foods

Tenneco West, Inc. Bakersfield, California December 1986 to June 1989

Held P&L responsibility for all marketing, operations, production, and distribution of the "Sun Giant" brand of nuts and dried fruit. Sales exceeded \$160 million annually. We had five production facilities employing over 1,200 persons, located throughout California and a national distribution network. By instituting modem quality management techniques, J.I.T. manufacturing and increasing the quality efforts across the division we were able to reduce processing costs by an average of 18% in each product line. Developed state-of-the-art electronic vision sorting processes, reducing product variation and increasing customer conformance to record levels of quality. The business was sold to Dole Foods.

Senior Quality Consultant

Tenneco Inc. Houston, Texas July 1983 to November 1986

Hired by Tenneco corporate to establish an internal consultancy for Total Quality Management. Traveled extensively, held seminars instructing senior division managers in modem methods of quality and safety. Using Deming's statistics, Juran's problem solving and Crosby's philosophies, implemented quality programs in the major divisions of Tenneco i.e., Packaging Corporation of America, Philadelphia Life Insurance, Monroe Auto Equipment Co., J.1. Case, and Newport News Shipbuilding and Drydock Co. After instituting a major quality improvement program and restructuring the cost accounting system at Tenneco West, which resulted in a reduction in direct processing costs of \$7 million, I was promoted to Vice President of the Processed Foods Division.

Vice President, Quality Consulting

Philip Crosby Associates, Inc. Winter Park, Florida November 1980 to June 1983

PCA, Inc, was a management consulting firm specializing in Quality Improvement. We followed the "Zero Defect" philosophy, which has been proven universally to increase management effectiveness, eliminate administrative error, increase customer responsiveness, and reduce wastes. Consulted with senior managers from service, financial and technology companies. Major clients were: Metropolitan Life, American Express, Texas Instruments, and IBM. Taught seminars in TQM, JIT, SPC, teamwork, problem-solving, and process-improvement. Implemented quality improvements on a project basis where my background and experience helped each client gain cost reductions and increase productivity.

Home Metal Products Plano, Texas July 1977 to September 1980

Plant Manager

Directed the overall operations of an appliance industry company. Responsibilities included operations, purchasing, engineering, quality, personnel, and distribution. Held direct authority over 260 employees who reported through eight managers. By redirecting the quality policies and implementing MRP we were able to increase customer performance objectives from below 70% to over 90% for on-time deliveries, product completions exceeded 99.8%. Sales grew from 4.5 to 8.5 million dollars during my tenure as plant manager.

Power Systems Division National Chemsearch Corp Irvine, Texas February 1973 to June 1977

Division Plant Manager

Hired as an industrial engineer for chemical processes. After a year, designed and laid out a new factory for internal manufacture of dispensing equipment. Supervised construction of the plant then, accepted promotion to manage the new division. Oversaw a metal fabrication, finishing and assembly plant of 65 employees and engineers. Our products where pressure washers, steam cleaners, sprayers, and hand-operated chemical dispensing equipment. All products where sold to the parent corporation and sister divisions for use with proprietary chemicals.

Collins Radio Corporation Richardson, Texas June 1967 to January 1973 **Engineering Supervisor**

Hired as a line Industrial Engineer, responsible for establishing production and test methods, and process flow layout. Advanced to Senior Engineer, where we developed a computer system that created assembly operator and machine control instructions directly from stored engineering design data. Then promoted to Quality Engineering Supervisor, developing cost estimates and quality standards for the production and test of communication electronics. Corrected a purchasing computer program saving the company \$1.6 million on federal contracts.



Whatcom County

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

Agenda Bill Master Report

File	Number:	AB2019-366
1 110	Number.	AD2013-300

File ID:	AB2019-366	Version:	1	Status:	Agenda Ready
File Created:	06/14/2019	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance		
First Assigned to: Council					
Agenda Date:	07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Ordinance granting Comcast Cable Communications Management, LLC, a non-exclusive franchise for the provision of cable 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 cable services

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:	
Attachment		nchise for Comcast Cable Communic for Comcast Cable Communications I	•	
			Final Action:	
			Enactment Date:	
			Enactment #:	

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



CIVIC CENTER 322 N. Commercial Street, Suite 210 Bellingham, WA 98225-4042 Telephone: (360) 778-6200 FAX: (360) 778-6201

MEMORANDUM

TO:	The Honorable Jack Louws, County Executive, Honorable Members of the Whatcom County Council
THROUGH:	Jon Hutchings, Director
FROM:	Andrew Hester, Public Works Real Estate Coordinator AH
RE:	Franchise for Comcast Cable Communications Management, LLC.
DATE:	June 14, 2019

Requested Action

Adopt an ordinance that grants a franchise to Comcast Cable Communications Management, LLC, allowing it to use and be present in County Rights of Way in order to provide cable services per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

Background and Purpose

Comcast Cable Communications is the successor of TCI Cablevision of Washington, Inc. which was granted a cable services franchise on January 23, 1996. The franchise agreement expired on January 1, 2011. Whatcom County and Comcast Cable Communications have been operating under the terms and conditions of that franchise agreement in good faith while a new franchise agreement was being negotiated. This proposed franchise agreement is largely based on a franchise agreement that the City of Bellingham entered into with Comcast. Attached is an information sheet that summarizes key topics of the existing Comcast and Wave Broadband franchise agreements, the proposed Comcast and Wave Broadband franchise agreements, and the City of Bellingham franchise agreement.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

Agreement - ComcastAgreement - WaveAgreement - ComcastFranchise Term15 years25 years10 yearsLine Extension60 dwellings per mile60 dwellings per mile10 yearsLine Extension60 dwellings per mile00 dwellings per mile00 dwellings per mileUnderground30 dwellings per mile30 dwellings per mile30 dwellings per mileTanchise Fee4%4%4%PEG Channel2 available (one1 availablePEG Channel2 available (one1 availablePEG Channel2 available (one1 availablePEG Channel2 available (one1 availableBerd with city) - up1 available1 availablePEG Channel2 available based1 availableDiscount programNot addressed in1 availableDiscount programNot addressed in1 availableDiscount programNot addressed in1 buscriber if requestedDiscount programNot addressed in1 buscriber if requestedDiscount programNoneNoneConplementary service	Current Franchise	Current Franchise	New Proposed Franchise	New Proposed	City of Bellingham
Broadband15 years25 years60 dwellings per mile25 years60 dwellings per mile0 dwellings per mileunderground30 dwellings per mile30 dwellings per mileaerial4%4%2 available (one1 available2 available (one1 available0 n use1 availableNo PEG Fee, grantsNot addressedaddress capitalNot addressedexpensesNot addressedNot addressed inNoneNoneNoneNoneNone	Agreement – Comcast	Agreement – Wave	Agreement – Comcast	Franchise Agreement –	Comcast Franchise
15 years25 years60 dwellings per mile60 dwellings per mileunderground00 dwellings per mile30 dwellings per mile30 dwellings per mileaerial30 dwellings per mile2 available (one4%2 available (one1 availableshared with city) – up1 availableto five available basedNot addressedon useNot addressedNo PEG Fee, grantsNot addressedaddress capitalNot addressedexpensesNot addressed inNot addressed inNoneNoneNone		Broadband		Wave Broadband	
60 dwellings per mile underground60 dwellings per mile underground0 dwellings per mile aerial30 dwellings per mile aerial30 dwellings per mile aerial30 dwellings per mile aerial4%4%2 available (one shared with city) – up to five available based on use1 availableNo PEG Fee, grants address capital expensesNot addressed discount programNot addressed in franchise agreementNoneNoneNone		25 years	10 years	10 years	10 years
undergroundunderground30 dwellings per mile30 dwellings per mileaerial30 dwellings per mileaerial4%4%4%2 available (one1 available2 available (one1 availableto five available based1 availableon useNot addressedon useNot addressedaddress capitalNot addressedexpensesNot addressed inNot addressed inNoneNoneNone	60 dwellings per mile	60 dwellings per mile	60 dwellings per mile	60 dwellings per mile	32 dwellings per
30 dwellings per mile30 dwellings per mileaerial30 dwellings per mileaerialaerial4%4%2 available (one4%2 available (one1 availableshared with city) – up1 availableto five available based1 availableon useNot addressedNo PEG Fee, grantsNot addressedaddress capitalexpensesNot addressed inNo discount programfranchise agreementNoneNoneNone	underground	underground	underground	underground	mile underground
aerialaerial4%4%2 available (one4%2 available (one1 availableshared with city) – up1 availableto five available based0 nuseon useNot addressedno PEG Fee, grantsNot addressedaddress capitalNot addressedexpensesNot addressed inNot addressed inNot addressedNot addressed inNot addressedfranchise agreementNoneNoneNone	30 dwellings per mile	30 dwellings per mile	30 dwellings per mile	30 dwellings per mile	32 dwellings per
4%4%2 available (one shared with city) - up to five available based on use1 available availableNo five available based on use1 available basedNo PEG Fee, grants address capital expensesNot addressed basedNot addressed in franchise agreementNon discount program None	aerial	aerial	aerial	aerial	mile aerial
2 available (one shared with city) – up to five available based on use1 available availableNo five available based on useNot addressed address capital expensesNot address capital expensesNot addressed not addressed not addressedNot address capital expensesNot addressed not addressedNot address capital expensesNot addressed not addressedNot addressed in franchise agreementNoneNoneNone	4%	4%	4%	4%	5%
shared with city) – up to five available based on use No PEG Fee, grants address capital expenses Not addressed expenses Not addressed in No discount program franchise agreement None None	2 available (one	1 available	1 available	1 available	3 available
to five available basedon useon useNo PEG Fee, grantsNot addressedaddress capitalexpensesNot addressed inNot addressed inNot addressed infranchise agreementNoneNone	shared with city) – up		3		10
on useon useNo PEG Fee, grantsNot addressedaddress capitalexpensesexpensesNo discount programfranchise agreementNoneNoneNone	to five available based				
No PEG Fee, grantsNot addressedaddress capitaleddressedexpensesNot addressed inNot addressed inNo discount programfranchise agreementNone	on use				
address capital expenses Not addressed in franchise agreement None	No PEG Fee, grants	Not addressed	Currently none, can be	Currently none,	\$0.50 per
expensesNot addressed infranchise agreementNone	address capital		up to \$0.25 per	negotiable if requested	subscriber
Not addressed in No discount program franchise agreement None	expenses		subscriber if requested		
franchise agreement None None		No discount program	Discount program in	No discount program	Discount program
None None		G	place	-	in place
		None	Complementary service	None	Complementary
complementary provided			provided		service provided
service					-

extension policy determines where the cable provider must make service available based on density requirements. A franchise fee is a payment based on a percentage of the cable provider's gross revenue defined in the franchise agreement. The County may collect a franchise fee up to television services have a few additional items unrelated to the use of the County's Right-of-Way. Among those items are franchise fees, PEG 5% of the cable provider's gross revenue. A PEG fee can only be used for capital expenses (equipment, buildings) in support of a PEG channel. facilities within the right-of-way and the process for relocating their facilities if needed by the County for a road project. Franchises for cable Franchise agreements regulate a utility's use of the County's Right-of-Way and establish the process for the maintenance and installation of Senior/Disabled discount program can be negotiated. PEG stands for "Public, Education, and Government" and refers to the type of local Channel/PEG Fees, and line extension policy. Also complimentary cable service for government facilities and schools, and a low Income programming that can be offered on local noncommercial channels. Currently the County does not have its own PEG channel. The line Both the franchise fee and the PEG fee can be passed on to cable subscribers.

SPONSORED BY:_____

PROPOSED BY: Executive

INTRODUCTION DATE:_____

ORDINANCE NO.

GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE SERVICES.

WHEREAS, TCI Cablevision of Washington, Inc. was granted a cable services franchise by Whatcom County under County Ordinance No. 96-005, approved on January 23, 1996;and Comcast Cable Communications Management, LLC, is the successor of that franchise; and

WHEREAS, the Franchise expired on January 1, 2011; and

WHEREAS, Whatcom County and Comcast Cable Communications Management, LLC, have continued to operate under the terms and conditions of the franchise since the expiration of the franchise, and are not aware of any defaults on the part of either party under the terms and conditions of the franchise; and

WHEREAS, Whatcom County and Comcast Cable Communications Management, LLC, began renewal negotiations in accordance with Section 62(h) of Title VI of the Communications Act of 1934, as amended, and the parties continued to reserve all rights under Section 626 during such negotiations; and

WHEREAS, as part of the franchise negotiations, Comcast Cable Communications Management, LLC has applied to the Whatcom County for a the grant, continuation and renewal of its non-exclusive franchise for the right of entry, use, and occupation of the public rights-of-way within the County, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those rights-of-way for purposes of offering and providing cable services utilizing said facilities; and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by Whatcom County; and WHEREAS, said application 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, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of Whatcom County and its inhabitants that a franchise be extended, renewed and granted to Comcast Cable Communications Management, LLC.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a nonexclusive franchise set forth in the language hereinbelow, is hereby granted to Comcast Cable Communications Management, LLC for a period of ten (10) years in order that it may install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, upon, along and/or across those rights-of-way for purposes of offering and providing cable services utilizing said facilities

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:

Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive () Approved () Denied

Date Signed:

Whatcom County, Washington, and Comcast Cable Communications Management, LLC

Cable Television Franchise

Whatcom County Comcast Cable Television Franchise Agreement Table of Contents

Section 1	. DEFINITIONS	. 7
1.1	"Access," "PEG Access," or "PEG Use"	. 7
1.2	"Access Channel"	
1.3	"Access Facilities"	
1.4	"Access Provider"	. 8
1.5	"Applicable Law"	. 8
1.6	"Basic or Basic Service"	. 8
1.7	"Cable Service"	
1.8	"Cable Act"	. 8
1.9	"Cable System"	
1.10	"Channel"	
1.11	"County"	
1.12	"County Code"	
1.13	"Grantee"	
1.14	"Day"	
1.15	"Demarcation Point"	
1.16	"Digital Services"	
1.17	"Effective Date"	
1.18	"Expanded Basic Service"	
1.19	"Franchise"	
1.20	"Franchise Fee"	
1.21	"Gross Revenues"	
1.22	"Headend"	
1.23	"Indefeasible Right of Use"	
1.24	"Leased Access"	
1.25	"Municipal buildings"	
1.26	"MVPD"	
1.27	"Normal Business Office Hours"	
1.28	"Normal Operating Conditions"	
1.29	"Premium Service"	
1.30	"PEG""	
1.31	"Person"	
1.32	"Subscriber" "State"	
1.33 1.34	"Road"	
1.34	"Transfer"	
1.35	"Video Services"	
Section 2.	FRANCHISE	13
2.1	Grant of Franchise	13
2.2	Police Powers	13
2.3	Franchise Term	13
2.4	Franchise Area	
2.5	Franchise Nonexclusive	
2.6	Competition from Wireline MVPD	
2.7	Franchise Renewal or New Franchise	
2.8	Periodic Public Review of Franchise	15

2.9	Transfer or Change of Control	
2.10	Renewal	
2.11	Conditions of Sale	16
2.12	Right to Require Removal of Property	16
2.13	Continuity of Service Mandatory	16
Section 3	. CONSTRUCTION AND OPERATION IN Roads AND RIGHTS-OF-WAY	17
3.1	Use of Roads	
3.2	Construction or Alteration	
3.3	Non-Interference	17
3.4	Consistency with Designated Use	17
3.5	Undergrounding	17
3.6	Maintenance and Restoration	
3.7	Tree Trimming	19
3.8	Relocation	19
3.9	Movement of Buildings	
Section 4	. CABLE SYSTEM CAPACITY and Complimentary Service	23
4.1	Cable System Capacity	23
4.2	Complimentary Cable Service in County	
4.3	Equal and Uniform Service	24
4.4	Cable System Specifications	
4.5	Technical Standards	24
4.6	Performance Testing	24
Section 5	PROGRAMMING AND SERVICES	
5.1	Categories of Programming Service	26
5.2	Changes in Programming Services	
5.3	Obscenity	
5.4	Parental Control Device	
5.5	Closed Captioning	27
Section 6.	PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS	28
6.1	Access Channels	
6.2	Control and Administration	
6.3	Noncommercial Use of PEG	
6.4	Indemnification	
6.5	PEG Channel Location	29
6.6	PEG Capital Fees	29
6.7	Transition to HD Format for PEG Channel	30
6.8	Fiber Return Line	30
6.9	PEG Signals and Equipment	
6.10	Technical Quality of PEG Channel Signals	31
6.11	Change in Technology	
Section 7.	REGULATORY PROVISIONS	
7.1	Intent	
7.2	Areas of Administrative Authority	
7.3	Regulation of Rates and Charges	
7.4	Franchise Violations, Remedies, and Revocation	
7.5	Liquidated Damages	
7.6	Removal of Cable Following Termination of Franchise	
7.7	Failure to Enforce	
7.8	Alternative Remedies	

Page 5

7.9	Compliance with the Laws; Eminent Domain	
Section 8	8. REPORTING REQUIREMENTS	40
8.1	Quarterly Revenue Report	40
8.2	Open Records	
8.3	Confidentiality	40
8.4	Maps and Records Required	
8.5	Annual Reports	
8.6	Monitoring and Compliance Reports	
8.7	Additional Reports and Information	
Section 9		
9.1	Response to Customers and Cooperation with County	
9.2	Definition of "Complaint"	
9.3	Customer Service Agreement	43
9.4	Customer Service	44
9.5	Customer Bills	45
9.6	Notification of Complaint Procedure	46
9.7	Grantee Identification	
Section 1	0. LINE EXTENSION POLICY	47
10.1	Service and Installation	47
Section 1	1. COMPENSATION AND FINANCIAL PROVISIONS	
11.1	Franchise Fees	48
11.2	County Annual Report to Grantee of PEG Fee Purchases	49
11.3	Additional Commitments Not Franchise Fees.	49
11.4	Auditing and Financial Records	50
11.5	Performance Bond	50
11.6	Validity of Bond	51
11.7	Indemnification by Grantee	51
11.8	Grantee Insurance	
Section 1		
12.1	Posting and Publication	53
12.2	Guarantee of Performance	53
12.3	Entire Agreement	53
12.4	Consent	53
12.5	Franchise Acceptance	53
12.6	Force Majeure	
12.7	Work of Contractors and Subcontractors	54
12.8	Severability	54
12.9	Counterparts	54
12.10	No Waiver of Rights	
12.11	No Third Party Beneficiaries	
12.12	Modification.	
12.12	Governing Law	
12.14	Notices	
EXHIBIT	- FCC Customer Service Standards	

Page 6

SECTION 1. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not defined in this section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise which are not defined in this section shall be given their common and ordinary meaning.

1.1 "Access," "PEG Access," or "PEG Use"

refers to the availability, for non-commercial purposes, of a channel, or channels, on the Cable System for Public, Education or Government programming by various agencies, institutions, organizations, groups, and individuals, including the County.

(a) "Public Access" or "Public Use"

means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

(b) "Education Access" or "Education Use"

means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

(c) "Government Access" or "Government Use"

means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

1.2 "Access Channel"

means any channel or portion of a PEG channel utilized for Video Services, whether by Grantee or in cooperation with, by or through the County, where any resident of the County or any noncommercial organization whose members reside in the County may be a programmer, either without charge or in a non-profit manner, on a non-discriminatory basis.

1.3 "Access Facilities"

means a facility(s) designated for PEG Use, and equipment, including, but not limited to, modulators, demodulators and transmitters, as well as production facilities and equipment for PEG Use of PEG Channels.

1.4 "Access Provider"

means an entity designated by the County to provide PEG programming and the provision of any facilities, equipment or other services for the purpose of facilitating such programming.

1.5 "Applicable Law"

means any federal, State or local statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

1.6 "Basic or Basic Service"

means any service tier which includes the retransmission of local television broadcast signals.

1.7 "Cable Service"

means:

- (a) The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and
- (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

1.8 "Cable Act"

means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

1.9 "Cable System"

means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. For the purposes of this Franchise, Cable System means Grantee's system serving the County.

1.10 "Channel"

means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).

1.11 "County"

means Whatcom County of the State of Washington and all the unincorporated territory within its present and future boundaries.

1.12 "County Code"

means the Municipal Code of Whatcom County, Washington, as may be amended from time to time.

1.13 "Grantee"

means Comcast Cable Communications Management, LLC, a Washington Corporation and permitted successors and assigns.

1.14 "Day"

unless otherwise specified shall mean a calendar day.

1.15 "Demarcation Point"

means the physical point at which the Cable System enters a subscriber's home or building.

1.16 "Digital Services"

means services offered over the Cable system including the transmission of audio and video by discrete (digital) signals including standard definition and high definition signals consistent with the standards developed by the Advanced Television Systems Committee for digital television transmission over terrestrial, cable, and satellite networks.

1.17 "Effective Date"

means this Franchise granted by this Ordinance shall be effective upon Grantee's acceptance and no sooner than ten (10) days from date of final passage by County Council; provided, however, that Grantee shall have sixty (60) days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the County's discretion if Grantee fails to accept within sixty (60) days.

1.18 "Expanded Basic Service"

Refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

1.19 "Franchise"

means this Ordinance and conditions as set forth herein.

Page 9

1.20 "Franchise Fee"

means the fee the County may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).

1.21 "Gross Revenues"

means all revenue derived by Grantee, or any affiliate of Grantee or any other person who would constitute a cable operator of the Cable System under the Cable Act, from the operation of the Cable System to provide Cable Service in the County. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any tier of Cable Services including Basic Service, optional Premium Service or Digital Services; pay-per-view services;, installation, disconnection, reconnection and change-in-service fees, Leased Access channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the County, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenues from home shopping and other revenue-sharing arrangements.

Gross revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, State or other governmental unit, and collected by Grantee for such entity. The Franchise fee is not such a tax. Gross revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in gross revenues for the period in which they are collected.

Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees, however, amounts included in gross revenues shall not be counted more than once; therefore, amounts included once in Grantee's gross revenues shall not be added to gross revenues again if they are received by an affiliate of Grantee in payment for programming or other goods or services supplied to Grantee.

1.22 "Headend"

means the control center of the Cable System where incoming signals are amplified, converted, processed, and combined for transmission to the Subscriber.

1.23 "Indefeasible Right of Use"

means the exclusive, irrevocable right to use specified fiber subject to the terms and conditions of this Franchise, and any extensions or renewals thereof.

Page 10

1.24 "Leased Access"

means Channel capacity designated for commercial use by Persons unaffiliated with Grantee, in accordance with section 612 of the Cable Act.

1.25 "Municipal buildings"

means those buildings owned or leased and occupied by the County for government administrative purposes.

1.26 "MVPD"

means "multichannel video programming distributor." As used in this Franchise MVPD means a cable operator or a multichannel multipoint distribution service, that makes available for purchase, by Subscribers, multiple Channels of video programming.

1.27 "Normal Business Office Hours"

means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.28 "Normal Operating Conditions"

means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1.29 "Premium Service"

means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis.

1.30 "PEG"

means public, educational and governmental.

1.31 "Person"

means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.32 "Subscriber"

means any person who legally receives Grantee's Cable Services over the Cable System.

1.33 "State"

means The State of Washington

Page 11

1.34 "Road"

means the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all unincorporated areas of the County.

1.35 "Transfer"

means any transaction in which:

- (a) All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Roads);
- (b) There is any change, acquisition, or direct or indirect transfer of control of the Grantee;
- (c) The rights and/or obligations held by the Grantee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or
- (d) The transfer of stock in a corporation so as to create a new controlling interest constitutes a "transfer." The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

1.36 "Video Services"

means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

SECTION 2. FRANCHISE

2.1 Grant of Franchise

The County hereby authorizes Grantee to occupy or use the County's Roads subject to (A) the provisions of this non-exclusive Franchise to provide Cable Service within the County; and (B) all applicable provisions of the County Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The County hereby reserves all of its rights to regulate such other services to the extent consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Police Powers

The Grantee, through this Franchise, is granted the right to operate its Cable System using the Roads within the Franchise Area in compliance with the County Code, as may be amended periodically. The Grantee specifically agrees to comply with the lawful provisions of the County Code and lawful applicable regulations of the County, and subject to the police power exception below, in the event of a conflict between the lawful provisions of the County Code or lawful applicable regulations of the County and this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the County through subsequent amendment to the County Code or any regulation of County, except in the lawful exercise of County's police power. Grantee acknowledges that the County may modify its generally applicable regulatory policies by lawful exercise of the County's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications. Grantee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law.

2.3 Franchise Term

The term of the Franchise shall be ten (10) years, unless extended by mutual written consent or terminated sooner in accordance with this Franchise.

2.4 Franchise Area

The Franchise Area shall be that area within the present or future unincorporated limits of the County. Cable Service shall be provided to all Persons subject to the service and installation policy outlined in this Franchise Section 10.1.

2.5 Franchise Nonexclusive

The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate

provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. If following the execution of this agreement, any other wireline MVPD enters into any agreement with the County to provide Video Services to Subscribers in the County, the County, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide Video Services to Subscribers in the County under a substantively similar agreement as applicable to the new MVPD, if permissible under Applicable Law. Within one hundred and twenty (120) Days after the Grantee submits a written request to the County, the Grantee and the County shall enter into an agreement or other appropriate authorization (if necessary) containing the exact same terms and conditions as are applicable to the new wireline MVPD.

2.6 Competition from Wireline MVPD

If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a wireline MVPD to provide Cable Service or similar Video Service to Subscribers in the County, or that otherwise changes the nature or extent of the obligations that the County may request from or impose on a wireline MVPD providing Cable Service or Video Service to subscribers in the County, the County agrees that if another wireline MVPD avails itself of such new law and provides Cable Service or Video Service in the County, upon Grantee's written request, the County shall permit the Grantee to terminate this Franchise and, subject to Applicable Law, provide Cable Service or Video Service to Subscribers in the County and the Grantee shall implement the provisions of this Section within one hundred and twenty (120) Days after the Grantee submits a written request to the County. The County shall have the same right of termination of this Franchise should the changed law be more advantageous to the County, in the County's sole discretion.

2.7 Franchise Renewal or New Franchise

The County may establish appropriate requirements for new franchises or franchise renewals consistent with Applicable Law.

2.8 Periodic Public Review of Franchise

- (a) Upon thirty (30) days written notification, the County may hold performance evaluation sessions, no more than once every twelve months, whenever necessary to ensure proper performance of the provisions of this Franchise.
- (b) All evaluation sessions shall be open to the public.
- (c) Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Cable Service rate structures, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber Complaints, privacy, modifications to this Franchise, judicial and FCC rulings, line extension policies and the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.
- (d) During evaluations under this subsection, Grantee shall fully cooperate with the County and shall provide such information and documents as the County may reasonably require to perform the evaluation.

2.9 Transfer or Change of Control

Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise without the prior written consent of the County, which consent shall not be unreasonably withheld. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. In any event of transfer or change of control in which the consent of the County is not required, Grantee shall nonetheless promptly inform the County of the transfer (ii) above and the identity of the transferee. If Grantee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502) the County shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the County shall process such applications, in accordance with procedures set out in the County Code so long as they are not in conflict with Applicable Law. A Transfer without the prior written approval of the County is a material violation of this Franchise and shall make the Franchise subject to termination by the County.

For the purposes of determining whether it shall consent to a Transfer, the County, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law. The Grantee and any prospective transferees shall assist the County in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the County shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System as per federal law.

No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Grantee under this Franchise for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

Approval by the County of a Transfer of a Franchise does not constitute a waiver or release of any of the rights of the County under this Franchise, whether arising before or after the date of the Transfer.

2.10 Renewal

This Franchise shall be renewed in accordance with 47 U.S.C. 546.

2.11 Conditions of Sale

The County may acquire the Cable System as provided 47 U.S.C. 547.

2.12 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted provided no renewal is granted per the Cable Act, or upon its forfeiture or revocation as provided for herein, the County shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all roads and public ways within the Franchise area. If Grantee fails to do so, the County may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the Whatcom County Auditor.

2.13 Continuity of Service Mandatory

Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service so long as their financial obligations to Grantee are honored. In the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any other Person, including any other operator of a cable communications franchise, Grantee shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this agreement through the transition, to maintain continuity of service to all Subscribers.

SECTION 3. CONSTRUCTION AND OPERATION IN ROADS AND RIGHTS-OF-WAY

3.1 Use of Roads

Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Roads within the County such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the County. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to Applicable Law.

3.2 Construction or Alteration

Subject to Section 2.2 herein, in connection with the construction, operation or repair of the Cable System, Grantee shall, in all cases, comply with the County Code.

3.3 Non-Interference

Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Roads. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall make every effort to provide advance notice of the same to such affected residents as per reasonable industry standard.

3.4 Consistency with Designated Use

Notwithstanding the above grant to use Roads, no Road shall be used by Grantee if the County, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such road was created or dedicated, or presently used under Applicable Laws.

3.5 Undergrounding

Grantee shall place underground all of its transmission lines which are located or are to be located above the roads of the County in the following cases:

- (a) All other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (b) Grantee is unable to get pole clearance;
- (c) Underground easements are obtained from developers of new residential areas; or

(d) Utilities are overhead but residents prefer underground service drops (underground service drops provided at cost).

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove cables and overhead wires within such district if requested to do so and place facilities underground. If such undergrounding of Grantee facilities is part of such a project, the costs thereof shall be included in such local improvement district.

Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration

(a) Restoration to Prior Condition

Consistent with Section 12.24, 12.27, 12.28, and 12.30 of the County Code, in case of any disturbance of any Road, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface, in as good condition as before said work was commenced and in accordance with standards for such work set by the County and the County Code.

Grantee shall perform all restoration work promptly.

If Grantee fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

Grantee shall maintain all above ground improvements that it places on County Roads pursuant to this franchise. In order to avoid interference with the County's ability to maintain the Roads, Grantee shall provide and maintain a clear zone of five feet on all sides of such improvements.

If Grantee fails to comply with this provision, and by its failure, property is damaged, then Grantee shall be responsible for all damages caused thereby.

(b) Disputes

In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of Whatcom County

Page 18

Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 7.5 herein.

3.7 Tree Trimming

Grantee shall have the authority to trim trees upon and overhanging Roads, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. The Grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the County; provided, that the Grantee may so remove or trim when necessary to permit immediate repair of the system in order to restore its signal so long as it gives the County notice thereof as promptly as is reasonably practical. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, and shall defend and hold County harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed or for any personal injury or property damage resulting from said activities.

3.8 Relocation

(a) Relocation of Facilities

In the event that at any time during the period of the Franchise, county or state shall lawfully elect to alter or change the grade of any road, alley, or other public ways, the Grantee, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right-of-way at its own expense and within the time frame established by the County Engineer, which time frame shall be reasonably determined and which shall in no event be less than sixty (60) days following the date of written notice of such order. Design locate marks will be placed in the same three (3) day time frame as construction located marks.

All construction or installation of Grantee 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 owner of all utilities, public or private, installed in the Franchise Area prior in time to the Grantee Facilities shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee Facilities. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise

Area. Grantee shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Grantee Facilities.

(b) Failure by Grantee to Remove or Relocate

If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the County; or in emergencies or where public health and safety or property is endangered, the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

(c) Procedure for Removal of Cable

Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the roads which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Subject to the County Code and other Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the County based upon a determination, in the sole discretion of the County, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the roads which is not removed shall be deemed abandoned and title thereto shall be vested in the County.

(d) Aerial and Underground Construction

If all of the distribution lines of all of the wireline service providers, such as telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a Cable Operator (collectively "Service Providers") in any portion of the Franchise Area are underground, Grantee shall place its Cable System's distribution cables underground within that area; provided that such underground locations are actually capable of accommodating Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a Service Provider's wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear

the additional cost in excess of aerial installation. If funds exist, are set aside for such purpose, or provided by a third party, Grantee shall be entitled to seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Grantee shall utilize existing conduit wherever possible.

The County shall not be required to obtain easements for Grantee. Grantee shall, to the extent economically feasible, participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where utilities are being converted to underground facilities.

Nothing in this Section shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

In the event of a County facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare, Grantee agrees to bear the costs of converting Grantee's Cable System from an overhead system to an underground system as follows:

Utility Trench and Vault/Pedestal Engineering: To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete Cable System related engineering coordination with the other utilities involved in the project.

Conduit and Vaults/Pedestals Placement: Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:

- (1) If the County contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.
- (2) If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the County or its contractor, Grantee shall have the option to hire its own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.
- (3) If Grantee chooses to hire its own contractor(s), the County and its contractor(s) are responsible for coordinating with Grantee's contractor(s) to provide reasonable notice and time to complete the

placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.

Within the conversion area, Grantee shall not be responsible for coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to its solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed above.

In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.

In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable facilities.

Grantee shall utilize existing poles and conduit wherever possible.

3.9 Movement of Buildings

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the County, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The County shall require all building movers to provide not less than 15 days' notice to the cable company to arrange for such temporary wire changes.

SECTION 4. CABLE SYSTEM CAPACITY AND COMPLIMENTARY SERVICE

4.1 Cable System Capacity

During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming to its customers in the Franchise Area, including Basic Cable.

4.2 Complimentary Cable Service in County

As a voluntary initiative, the Grantee will continue to provide free of charge to the County and schools, Cable Service (consisting of the Digital Starter tier, or their reasonable functional equivalent) to each Municipal Building, Institutional Facility and each State accredited and/or Regional accredited K-12 school, not including "home schools," or incarceration facilities, located in the Franchise Area.

(a) County or school responsibilities

In instances wherein the County or school is leasing and occupying the building, the County or school shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. The Cable Service provided shall not be used for commercial purposes.

(b) New Installations

For new installations or relocation of installations, if the drop line to such building exceeds a Standard Installation drop of one hundred twenty-five (125) feet, the Grantee will accommodate the drop up to two hundred fifty (250) feet if the County or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided the County or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials.

(c) Alternate Wireline Service Provider

In the event that there is another wireline service provider (or providers) providing Cable Service within the County, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis, in County's sole discretion, in an effort to maintain equitable burdens on each provider.

4.3 Equal and Uniform Service

Subject to density requirements, Grantee shall provide access to equal and uniform Cable Service throughout the franchise area and shall not discriminate in the provision of Cable Services against any Subscriber consistent with applicable federal law.

4.4 Cable System Specifications

(a) Cable System Maintenance

In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise agreement.

(b) Emergency Alert Capability

Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System.

(c) Standby Power

Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power supplies, rated at least at two hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the County upon request.

4.5 Technical Standards

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply. The County may establish reasonable technical standards for the performance of the Cable System if permitted to do so under Applicable law.

4.6 Performance Testing

Grantee shall perform all Cable System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. Written records of all Cable System test results performed by or for Grantee shall be maintained and available for County inspection upon request.

The tests may be witnessed by representatives of the County, and Grantee shall inform the County of the time and place of each test no less than three weeks prior to the scheduled compliance test. Written test reports of compliance testing shall be submitted to the County. If more than one of the locations tested fail to meet the performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed. If a second test results in failure of one or more sites, then the County may seek remedies in accordance with sections 7.5 and 7.6 unless the circumstances of the failure are caused by conditions which are beyond Grantee's control, as determined, acknowledged and verified by the County.

Whatcom County Comcast Cable Cable Television Franchise

1

SECTION 5. PROGRAMMING AND SERVICES

5.1 Categories of Programming Service

Grantee shall provide video programming services in at least the following broad categories:

News and Information Sports General Entertainment Arts/Performance/Humanities Science/Technology Children/Family/Seniors Foreign Language Public, Educational and Governmental Access Programming

5.2 Changes in Programming Services

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without notifying the County. Further, Grantee shall provide at least thirty (30) days' prior written notice to Subscribers and to the County of Grantee's intent to effectively delete any broad category of programming or any channel within its control, including all proposed changes in channel allocation, including any new equipment requirements that may occur as a result of these changes.

Subscribers will be notified by Grantee of any changes in programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. The Grantee shall also give 30 days' written notice to both Subscribers and the County before implementing any service change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain day-parts.

5.3 Obscenity

Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

5.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device that will enable the Subscriber to block all access to any and all channels without

Page 26

affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

5.5 Closed Captioning

Grantee shall at all times comply with the requirements of 47 C.F.R. § 79.1 by providing services for the disabled, including, but not limited to, passing through closed captioning for local programming if provided by County or Access Provider.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

6.1 Access Channels

For the purpose of meeting the community's need for Access programming, the Grantee shall make available one (1) Government Access Channel throughout the term of this Franchise. As of the effective date of this Franchise, the County does not control or operate said Government Access Channel. The County collaborates with another neighboring community, serviced by the Grantee, to facilitate the County's needs for Access programming.

If the County opts to control and operate its own Government Access Channel, upon receipt of forty-five (45) days written notice, the County and Grantee shall meet to discuss and mutually agree upon a reasonable implementation plan to activate said Channel, and Grantee will provide such Channel in no event later than two hundred seventy (270) days. Grantee will use good faith efforts to make available the Government Access Channel in advance of the established timeframes and provide monthly reports to the County on its progress. Notwithstanding anything to the contrary set forth herein, if County desires to program said Government Access Channel, the Grantee will implement the County's programming within the existing Access Channel currently airing the local Government Access programming.

The County acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee may, but is not required, to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System.

6.2 Control and Administration

The control and administration of the PEG Access Channel shall rest with the County and the County may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in the County's sole discretion.

6.3 Noncommercial Use of PEG

PEG Access Channels are for noncommercial programming to be promoted and administered by the County as allowed under Applicable Law. Permitted noncommercial uses of the PEG Access Channels shall include by way of example and not limitation: (A) the identification of financial supporters similar to what is provided on public broadcasting stations; or (B) the solicitation of financial support for the provision of PEG programming by the County or third party users for charitable, educational or governmental purposes; or (C) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel.

Page 28

6.4 Indemnification

The County shall require, through the mutually agreed upon use requirements related to the protection of copyrighted material, that all public access users indemnify and hold the Grantee and the County harmless from all liability of any kind whatsoever, including the costs of legal defense arising from the use of facilities, channel(s) or access time by the user. To the extent allowed by law, the County agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the County's use of the PEG Access Channels required herein.

6.5 PEG Channel Location

Any PEG Access Channel activated hereunder will be provide to all subscriber on the Basic Service tier and be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels, excluding pay-per-view programming offered by Grantee in the County. Grantee will give County at least 90 day notice prior to changing any PEG Access channel location or number.

6.6 **PEG Capital Fees**

(a) PEG Fee Amounts

If County activates a Access channel per Section 6.1, the Grantee shall collect fees to support PEG capital needs on a per subscriber per month basis.

Within ninety (90) days of Grantee's receipt of the County's advance written request to activate the Government Access Channel, Grantee shall collect on behalf of the County a per Subscriber fee of no more than twenty five cents (\$.25) per month ("PEG Fee").

Subject to the preceding requirements of this Section 6.7(a), the County may, at any time over the term of this Franchise, provide Grantee ninety (90) days advance written notice and increase or decrease the PEG Fee as determined in the County's sole discretion. In no event however, may any PEG Fee exceed twenty five cents (\$.25)/Subscriber/month.

Any PEG fees collected and shown on Subscriber bills shall appear in a single line on the bill.

(b) County's use of PEG Fees

In no event shall the County use any portion of the PEG Fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations.

So long as the County uses the PEG fee for capital purposes consistent with federal law and FCC determinations, the County and Grantee agree that the PEG Fee is in addition to the Franchise Fee and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law.

(c) Grantee payment of PEG Fees

Upon activation of PEG Fee, Grantee shall pay the PEG Fee to the County quarterly at the same time as the payment of franchise fees under Section 11.1 of this Franchise. So long as the County uses any PEG fee in a manner consistent with this Franchise, federal law and FCC determinations, Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required as a result of its obligation to remit the PEG Funds or the PEG Fee.

Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed franchise in accordance with Applicable Law, Grantee shall continue to make monthly PEG Fee payments for, and in support of PEG Channels as specified hereinabove.

Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than forty five (45) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or the prime lending rate published by the Wall Street Journal plus two percent on the day the payment was due, whichever is greater.

6.7 Transition to HD Format for PEG Channel

Upon such time that Grantee provides all programming in an HD only format, Grantee shall provide the County's Access Channel in an HD format as well, provided that it receives an HD signal from the County.

6.8 Fiber Return Line

When the County provides notice to the Grantee concerning its election to program the Government Access Channel under Section 6.1, the County shall designate its proposed Government Access facility location. Within sixty (60) days of receiving notice, the Grantee shall provide an estimate of costs associated with the construction and activation of a fiber optic return line capable of transmitting Video Programming to enable the distribution of the County's Access programming to Subscribers on the provided Access Channel. The return line shall run from a location to be determined by the County to the Grantee's headend facilities. Within a reasonable time-period of receiving the County's directive to construct, the Grantee shall

Page 30

construct and activate a return line in accordance with the cost estimate previously provided. The County agrees to pay the actual costs of the return line within ninety (90) days of construction / activation and receipt of an invoice from the Grantee. The County may utilize the PEG Fees from Section 6.6 to cover the cost of construction at their sole discretion. Once constructed, the Grantee shall maintain the fiber optic return line to Grantee's Headend. If the County desires to relocate or expand the fiber optic return line to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the County and at the County's cost for Grantee's reasonable time and materials, the Grantee shall construct the requested new fiber optic return line(s).

6.9 **PEG Signals and Equipment**

All Access Channels shall be provided as part of Basic Service in accordance with applicable law. All Access Channels may be delivered by the County to Grantee in standard digital format

Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the Access Provider's side of fiber termination panel, or any designated playback center authorized by the County, shall be borne entirely by Grantee and provided free of charge to the County and its designees.

Grantee shall not cause any programming to override Access programming on any Access Channel, except by oral or written permission from the County, with the exception of emergency alert system signals.

6.10 Technical Quality of PEG Channel Signals

(a) PEG channel signals

The parties agree that it is the responsibility of the designated access provider(s) to provide a quality PEG signal, to the Grantee at the point of demarcation, which meets or exceeds the FCC technical standards. Notwithstanding the forgoing, the Grantee agrees that it will deliver to subscribers a PEG signal of the same quality it receives from the designated Access provider(s) without degradation and in accordance with the FCC technical standards. There shall be no restrictions on Grantee's technology used to deploy and deliver standard digital signals so long as the requirements of the Franchise are otherwise met. FCC technical standards shall be used for all testing and assessment of quality under this section. Grantee shall not impose any additional charges on the County or any access provider(s) after the signal is delivered to Grantee.

(b) PEG Signal – Technical support from Grantee

Within 24 hours of a call from County to the Grantee identifying a technical problem and requesting assistance, Grantee will provide technical assistance or

diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the County in order to determine the course of action to remedy the problem.

6.11 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the County to obtain new equipment in order to be compatible with such change, Grantee shall reimburse the County for such equipment as may be necessary.

SECTION 7. REGULATORY PROVISIONS

7.1 Intent

In accordance with the provisions of Chapter 12.24, 12.27, 12.28, and 12.30 Whatcom County Code and Chapter 36.55 RCW, the County retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law, so long as such regulation does not modify or subvert the express provisions of this Franchise.

7.2 Areas of Administrative Authority

In addition to any other regulatory authority granted to the County by law or franchise, the County shall have administrative authority in the following areas:

- (a) Administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of PEG Channel programming.
- (c) Formulating and recommending long-range cable communications policy for the Franchise area.
- (d) Disbursing and utilizing Franchise revenues paid to the County.

Grantee shall cooperate fully in facilitating the County's discharge of its administrative authority.

7.3 Regulation of Rates and Charges

(a) Right to Regulate.

The County reserves the right to regulate rates and charges for any Cable Service within the limits of Applicable Law.

(b) Notice of Change in Rates and Charges.

Throughout the term of this Franchise, Grantee shall give the County and all Subscribers within Whatcom County at least thirty (30) days' notice of any intended change to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers.

(c) Rate Discrimination Prohibited.

Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations.

(d) Low Income Senior/Disabled Discount Program.

As a voluntary initiative, Grantee agrees to provide throughout the term of this Franchise a discount of 30% from its published rate card to Basic Service Subscribers who are low income, and aged 65 years or older or disabled provided that such individual(s) are the legal owner or lessee/tenant of their dwelling unit and that their combined disposable income from all sources meets Grantee's thenapplicable income standards for participant.

Grantee shall administer the discount program. The County shall refer potential qualifying customers to Grantee.

Upon request, Grantee shall provide the County with the number of Subscribers participating in the discount program.

The County acknowledges that discounted services reflect a voluntary initiative on the part of Grantee and is not a requirement of this Franchise. Should Grantee elect to discontinue the low income discount, Grantee shall first provide the County with ninety (90) days' prior notice.

7.4 Franchise Violations, Remedies, and Revocation

(a) Remedies

The County shall have the right to assert the remedies set out below in the event Grantee violates any provision of this Franchise. These remedies are intended to embody the County's and/or the public's rights under County Charter to the extent permitted by Applicable Law.

(1) To the extent the County deems necessary to remedy the default, proceeding against all or any part of any security provided under the County Code or this Franchise, including, without limitation, any bonds, security funds, or other surety, Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs;

(2) Impose liquidated damages as set forth in Section 7.6, but only after the due process provisions outlined herein have been completed;

Page 34

(3) Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or

(4) In the case of a Grantee's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.

In determining which remedy or remedies for Grantee's violation are appropriate, the County shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

(b) Revocation

The County has the right to revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

(1) Grantee is in violation of any material provision of the Franchise agreement or has demonstrated a pattern of Franchise violations and fails to correct the violation(s) after written notice of the violation(s) and proposed forfeiture and a reasonable opportunity thereafter to correct the violation(s) as noted in section 7.5 (c); or

(2) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, to the extent permitted by Applicable Law; or

(3) Grantee is found to have engaged in any or attempted fraud or deceit upon the County, Persons, or Subscribers; or

(4) Grantee fails to post a performance bond as required under the terms of this Franchise.

(c) Enforcement Procedures

(1) <u>Notice of Violation or Default</u>. In the event the County believes that the Grantee has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Grantee to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Grantee prior to issuing a notice of violation. Thereafter the County shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default ("Violation Notice"). (2) <u>Grantee's Right to Cure or Respond</u>. The Grantee shall have thirty (30) days from the receipt of the Violation Notice to: (A) to respond to the County, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed. The County shall not unreasonably refuse to accept the Grantee's proposed cure date but such decision shall be the County's alone to make.

(3) <u>Contested Hearings</u>. In the event the Grantee fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required under this Section 7.5 (c), the County may refer the matter to the County's hearing examiner in accordance with Section 2.11 of the County Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. County shall notify Grantee of the hearing in writing. The determination as to whether Grantee is in default of this Franchise shall be determined by the hearing examiner, but any such written decision shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be filed within thirty (30) Days of the issuance of the written decision of the hearing examiner. County shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.

(4) In the event the hearing examiner determines that Grantee is in non-compliance with any provision of the Franchise, the County may impose any of the remedies set out in section 7.

7.5 Liquidated Damages

- (a) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the County and because it will be impractical to determine the actual amount of such damages, the County and Grantee hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.
- (b) The County shall specify any damages subject to this section and shall include such information in the Violation Notice sent to Grantee required under Section 7.5(c)(1). Such Violation Notice may provide for damages sustained prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Grantee.
- (c) To the extent that the County elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that the assessment of liquidated damages does not constitute a waiver by the County of any other right or remedy it may have under the Franchise or Applicable Law.
- (d) Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Grantee's receipt of the Violation Notice, unless the County has agreed to extend the thirty (30) day cure period. If Grantee fails to cure within the thirty (30) days, then the liquidated damages accrue from the date of the Violation Notice for a maximum of one hundred-twenty (120) days, whereupon the County shall pursue alternate remedies as provided herein. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.
- (e) Grantee may cure the breach or violation within the time specified in Section 7.5(c)(2) to the County's satisfaction, whereupon no liquidated damages are assessed.
- (f) <u>Schedule of Liquidated Damages</u>. Nothing requires the County to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the County. Liquidated damages are set as follows.

(1) For failure to provide data, documents, reports and information as required by this Franchise or to cooperate with the County during a system review, One Hundred Fifty and No/100 Dollars (\$150) per day, or part thereof, per each separate violation.

(2) For failure to provide the services required by this Franchise, including, but not limited to, the implementation and utilization of the PEG Channels, performance of required tests, and compliance with customer service standards, Two Hundred Fifty and No/100 Dollars (\$250) per day for each day, or part thereof, such failure occurs or continues.

(3) For failure to comply with any of the material provisions of the Franchise, for which a liquidated damage is not otherwise specified, the liquidated damages shall be Two Hundred and No/100 (\$200) per day for each day, or part thereof, such failure occurs or continues.

7.6 Removal of Cable Following Termination of Franchise

Any order by the County to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the final determination of revocation of Grantee's right to occupy public right of way. Grantee shall file written notice with the County not later than 30 calendar days following the date of termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the County. Removal shall be completed no later than 12 months following the date of expiration of the Franchise. To the extent that Grantee provides non-cable services over its Cable System that are not regulated under this Franchise, Grantee must confirm that it has the right to retain facilities in the right of way to continue to provide non-cable services.

7.7 Failure to Enforce

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the County to enforce prompt compliance, and County's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

7.8 Alternative Remedies

- (a) As an alternative to the remedy set forth herein, the parties may mutually agree to submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the State of Washington, and shall be selected as follows: one by the County Council, one by the Grantee, and one by the two so appointed. Should the two arbitrators be unable to name a third, such third arbitrator shall be named by a judge of the Superior Court for Whatcom County. Said board shall make its decision in writing and file its decision with the parties within 60 days from the date of the appointment of the final arbitrator. The decision of the board shall be by a majority vote and signed by at least two arbitrators. The written decision shall be final and binding upon the parties.
- (b) No provision of this Franchise shall be deemed to bar the right of the parties to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in the Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the parties to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

7.9 Compliance with the Laws; Eminent Domain

Grantee shall comply with all applicable federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the County heretofore or hereafter adopted or established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the County's right of eminent domain under State law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the County requiring permits, fees to be paid, or regulation of construction.

SECTION 8. REPORTING REQUIREMENTS

8.1 Quarterly Revenue Report

For each Franchise Fee payment there shall be a report submitted by a representative of the Grantee showing the basis for the computation of the Franchise Fees and applicable PEG fees paid during that period in the Grantee's standard format. This report shall separately indicate revenues received by Grantee within the County including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.22 of this Franchise.

8.2 Open Records

The County shall have access to, and the right to inspect, any books and records of Grantee and its Affiliates which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise at the Grantee's regional business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. The County may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the County at the sole expense of Grantee. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the County shall inspect them at Grantee's regional office.

8.3 Confidentiality

Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee that is not providing Cable Service in the Franchise Area. The County agrees to keep proprietary or confidential books or records of Grantee confidential to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information that is reasonably determined by the Grantee to be competitively sensitive.

If the County receives a demand from any Person for disclosure of any information designated by Grantee as proprietary or confidential, the County shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

8.4 Maps and Records Required

Grantee shall provide to the County upon request:

- (a) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the County to add this information to County's geographic information system program;
- (b) A copy of all FCC filings which relate to the operation of the Cable System in the Franchise Area; and
- (c) A list of Grantee's Cable Services, rates and channel line-up.
- (d) Grantee shall, provide County with information which shall describe in detail Grantee's compliance with customer service standards, including complaint resolution, telephone answering, and outage reports, subject to customer privacy regulations.

8.5 Annual Reports

Upon request, thirty (30) days after the end of the first quarter, Grantee shall submit to the County a written report, which shall include the following information:

- (a) A summary of gross revenue and franchise fee calculations for the previous year.
- (b) An unaudited financial statement for Grantee. The County shall have the right one (1) time during the term of this Franchise to require that the Grantee provide the County with an audited financial statement for any one fiscal year of the Grantee.
- (c) A summary of the previous year's activities for the Franchise area served by Grantee including, but not limited to, the number of homes passed, miles of overhead and underground cable plant.
- (d) A description of all significant changes and modifications to the system or services that have been implemented in the previous year.
- (e) A summary of Subscriber complaints received in the previous year.

8.6 Monitoring and Compliance Reports

Upon request, but no more than once a year, Grantee shall provide FCC proof of performance test results. Upon request, Grantee shall make available for County's review, any other technical testing results related to the system serving the County.

8.7 Additional Reports and Information

Grantee shall prepare and the County may review, at the times and in the form prepared by Grantee in its normal course of business, such additional reports with respect to its operation, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise.

SECTION 9. CUSTOMER SERVICE POLICIES

9.1 Response to Customers and Cooperation with County

Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the County's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the County to resolve complaints. Grantee shall comply with FCC standards as described below.

9.2 Definition of "Complaint"

For the purposes of section 9, with the exception of Subsection 9.3, a "complaint" shall mean any communication to Grantee or to the County by a Subscriber or a Person who has; requested cable service, and is expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise and has not found resolution through normal Grantee processes.

9.3 Customer Service Agreement

Grantee shall provide to Subscribers a comprehensive service agreement and a customer packet for use in establishing Subscriber service. This packet shall, at a minimum, contain the following information:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.
- (f) Converter/Subscriber equipment policy.
- (g) Breach of Agreement specification.
- (h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (i) The name and address, of the County identified as the local franchising authority This information shall be contained in the packet, A copy of the customer service agreement shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection. Thereafter, if the packet is modified to reflect material changes in policy an updated copy of the packet shall be sent to all Subscribers within 30 days of such modification.

9.4 Customer Service

(a) Customer Service Location

Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

(b) Customer Service Standards

The County hereby adopts the customer service standards set forth in §76.309 of the FCC's rules and regulations, as included in Exhibit.

(c) Customer Service procedures regarding television signal quality

Consistent with §76.1602 of the FCC's rules and regulations, Grantee will provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

- (1) Products and Services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the County's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the County.

(d) Customer Service Rate and Service Changes

Consistent with §76.1603 of the FCC's rules and regulations, subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee.

Grantee shall give 30 days' written notice to both subscribers and the County before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

(e) Information on Subscriber Bills

Consistent with §76.1619 of the FCC's rules and regulations,

- (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (2) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(f) Refund Policy

If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

(g) Late Fees

Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill.

(h) Disputes

In the event a subscriber has a complaint related to Grantee's service or performance and Grantee has failed to resolve the issue. Subscribers may then direct complaints regarding Grantee's service or performance to the chief administrative officer of the County or the chief administrative officer's designee, which may be a board or commission of the County.

9.5 Customer Bills

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

9.6 Notification of Complaint Procedure

Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in section 9.3, the 24-hour Grantee phone number for Subscriber inquiries.

9.7 Grantee Identification

Grantee shall provide all customer service technicians and all other employees entering private property with appropriate picture identification so that Grantee's employees may be easily identified by the property owners and Subscribers.

SECTION 10. LINE EXTENSION POLICY

10.1 Service and Installation

Grantee shall make service available at standard installation and service rates, for every potential subscriber, pursuant to the following requirements:

- (a) In newly developing underground service areas, where a shared trench is provided, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least sixty (60) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
- (b) In any area served by overhead facilities Grantee shall extend and make cable television service available to every dwelling unit in areas having at least thirty (30) dwelling units per strand mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
- (c) In any area served by underground facilities that has existing homes that are not served by Grantee, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least one-hundred twenty (120) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system.
- (d) Grantee must extend and make cable television service available to any resident requesting connection at the standard connection charge if the connection to the resident would require no more than a standard 125' aerial drop line.
- (e) With respect to requests for connection requiring an aerial drop line in excess of 125', the Grantee must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the company for the distance exceeding 125'.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS

11.1 Franchise Fees

During the term of the Franchise, Grantee shall pay to the County a franchise fee of 4% of Gross Revenues. The County retains the option of increasing the franchise fee up to 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the County shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law and that all cable providers serving the County are treated similarly. In the event the franchise fee is modified by the County, the County agrees to provide Grantee with prompt written notice of such modification. In the event Grantee bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Services in accordance with applicable law and GAAP. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

- (a) Franchise fees shall be paid quarterly not later than 45 days following the end of a given quarter. In accordance with Section 8.1 of this Franchise, and not later than the date of each payment, Grantee shall file with the County on a quarterly basis a franchise fee payment report which identifies Gross Revenues earned by Grantee during the prior quarter. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the County may have for further or additional sums payable under the provisions of this section.
- (b) Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by Applicable Law. Nor shall copyright fees or other license fees paid by Grantee be subtracted from Gross Revenues for purposes of calculating franchise fees.
- (c) Any franchise fees owing pursuant to this Franchise which remain unpaid more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

11.2 County Annual Report to Grantee of PEG Fee Purchases

If the County requests remittance of any PEG Fees, they shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the County's PEG related capital expenditures.

If Grantee alleges that County has inappropriately used PEG fees, Grantee agrees to first notify the County of its concern prior to taking any legal action or withholding payment against any other fees owed County.

11.3 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay in full the Franchise Fee percentage listed in this Franchise. Additionally, the Capital Contribution pursuant to Section 6.6 (a), as well as any charges incidental to the awarding or enforcing of this Franchise, including payments for bonds, security funds, letters of credit insurance, indemnification, penalties or liquidated damages shall not be offset against Franchise Fees. Furthermore, the County and Grantee agree that any utility tax, business and occupation tax or similar local tax of general applicability shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law. This section shall not be interpreted to prohibit offsets required or authorized by federal law or regulation, such as complimentary services or voluntary discounts. In the event that Grantee elects to offset

franchise fees by any service authorized by applicable law, Grantee shall provide ninety (90) days' advance notice.

11.4 Auditing and Financial Records

Grantee agrees to meet with representatives of the County upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the County deems necessary for understanding the meaning of reports and records.

The County or its authorized agent may at any time and at the County's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of franchise fees paid to the County. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. Any such audit shall take place within three (3) years from the date the County receives such payment, after which period any such payment shall be considered final.

Upon the completion of any such audit by the County, the County shall provide to the Grantee a final report setting forth the County's findings in detail, including any and all substantiating documentation. Enforcement of any overpayment or underpayment shall be undertaken in accordance with Section 7.5 of this Franchise. In the event Grantee has underpaid the County by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to fifteen thousand dollars (\$15,000). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.

In the event of an overpayment by Grantee, the County shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the County.

The County agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement of the Franchise.

11.5 Performance Bond

Within 30 days after the Grantee's acceptance of this Franchise, Grantee shall post a performance bond, in the amount of two hundred fifty thousand dollars (\$250,000.00), to ensure Grantee's faithful performance of the terms of this Franchise.

Neither the provisions of this section, any bond accepted by the County pursuant thereto, nor any damages recovered by the County thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

Page 50

11.6 Validity of Bond

If, at any time during the term of the Franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the County, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the County.

11.7 Indemnification by Grantee

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the County, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the County or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of, or alleged to arise out of, any claim for damages for Grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to Grantee in its business. Nothing herein shall be deemed to prevent the County, its officers, or its employees, from participating in the defense of any litigation by their own counsel, at such parties expense. Such participation shall not, under any circumstances, relieve Grantee from its duty of defense against liability, or of paying any judgment entered against the County, its officers, or its employees.

Notwithstanding, this Section (11.7) does not include PEG Access programming, operations, or administration, Access Channel(s), Access Facilities, or Access Provider(s), all of which is the County's sole responsibility.

11.8 Grantee Insurance

Grantee shall maintain, throughout the term of the Franchise, liability insurance in the minimum amounts of:

- (a) \$2,000,000 for personal injury or death to any one person and \$5,000,000 aggregate for personal injury or death per single accident or occurrence.
- (b) \$2,000,000 for property damage to any one person and \$5,000,000 aggregate for property damage per single accident or occurrence.

Page 51

Whatcom County Comcast Cable Cable Television Franchise (c) \$2,000,000 for all other types of liability, including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction.

Such insurance shall specifically name as additional insured Whatcom County, its officers, employees and agents, shall further provide that the policy shall not be modified or canceled during the life of this Franchise without giving 30 days' written notice to the County.

Grantee shall file with the County a certificate of insurance showing up-to-date coverage and additional insured coverage, as set forth above. Coverage shall not be changed or canceled without approval of the County.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Posting and Publication

Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

12.2 Guarantee of Performance

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the County of a 10-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Grantee.

12.3 Entire Agreement

This Franchise agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

12.4 Consent

Wherever the consent or approval of either Grantee or the County is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

12.5 Franchise Acceptance

This Franchise granted by this Ordinance shall be effective upon Grantee's acceptance and no less than 10 days from date of final passage by County Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the County's discretion if Grantee fails to accept within 60 days.

12.6 Force Majeure

In the event that either party is prevented or delayed in the performance of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight embargoes, shortages or unavailability of materials or supplies, unusually severe weather conditions, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Agreement, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

Page 53

Whatcom County Comcast Cable Cable Television Franchise

12.7 Work of Contractors and Subcontractors

Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the County Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the County Code and other Applicable Laws governing the work performed by them.

12.8 Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

12.9 Counterparts

This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

12.10 No Waiver of Rights

Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, either County or Grantee may have under Federal or state law unless such waiver is expressly stated herein.

12.11 No Third Party Beneficiaries

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

12.12 Modification

No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the County and the Grantee, which amendment shall be authorized on behalf of the County through the adoption of an appropriate resolution or order by the County, as required by applicable law.

12.13 Governing Law

Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the

Page 54

laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

12.14 Notices

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the County:

Whatcom County 311 Grand Ave., Suite 108 Bellingham, WA 98225-4038 Attn: County Executive

To the Grantee:

Comcast of Washington IV, Inc. 15815 25th Ave. W. Lynnwood, WA 98087 Attn: Government Affairs Dept.

Non-binding courtesy copy to:

Comcast Cable Communications, Inc. 400 Sequoia Dr, Bellingham, WA, 98226 Attn.: Government Affairs Dept.

EXHIBIT - FCC CUSTOMER SERVICE STANDARDS

Grantee shall comply in all respects with the following customer service requirements established by the §76.309 of the FCC's rules and regulations:

- (1) Cable System office hours and telephone availability:
 - (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - (A) Trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (B) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
 - (ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 - (iii) The operator shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - (iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - (v) Customer service center and bill payment locations will be open at least during Normal Business Office Hours and will be conveniently located.
- (2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:
 - (i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

Page 56

- (ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.
- (iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
- (iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (3) Communications between Cable operators and Subscribers:
 - (i) Refunds. Refund checks will be issued promptly, but no later than either:
 - (A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (B) The return of the equipment supplied by the cable operator if service is terminated.
 - (ii) Credits. Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.



Whatcom County

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

Agenda Bill Master Report

File	Number:	AB2019-368
	Training of the	

First Assigned t Agenda Date:	o: Council 07/09/2019	Next Mtg. Da	ite:	Hearing	Date:
Department:	Public Works Department	File Type:	Ordinance		
File Created:	06/14/2019		AHester@co.whatcom.wa.us	•••••	5
File ID:	AB2019-368	Version:	1	Status:	Agenda Ready

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

TITLE FOR AGENDA ITEM:

Ordinance granting WaveDivision I, LLC, a non-exclusive franchise for the provision of cable 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 cable services

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:	
Attachments	: Memo-Ordinance-Fran LLCpdf	chise for WaveDivision I, LLCpdf, C	Ordinance-Franchise for WaveDivision I,	
			Final Action:	
			Enactment Date:	
			Enactment #:	

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



CIVIC CENTER 322 N. Commercial Street, Suite 210 Bellingham, WA 98225-4042 Telephone: (360) 778-6200 FAX: (360) 778-6201

MEMORANDUM

The Honorable Jack Louws, County Executive, Honorable Members of the Whatcom County Council
Jon Hutchings, Director
Andrew Hester, Public Works Real Estate Coordinator AH
Franchise for WaveDivision I, LLC.
June 14, 2019

Requested Action

Adopt an ordinance that grants a franchise to WaveDivision I, LLC, allowing it to use and be present in County Rights of Way in order to provide cable services per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

Background and Purpose

WaveDivision I, LLC, is the successor of County Cable, Inc. which was granted a cable services franchise on October 27, 1992. The franchise agreement expired on October 27, 2017. Whatcom County and WaveDivision I, LLC, have been operating under the terms and conditions of that franchise agreement in good faith while a new franchise agreement was being negotiated. This proposed franchise agreement is largely based on a franchise agreement that the City of Bellingham entered into with Comcast. Attached is an information sheet that summarizes key topics of the existing Comcast and Wave Broadband franchise agreements, the proposed Comcast and Wave Broadband franchise agreements, and the City of Bellingham franchise agreement.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

	Current Franchise	Current Franchise	New Proposed Franchise	New Proposed	City of Bellingham
	Agreement – Comcast	Agreement – Wave	Agreement – Comcast	Franchise Agreement –	Comcast Franchise
		Broadband		Wave Broadband	
Franchise Term	15 years	25 years	10 years	10 years	10 years
Line Extension	60 dwellings per mile	60 dwellings per mile	60 dwellings per mile	60 dwellings per mile	32 dwellings per
	underground	underground	underground	underground	mile underground
	30 dwellings per mile	30 dwellings per mile	30 dwellings per mile	30 dwellings per mile	32 dwellings per
	aerial	aerial	aerial	aerial	mile aerial
Franchise Fee	4%	4%	4%	4%	5%
PEG Channel	2 available (one	1 available	1 available	1 available	3 available
	shared with city) – up				
	to five available based				
	on use				
PEG Fee	No PEG Fee, grants	Not addressed	Currently none, can be	Currently none,	\$0.50 per
	address capital		up to \$0.25 per	negotiable if requested	subscriber
	expenses		subscriber if requested		
Discount program	Not addressed in	No discount program	Discount program in	No discount program	Discount program
Low Income/Senior	franchise agreement		place	5	in place
School/Government	None	None	Complementary service	None	Complementary
complementary			provided		service nrovided
service			_	s c	
	2				

extension policy determines where the cable provider must make service available based on density requirements. A franchise fee is a payment based on a percentage of the cable provider's gross revenue defined in the franchise agreement. The County may collect a franchise fee up to television services have a few additional items unrelated to the use of the County's Right-of-Way. Among those items are franchise fees, PEG 5% of the cable provider's gross revenue. A PEG fee can only be used for capital expenses (equipment, buildings) in support of a PEG channel. facilities within the right-of-way and the process for relocating their facilities if needed by the County for a road project. Franchises for cable Franchise agreements regulate a utility's use of the County's Right-of-Way and establish the process for the maintenance and installation of Senior/Disabled discount program can be negotiated. PEG stands for "Public, Education, and Government" and refers to the type of local Channel/PEG Fees, and line extension policy. Also complimentary cable service for government facilities and schools, and a low Income programming that can be offered on local noncommercial channels. Currently the County does not have its own PEG channel. The line Both the franchise fee and the PEG fee can be passed on to cable subscribers.

SPONSORED BY:_____ PROPOSED BY:___Executive_____ INTRODUCTION DATE:_____

ORDINANCE NO.

GRANTING WAVEDIVISION I, LLC, A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE SERVICES.

WHEREAS, Country Cable, Inc. was granted a cable services franchise ("Franchise") by Whatcom County ("County") under County Ordinance No. 92-077, approved on October 27, 1992; and the County consented to the transfer of the Franchise to Northland Cable Properties Seven Limited Partnership under County Ordinance No. 93-025, adopted on May 25, 1993, and the County further consented to the transfer of the Franchise to WaveDivision I, LLC ("Grantee") under County Ordinance No. 2003-016, adopted on February 11, 2003; and

WHEREAS, the Franchise expired on October 27, 2017; and

WHEREAS, the County and Grantee have continued to operate under the terms and conditions of the Franchise since the transfer of the Franchise to Grantee, and are not aware of any defaults on the part of either party under the terms and conditions of the Franchise; and

WHEREAS, the County and Wave began renewal negotiations in accordance with Section 62(h) of Title VI of the Communications Act of 1934, as amended, and the parties continued to reserve all rights under Section 626 during such negotiations; and

WHEREAS, as part of the Franchise negotiations, Grantee has applied to the County for a the grant, continuation and renewal of its non-exclusive franchise for the right of entry, use, and occupation of the public Rights-of-Way within the County, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its Facilities in, on, upon, along and/or across those Rights-of-Way for purposes of offering and providing Cable Services utilizing said Facilities ("Grantee Services"); and

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the _____ day of _____, 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, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of the County and its inhabitants that a franchise be extended, renewed and granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a nonexclusive franchise set forth in the language hereinbelow, is hereby granted to Grantee for a period of ten (10) years in order that it may install, construct, erect, operate, maintain, repair, relocate and remove its Facilities in, on, upon, along and/or across those Rights-of-Way for purposes of offering and providing Cable Services utilizing said Facilities

Adopted this day of	_, 2019. 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
Clea	
Civil Deputy Prosecutor	Jack Louws, County Executive () Approved () Denied

Date Signed: _____

Definitions.

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not defined in this section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise which are not defined in this section shall be given their common and ordinary meaning.

"Access," "PEG Access," or "PEG Use"

refers to the availability, for non-commercial purposes, of a channel, or channels, on the Cable System for Public, Education or Government programming by various agencies, institutions, organizations, groups, and individuals, including the County.

a. "Public Access" or "Public Use"

means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

<u>"Education Access" or "Education Use"</u> means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

<u>"Government Access" or "Government Use"</u> means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

"Access Channel"

means any channel or portion of a PEG channel utilized for Video Services, whether by Grantee or in cooperation with, by or through the County, where any resident of the County or any noncommercial organization whose members reside in the County may be a programmer, either without charge or in a non-profit manner, on a non-discriminatory basis.

"Access Facilities"

means a facilities designated for PEG Use, and equipment, including, but not limited to, modulators, demodulators and transmitters, as well as production facilities and equipment for PEG Use of PEG Channels.

"Access Provider"

means an entity designated by the County to provide PEG programming and the provision of any facilities, equipment or other services for the purpose of facilitating such programming.

"Applicable Law"

means any federal, State or local statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

"Basic or Basic Service"

means a service tier that includes, at a minimum, all signals of domestic television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System), any public, educational, and governmental programming required by this Franchise to be carried on the Basic tier, and any additional video programming signals or service added to the Basic tier by the Grantee.

"Cable Service"

means:

- (a) The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and
- (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

"Cable Act"

means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

"Cable System"

means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. For the purposes of this Franchise, Cable System means Grantee's system serving the County.

"Channel"

means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).

"County"

means Whatcom County of the State of Washington and all the unincorporated territory within its present and future boundaries.

"County Code"

means the Municipal Code of Whatcom County, Washington, as may be amended from time to time.

"Grantee"

means WaveDivision I, LLC, a Washington limited liability company and permitted successors and assigns.

"Day"

unless otherwise specified shall mean a calendar day.

"Demarcation Point"

means the physical point at which the Cable System enters a subscriber's home or building.

"Digital Services"

means services offered over the Cable system including the transmission of audio and video by discrete (digital) signals including standard definition and high definition signals consistent with the standards developed by the Advanced Television Systems Committee for digital television transmission over terrestrial, cable, and satellite networks.

"Effective Date"

means this Franchise granted by this Ordinance shall be effective upon Grantee's acceptance and no sooner than ten (10) days from date of final passage by County Council; provided, however, that Grantee shall have sixty (60) days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the County's discretion if Grantee fails to accept within sixty (60) days.

"Expanded Basic Service"

Refers to the next tier of service above the Basic Service tier excluding premium or pay-perview services.

"Franchise"

means this Ordinance and conditions as set forth herein.

"Franchise Area"

means the limited area within the County as specified in Section 1.4 hereof within which the Grantee is authorized to provide Cable Services under this Franchise, .

"Franchise Fee"

means the fee the County may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).

"<u>Grantee Facilities</u>" means such poles, antenna, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related wireline and wireless property or equipment as may be necessary or appurtenant to Grantee's Cable System.

"Gross Revenues"

means all revenue derived by Grantee, or any affiliate of Grantee or any other person who would constitute a cable operator of the Cable System under the Cable Act, from the operation of the Cable System to provide Cable Service in the County. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any tier of Cable Services including Basic Service, optional Premium Service or Digital Services; pay-per-view services;, installation, disconnection, reconnection and change-in-service fees, Leased Access channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the County, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenues from home shopping and other revenue-sharing arrangements.

Gross Revenues shall not include any taxes or other fees on services furnished by Grantee, which taxes or fees are imposed directly on or passed through to a Subscriber or user by a city, county, State or other governmental unit, and collected by Grantee for such entity. The Franchise fee is such a fee. Gross Revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected.

Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees, however, amounts included in Gross Revenues shall not be counted more than once; therefore, amounts included once in Grantee's Gross Revenues shall not be added to Gross Revenues again if they are received by an affiliate of Grantee in payment for programming or other goods or services supplied to Grantee.

"Headend"

means the control center of the Cable System where incoming signals are amplified, converted, processed, and combined for transmission to the Subscriber.

"Leased Access"

means Channel capacity designated for commercial use by Persons unaffiliated with Grantee, in accordance with section 612 of the Cable Act.

"Liquidated Damages"

means any requirement imposed on the Grantee to pay specified sums to the County as a result of performance deficiencies and/or Franchise violations identified herein.

"MVPD"

means "multichannel video programming distributor." As used in this Franchise MVPD means a cable operator or a multichannel multipoint distribution service, that makes available for purchase, by Subscribers, multiple Channels of video programming.

"Normal Business Office Hours"

is defined in 76 CFR Section 309(c)(4)(i), as may be amended, the current version of which is included in Exhibit A to this Franchise.

"Normal Operating Conditions"

is defined in 76 CFR Section 309(c)(4)(ii), as may be amended, the current version of which is included in Exhibit A to this Franchise.

"Parent Corporation"

means any existing or future corporation, entity, or person with greater than 50 percent ownership or control over Grantee.

"Premium Service"

means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis.

"PEG"

means public, educational and governmental.

"Person"

means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

"Subscriber"

means any person who legally receives Grantee's Cable Services over the Cable System.

"State" means The State of Washington

"Road"

means the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all unincorporated areas of the County.

"Transfer"

means any transaction in which:

- (a) All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Roads);
- (b) There is any change, acquisition, or direct or indirect transfer of control of the Grantee;
- (c) The rights and/or obligations held by the Grantee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or
- (d) The transfer of stock in a corporation so as to create a new controlling interest constitutes a "transfer." The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

"Video Services"

means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

Section 1. Grant of Franchise Right to Use Franchise Area.

1.1 County hereby authorizes Grantee to occupy or use the County's Roads subject to (A) the terms, conditions, and other provisions of this non-exclusive Franchise to provide Cable Service within the County; and (B) all applicable provisions of the County Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The County hereby reserves all of its rights to regulate such other serves to the extent consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

1.2 The Grantee, through this Franchise, is granted the right to operate its Cable System using the Roads within the Franchise Area in compliance with the County Code, as may be amended periodically. The Grantee specifically agrees to comply with the lawful provisions of the County Code and lawful applicable regulations of the County, and subject to the police power exception below, in the event of a conflict between the lawful provisions of the County Code or lawful applicable regulations of the County and this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the County

8

through subsequent amendment to the County Code or any regulation of County, except in the lawful exercise of County's police power. Grantee acknowledges that the County may modify its generally applicable regulatory policies by lawful exercise of the County's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications. Grantee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The County reserves all of its rights and defenses to such challenges whether arising in contract or at law.

1.3 The term of the Franchise shall be ten (10) years, unless extended by mutual written consent or terminated sooner in accordance with this Franchise.

1.4 The Franchise Area shall be that area Grantee's Facilities occupy together with any adjoining area in which Grantee expands the Grantee Facilities, which shall automatically become a part of the Franchise Area at the time of permitting for the installation of any Grantee Facilities, within the present or future unincorporated limits of the County. Cable Service shall be provided to all Persons subject to the service and installation policy outlined in this Franchise Section 9.1.

1.5 The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. If following the execution of this agreement, any other wireline MVPD enters into any agreement with the County to provide Video Services to Subscribers in the County, the County, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide Video Services to Subscribers in the County under a substantively similar agreement as applicable to the new MVPD, if permissible under Applicable Law. Within one hundred and twenty (120) Days after the Grantee submits a written request to the County, the Grantee authorization (if necessary) containing the exact same terms and conditions as are applicable to the new wireline MVPD.

1.6 If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a wireline MVPD to provide Cable Service or Video Service to Subscribers in the County, or that otherwise changes the nature or extent of the obligations that the County may request from or impose on a wireline MVPD providing Cable Service or Video Service to subscribers in the County, the County agrees that if another wireline MVPD avails itself of such new law and provides Cable Service or Video Service in the County, upon Grantee's written request, the County shall permit the Grantee to terminate this Franchise and, subject to Applicable Law, provide Cable Service or Video Service to Subscribers in the County and the Grantee shall implement the provisions of this

section within one hundred and twenty (120) Days after the Grantee submits a written request to the County. The County shall have the same right of termination of this Franchise should the changed law be more advantageous to the County, in the County's sole discretion.

1.7 The County may establish appropriate requirements for new franchises or franchise renewals consistent with Applicable Law.

1.8 Upon thirty (30) days written notification, the County may hold performance evaluation sessions, no more than once every thirty-six months, whenever necessary to ensure proper performance of the provisions of this Franchise. All evaluation sessions shall be open to the public. Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Cable Service rate structures, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Grantee for new services or programs, Subscriber Complaints, privacy, modifications to this Franchise, judicial and FCC rulings, line extension policies and the City's or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise. During evaluations under this subsection, Grantee shall fully cooperate with the County and shall provide such information and documents as the County may reasonably require to perform the evaluation, subject to the confidentiality provisions of this Franchise.

1.9 Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise without the prior written consent of the County, which consent shall not be unreasonably withheld. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by WaveDivision Holdings, LLC. In any event of transfer or change of control in which the consent of the County is not required, Grantee shall nonetheless promptly inform the County of the transfer (ii) above and the identity of the transferee. If Grantee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502) the County shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the County shall process such applications, in accordance with procedures set out in the County Code so long as they are not in conflict with Applicable Law. A Transfer without the prior written approval of the County is a material violation of this Franchise and shall make the Franchise subject to termination by the County.

For the purposes of determining whether it shall consent to a Transfer, the County, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law. The Grantee and any prospective transferees shall assist the County in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the County shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System as per federal law.

No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Grantee under this Franchise for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

Approval by the County of a Transfer of a Franchise does not constitute a waiver or release of any of the rights of the County under this Franchise, whether arising before or after the date of the Transfer.

1.10 This Franchise shall be renewed in accordance with 47 U.S.C. 546.

1.11 The County many acquire the Cable System as provided 47 U.S.C. 447.

1.12 At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the County shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Grantee's Facilities from all roads and public ways within the Franchise area. If Grantee fails to do so, the County may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the Whatcom County Auditor.

1.13 Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service under normal operating conditions so long as their obligations to Grantee are honored and do not abuse Grantee's personnel or Facilities or otherwise misuse the Grantee's Facilities In the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any other Person, including any other operator of a cable communications franchise, Grantee shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this agreement through the transition, to maintain continuity of service to all Subscribers until such time as the transfer is complete.

Section 2. Construction and Operation in Roads and Rights-of-Way

2.1 Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Roads within the County such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the County. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to Applicable Law.

2.2 Subject to Section 1.2 herein, in connection with the construction, operation or repair of the Cable System, Grantee shall, in all cases, comply with the County Code.

2.3 Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Roads. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall make every effort to provide advance notice of the same to such affected residents as per reasonable industry standard.

2.4 Notwithstanding the above grant to use Roads, the County is under no obligation to grant a permit to Grantee for construction of Grantee Facilities if the County, in its sole opinion, determines that at the time of the permit application such use is inconsistent with the terms, conditions or provisions by which such road was created or dedicated, or presently used under Applicable Laws.

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove cables and overhead wires within such district if requested to do so and place facilities underground and all other utilities are required to do so. If such undergrounding of Grantee facilities is part of such a project, the costs thereof shall be included in such local improvement district.

2.5 All construction or installation of Grantee's 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 owner of all utilities, public or private, installed in the Franchise Area prior in time to the Grantee's Facilities shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee's Facilities. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Grantee shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Grantee's Facilities.

Grantee shall maintain a minimum underground horizontal separation of five (5) feet from County water facilities and ten (10) feet from above-ground County water facilities; provided, that for development of new areas, County, together with Grantee and other utility purveyors or authorized users of rights-of-way, will develop and follow the Public Works Director's determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Franchise.

2.6 Maintenance and Restoration

a. Consistent with Section 12.24, 12.27, 12.28, and 12.30 of the County Code, in case of any disturbance of any Road, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface, in as good condition as before said work was commenced and in accordance with standards for such work set by the County and the County Code.

Grantee shall perform all restoration work promptly.

If Grantee fails, neglects or refuses to make restorations as required under this Section, then the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.

Grantee shall maintain all above ground improvements that it places on County Roads pursuant to this franchise. In order to avoid interference with the County's ability to maintain the Roads, Grantee shall provide and maintain a clear zone of five feet on all sides of such improvements. 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. If Grantee fails to comply with this provision, and by its failure, property is damaged, then Grantee shall be responsible for all damages caused thereby.

Before commencing any work within the Franchise Area, Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

If Grantee fails to comply with this provision, and by its failure, property is damaged, then Grantee shall be responsible for all damages caused thereby.

b. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of Whatcom County Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 6.4 herein.

2.7 Grantee shall have the authority to trim trees upon and overhanging Roads, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. The Grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the County; provided, that the Grantee may so remove or trim when necessary to permit immediate repair of the system in order to restore its signal so long as it gives the County notice thereof as promptly as is reasonably practical. Regardless of who

performs the work requested by the Grantee, the Grantee shall be responsible, and shall defend and hold County harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed, or for any personal injury or property damage resulting from said activities.

- 2.8 Relocation
- a. In the event that at any time during the period of the Franchise, county or state shall lawfully elect to alter or change the grade of any road, alley, or other public ways, the Grantee, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right-of-way at its own expense and within the time frame established by the County Engineer, which time frame shall be reasonably determined and which shall in no event be less than sixty (60) days following the date of written notice of such order. Design locate marks will be placed in the same three (3) day time frame as construction located marks.
- b. If Grantee fails, neglects, or refuses to remove or relocate its facilities as directed by the County; or in emergencies or where public health and safety or property is endangered, the County may do such work or cause it to be done, and the cost thereof to the County shall be paid by Grantee.
- c. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the roads which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Subject to the County Code and other Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the County based upon a determination, in the reasonable discretion of the County, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the roads which is not removed shall be deemed abandoned and title thereto shall be vested in the County.
- d. If all of the distribution lines of all of the wireline service providers, such as telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a Cable Operator (collectively "Service Providers") in any portion of the Franchise Area are underground, Grantee shall place its Cable System's distribution cables underground within that area; provided that such underground locations are actually capable of accommodating Grantee's cable and other equipment without technical degradation of the Cable System's signal

quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where a Service Provider's wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. If funds exist, are set aside for such purpose, or provided by a third party, Grantee shall be entitled to seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Grantee shall utilize existing conduit wherever possible.

d(i) The County shall not be required to obtain easements for Grantee. Grantee shall, to the extent economically feasible, participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where utilities are being converted to underground facilities.

d(ii) Nothing in this Franchise shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, nodes, pedestals, or other related equipment.

d(iii) In the event of a County facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare, Grantee agrees to bear its proportionate share of the costs of converting Grantee's Cable System from an overhead system to an underground system as follows:

- A. Utility Trench and Vault/Pedestal Engineering: To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete Cable System related engineering coordination with the other utilities involved in the project.
- B. Conduit and Vaults/Pedestals Placement: Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:

1. If the County contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project. 2. If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the County or its contractor, Grantee shall have the option to hire its own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.

3. If Grantee chooses to hire its own contractor(s), the County and its contractor(s) are responsible for coordinating with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.

d(iv). Within the conversion area, Grantee shall not be responsible for any onsite coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to its solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in Section 2.8(D) above.

- A. In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID funding for all expenses incurred as a result of the project.
- B In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable facilities.
- C. Grantee shall utilize existing poles and conduit wherever possible.

2.9 Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the County, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The County shall require all building movers to provide not less than 15 days' notice to the cable company to arrange for such temporary wire changes.

Section 3. Cable System Capacity

3.1 During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming to its customers in the Franchise Area, including Basic Cable.

16

3.3 Subject to density requirements, Grantee shall provide access to equal and uniform Cable Service throughout the Franchise Area and shall not discriminate in the provision of Cable Services against any Subscriber on the basis of income.

- 3.4 Cable System Specifications
- a. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise agreement.
- b. Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System.
- c. Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall have in place throughout the Franchise term a plan, and all reasonable resources necessary for implementation of the plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the County upon request.

3.5 The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply. The County may establish reasonable technical standards for the performance of the Cable System if permitted to do so under Applicable law.

3.6 Grantee shall perform all Cable System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. Records of all Cable System test results performed by or for Grantee shall be maintained and available for County inspection upon reasonable request. If more than one of the locations tested fail to meet the performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed. If a second test results in failure of one or more sites, then the County may seek remedies in accordance with sections 6.4 and 6.5 unless the circumstances of the failure are caused by conditions which are beyond Grantee's control, as determined, acknowledged and verified by the County.

Section 4. Programming and Services

4.1 Grantee shall provide video programming services in at least the following broad categories:

News and Information Sports General Entertainment Arts/Performance/Humanities Science/Technology Children/Family/Seniors Foreign Language

4.2 Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without notifying the County. Further, Grantee shall provide at least thirty (30) days' prior written notice to Subscribers and to the County of Grantee's intent to effectively delete any broad category of programming or any channel within its control, including all proposed changes in channel allocation, including any new equipment requirements that may occur as a result of these changes.

Subscribers will be notified by Grantee of any changes in programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. The Grantee shall also give 30 days' written notice to both Subscribers and the County before implementing any service change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain day-parts.

4.3 Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

4.4 Upon request by any Subscriber, Grantee shall make available a parental control or lockout device that will enable the Subscriber to block all access to any and all channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

4.5 Grantee shall at all times comply with the requirements of 47 C.F.R. § 79.1 by providing services for the disabled, including, but not limited to, passing through closed captioning for local programming if provided by County or Access Provider.

Section 5. Public, Educational and Governmental Access

5.1 Within one hundred eighty days (180) of a written request from the County, Grantee shall make available one (1) full time activated channel for use by the County for PEG Access over the Cable System.

Upon such notice, the County and Grantee shall meet to discuss and mutually agree upon a reasonable implementation plan to activate said PEG Access, including discussion of format of the PEG Access channel and the delivery of the signal from the County to Grantee.

5.2 The control and administration of the PEG Access Channel shall rest with the County and the County may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in the County's sole discretion.

5.3 PEG Channels are for noncommercial programming to be promoted and administered by the County as allowed under Applicable Law. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (A) the identification of financial supporters similar to what is provided on public broadcasting stations; or (B) the solicitation of financial support for the provision of PEG programming by the County or third party users for charitable, educational or governmental purposes; or (C) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel.

5.4 The County shall require, through the mutually agreed upon use requirements related to the protection of copyrighted material, that all public access users indemnify and hold the Grantee and the County harmless from all liability of any kind whatsoever, including the costs of legal defense arising from the use of facilities, channel(s) or access time by the user. To the extent allowed by law, the County agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the County's use of the PEG Channels required herein.

5.5 Any PEG Channel activated hereunder will be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels, excluding payper-view programming offered by Grantee in the County.

Grantee will give County at least 90 day notice prior to changing any PEG channel location or number.

- 5.6 PEG Capital Fees
- a. Upon the notice described in Section 5.1 above, the County shall present its plan for the PEG Access channel to Grantee. The parties will then discuss in good faith the amount of any fee that Grantee will collect from Subscribers on behalf of the County for the PEG Access channel ("PEG Fee").

Any PEG fees collected and shown on Subscriber bills shall appear in a single line on the bill.

b. In no event shall the County use any portion of the PEG Fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations.

So long as the County uses the PEG fee for capital purposes consistent with federal law and FCC determinations, the County and Grantee agree that the PEG Fee is in addition to the Franchise Fee, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law.

c. Grantee shall pay the PEG Fee to the County quarterly at the same time as the payment of franchise fees under Section 10.1 of this Franchise. So long as the County uses any PEG fee in a manner consistent with this Franchise, federal law and FCC determinations, Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required as a result of its obligation to remit the PEG Funds or the PEG Fee.

Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed franchise in accordance with Applicable Law, Grantee shall continue to make monthly PEG Fee payments for, and in support of PEG Channels as specified hereinabove.

Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than forty five (45) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or the prime lending rate published by the Wall Street Journal plus two percent on the day the payment was due, whichever is greater.

Section 6. Regulatory Provisions

6.1 In accordance with the provisions of Chapter 12.24, 12.27, 12.28, and 12.30 Whatcom County Code and Chapter 36.55 RCW, the County retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law, so long as such regulation does not modify or subvert the express provisions of this Franchise.

6.2 In addition to any other regulatory authority granted to the County by law or franchise, the County shall have administrative authority in the following areas:

- (a) Administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of PEG Channel programming.
- (c) Formulating and recommending long-range cable communications policy for the Franchise area.
- (d) Disbursing and utilizing Franchise revenues paid to the County.

Grantee shall cooperate fully in facilitating the County's discharge of its administrative authority.

- 6.3 Regulation of Rates and Charges
- (a) Right to Regulate. The County reserves the right to regulate rates and charges for any Cable Service within the limits of Applicable Law.
- (b) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give the County and all Subscribers within Whatcom County at least thirty (30) days' notice of any intended change to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers.
- (c) Rate Discrimination Prohibited. Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations.
- 6.4 Franchise Violations, Remedies, and Revocation
- (a) The County shall have the right to assert the remedies set out below in the event Grantee violates any provision of this Franchise. These remedies are intended to embody the County's and/or the public's rights under County Charter to the extent permitted by Applicable Law.
 - (1) To the extent the County deems necessary to remedy the default, proceeding against all or any part of any security provided under the County Code or this Franchise, including, without limitation, any bonds,

security funds, or other surety, Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs;

- (2) Impose liquidated damages as set forth in Section 6.5, but only after the due process provisions outlined herein have been completed;
- (3) Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or
- (4) In the case of a Grantee's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.

In determining which remedy or remedies for Grantee's violation are appropriate, the County shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

- (b) The County has the right to revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:
 - (1) Grantee is in violation of any material provision of the Franchise agreement or has demonstrated a pattern of Franchise violations and fails to correct the violation(s) after written notice of the violation(s) and proposed forfeiture and a reasonable opportunity thereafter to correct the violation(s) as noted in section 6.4 (c); or
 - (2) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, to the extent permitted by Applicable Law; or
 - (3) Grantee is found to have engaged in any fraud or attempted fraud upon the County.
- (c) Enforcement Procedures
 - (1) <u>Notice of Violation or Default</u>. In the event the County believes that the Grantee has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Grantee to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Grantee prior to issuing a notice of violation. Thereafter the County shall notify the Grantee in writing with specific details

regarding the exact nature of the alleged noncompliance or default ("Violation Notice").

- (2) <u>Grantee's Right to Cure or Respond</u>. The Grantee shall have thirty (30) days from the receipt of the Violation Notice to: (A) to respond to the County, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed. The County shall not unreasonably refuse to accept the Grantee's proposed cure date but such decision shall be the County's alone to make.
- (3) <u>Contested Hearings</u>. In the event the Grantee fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required under this Section 6.4 (c), the County may refer the matter to the County's hearing examiner in accordance with Section 2.11 of the County Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. County shall notify Grantee of the hearing in writing. The determination as to whether Grantee is in default of this Franchise shall be determined by the hearing examiner, but any such written decision shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be filed within thirty (30) Days of the issuance of the written decision of the hearing examiner. County shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.
- (4) In the event the hearing examiner determines that Grantee is in noncompliance with any provision of the Franchise, the County may impose any of the remedies set out in section 6.
- 6.5 Liquidated Damages
- (a) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the County and because it will be impractical to determine the actual amount of such damages, the County and Grantee hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.
- (b) The County shall specify any damages subject to this section and shall include such information in the Violation Notice sent to Grantee required under Section 6.5(c)(1). Such Violation Notice may provide for incidents occurring up to sixty

(60) days prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Grantee.

- (c) To the extent that the County elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that the assessment of liquidated damages shall be the County's sole and exclusive remedy for the matters for which liquidated damages are sought.
- (d) Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Grantee's receipt of the Violation Notice, unless the County has agreed to extend the thirty (30) day cure period. If Grantee fails to cure within the thirty (30) days, then the liquidated damages accrue from the date of the Violation Notice for a maximum of one hundred-twenty (120) days. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.
- (e) Grantee may cure the breach or violation within the time specified in Section 6.4(c)(2) to the County's satisfaction, whereupon no liquidated damages are assessed.
- (f) Nothing requires the County to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the County. Liquidated damages are set as follows.
 - 1. For failure to provide data, documents, reports and information as required by this Franchise or to cooperate with the County during a system review, Fifty and No/100 Dollars (\$50) per day, or part thereof, per each separate violation.
 - For failure to provide the services required by this Franchise, including, but not limited to, the implementation and utilization of the PEG Channels, performance of required tests, and compliance with customer service standards, Two Hundred and No/100 Dollars (\$200) per day for each day, or part thereof, such failure occurs or continues; .
 - 3. For failure to comply with any of the material provisions of the Franchise, for which a liquidated damage is not otherwise specified, the liquidated damages shall be Two Hundred and No/100 (\$200) per day for each day, or part thereof, such failure occurs or continues provided that any delay is not caused by the County or any other cause beyond Grantee's reasonable control.
 - 4. Grantee is not responsible for and shall not be liable for any liquidated damages, if the failure to comply is in any way caused by any factors outside Grantee's reasonable control as described in Section 11.7 below.

(g) Any liquidated damages assessed under this Franchise shall be capped at the amount of \$20,000 per calendar year.

6.6 Any order by the County to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the final determination of revocation of Grantee's right to occupy public right of way. Grantee shall file written notice with the County not later than 30 calendar days following the date of termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the County. Removal shall be completed no later than 12 months following the date of expiration of the Franchise.

6.7 Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the County to enforce prompt compliance, and County's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

6.8 Alternative Remedies

- (a) As an alternative to the remedy set forth herein, the parties may mutually agree to submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the State of Washington, and shall be selected as follows: one by the County Council, one by the Grantee, and one by the two so appointed. Should the two arbitrators be unable to name a third, such third arbitrator shall be named by a judge of the Superior Court for Whatcom County. Said board shall make its decision in writing and file its decision with the parties within 60 days from the date of the appointment of the final arbitrator. The decision of the board shall be by a majority vote and signed by at least two arbitrators. The written decision shall be final and binding upon the parties.
- (b) No provision of this Franchise shall be deemed to bar the right of the parties to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in the Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the parties to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

6.9 Grantee shall comply with all applicable federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the County heretofore or hereafter adopted or

established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the County's right of eminent domain under State law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the County requiring permits, fees to be paid, or regulation of construction.

Section 7. Reporting Requirements

7.1 For each Franchise Fee payment there shall be a report submitted by a representative of the Grantee showing the basis for the computation of the Franchise Fees and any PEG fees paid during that period in the Grantee's standard format. This report shall separately indicate revenues received by Grantee within the County including, but not limited to such items as listed in the definition of "Gross Revenues" of this Franchise.

7.2 The County shall have access to, and the right to inspect, any books and records of Grantee and its affiliates which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise, during normal business hours, and without unreasonably interfering with Grantee's business operations. The County may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the County at the sole expense of Grantee. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the County shall inspect them at Grantee's office.

7.3 Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee that is not providing Cable Service in the Franchise Area. The County agrees to keep proprietary or confidential books or records of Grantee confidential to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. If the County receives a demand from any Person for disclosure of any information designated by Grantee as proprietary or confidential, the County shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

7.4 Grantee shall provide to the County upon reasonable request, provided that Grantee may comply with this Section by making information available on a publicly available web site:

(a) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the County to add this information to County's geographic information system program; subject to the County maintaining the confidentiality of this information;

(b) A copy of all FCC filings which relate to the operation of the Cable System in the Franchise Area maintained by Grantee on the FCC's public website; and

(c) A list of Grantee's Cable Services, rates and channel line-up, as provided on Grantee's web site.

7.5 Upon request, thirty (30) days after the end of the year, Grantee shall submit to the County a summary of gross revenue and franchise fee calculations for the previous year.

7.6 Upon request, but no more than once a year, Grantee shall provide FCC proof of performance test results. Upon request, Grantee shall make available for County's review, any other technical testing results related to the system serving the County.

7.7 Grantee shall prepare and the County may review, at the times and in the form prepared by Grantee in its normal course of business, such additional reports with respect to its operation, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise.

7.8 Upon request, Grantee will make available updated route maps for the County's inspection Grantee may take reasonable steps to ensure the confidentiality of its system maps.

Section 8. Customer Service Policies

8.1 Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the County's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the County to resolve complaints. Grantee shall comply with FCC standards, as may be amended from time to time. The current FCC standards are set forth in Exhibit A.

8.2 County reserves the right upon request to review Subscriber complaint records. County acknowledges that Grantee does not organize complaints by franchise area and it would be the responsibility of the County to review complaint records in the form provided by the Grantee.

Section 9. Line Extension Policy

9.1 Grantee shall make service available at standard installation and service rates, for every potential subscriber within the Franchise Area, pursuant to the following requirements:

- (a) In newly developing underground service areas, where a shared trench is provided, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least sixty (60) dwelling units per trench mile as measured from the end of Grantee's then existing distribution system.
- (b) In any area served by overhead facilities Grantee shall extend and make cable television service available to every dwelling unit in areas having at least thirty (30) dwelling units per strand mile as measured from the end of Grantee's then existing distribution system.
- (c) In any area served by underground facilities that has existing homes that are not served by Grantee, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least one-hundred twenty (120) dwelling units per trench mile as measured from the end of Grantee's then existing distribution system.
- (d) Grantee must extend and make cable television service available to any resident requesting connection at the standard connection charge if the connection from Grantee's distribution plant to the resident would require no more than a standard 125' aerial drop line.
- (e) With respect to requests for connection requiring an aerial drop line in excess of 125' from Grantee's distribution plant, the Grantee must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by Grantee for the distance exceeding 125'; provided that nothing in this section shall require Grantee to extend its distribution plant.

Section 10. Compensation and Financial Provisions

10.1 During the term of the Franchise, Grantee shall pay to the County a franchise fee of 4% of Gross Revenues. The County retains the option of increasing the franchise fee up to 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the County shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law and that all cable providers serving the County are treated similarly. In the event the franchise fee is modified by the County, the County agrees to provide Grantee with at least sixty (60) days' prior written notice of such modification. In the event Grantee bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

- (a) Franchise fees shall be paid quarterly not later than 45 days following the end of a given quarter. In accordance with Section 7.1 of this Franchise, and not later than the date of each payment, Grantee shall file with the County on a quarterly basis a franchise fee payment report which identifies Gross Revenues earned by Grantee during the prior quarter. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the County may have for further or additional sums payable under the provisions of this section.
- (b) Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by Applicable Law. Nor shall copyright fees or other license fees paid by Grantee be subtracted from Gross Revenues for purposes of calculating franchise fees.
- (c) Any franchise fees owing pursuant to this Franchise which remain unpaid more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

10.2 If the County requests remittance of any PEG Fees, they shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the County's PEG related capital expenditures.

If Grantee alleges that County has inappropriately used PEG fees, Grantee agrees to first notify the County of its concern prior to taking any legal action or withholding payment against any other fees owed County.

10.3 Grantee agrees to discuss with representatives of the County upon reasonable request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the County deems necessary for understanding the meaning of reports and records.

The County or its authorized agent may at any time, but not more than once every three (3) calendar years, and at the County's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of franchise fees paid to the County. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. Any such audit shall take place within three (3) years from the date the County receives such payment, after which period any such payment shall be considered final. If the County uses an independent contractor for such audit, the contractor must sign a non-disclosure agreement acceptable to Grantee prior to the contractor accessing any Grantee information.

Upon the completion of any such audit by the County, the County shall provide to the Grantee a final report setting forth the County's findings in detail, including any and all substantiating documentation. Enforcement of any overpayment or underpayment shall be undertaken in accordance with Section 6.4 of this Franchise. In the event Grantee has underpaid the County by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to fifteen thousand dollars (\$15,000). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.

In the event of an overpayment by Grantee, the County shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the County.

The County agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement of the Franchise.

10.4 Within 30 days after the Grantee's acceptance of this Franchise, Grantee shall post a performance bond, in the amount of one hundred thousand dollars (\$100,000.00), to ensure Grantee's faithful performance of the terms of this Franchise.

Neither the provisions of this section, any bond accepted by the County pursuant thereto, nor any damages recovered by the County thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

10.5 If, at any time during the term of the Franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the County, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the County.

10.6 Grantee shall, at its sole expense, fully indemnify, defend, and hold harmless the County, and its officers, agents, and employees in their capacity as such, , from any claim for injury, damages, loss, liability, cost, and expense arising in whole or in part from, incident to, or connected with any act or omission of the Grantee, or its Parent Corporation, their agents, contractors or subcontractors, or any of their employees, including without limitation any

construction, operation, maintenance, excavation, reconstruction, or any other act done under this Franchise by or for Grantee, its Parent Corporation, their agents, contractors, subcontractors, or their employees, and including any neglect or omission to keep the Cable System in a safe condition. Grantee's obligation to indemnify, defend, and hold the County harmless includes the obligation to pay attorney's fees, expert fees, and all other costs of defending any indemnified claim, and all such costs incurred in recovering against Grantee under this indemnity provision. To the maximum extent permitted by the law, Grantee's indemnity obligation shall not be extinguished or reduced in the event that an act or omission of the indemnified parties is a concurrent or contributing cause of the claim, but no indemnity shall be owed to the extent that the cause of any claim is the negligence of the County or a willful omission of the County in violation of this Franchise. Grantee shall have full control of the defense, including the right to settle any claim. The County shall fully cooperate with the Grantee in said defense. Nothing herein shall be deemed to prevent the County, its officers, or its employees, from participating in the defense of any litigation by their own counsel, at such party's expense.

The County shall give the Grantee timely notice of the making of any claim or the commencement of any action, suit, or other proceeding covered by this indemnity. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the right and duty to accept the tender and thereafter defend, settle, or compromise any claims arising hereunder and the County shall cooperate fully therein

Notwithstanding, this Section (10.6) does not include PEG Access programming, operations, or administration, Access Channel(s), Access Facilities, or Access Provider(s), all of which is the County's sole responsibility.

10.7 Grantee shall maintain, throughout the term of the Franchise, liability insurance in the minimum amounts of:

- (a) \$2,000,000 for personal injury or death to any one person and \$5,000,000 aggregate for personal injury or death per single accident or occurrence.
- (b) \$2,000,000 for property damage to any one person and \$5,000,000 aggregate for property damage per single accident or occurrence.
- (c) \$2,000,000 for all other types of liability, including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or

resolution of the United States, State of Washington, or any local agency with jurisdiction.

Such insurance shall specifically name as additional insured Whatcom County, its officers, employees and agents. The policy shall not be materially modified or canceled during the life of this Franchise without giving 30 days' written notice to the County.

Grantee shall maintain on file with the County a current certificate of insurance showing up-to-date coverage and additional insured coverage, as set forth above. Grantee specifically acknowledges that the limits of liability requirements specified above shall neither be construed as a limitation of Grantee's liability nor shall it be construed to inure to the benefit of any insurer by serving as a limitation or cap of any insurer's limits of liability that would otherwise apply.

Section 11. Miscellaneous Provisions

11.1 Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

11.2 Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the County of a 10-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Grantee.

11.3 This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

11.4 Wherever the consent or approval of either Grantee or the County is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

11.6 This Franchise granted by this Ordinance shall be effective upon Grantee's acceptance and no less than 10 days from date of final passage by County Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the County's discretion if Grantee fails to accept within 60 days. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the "Franchise Acceptance"). The date that the Franchise Acceptance is filed with the County Council shall be the effective date of this Franchise. Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the effective date of this ordinance, the Franchise will terminate and shall be null and void, at the discretion of the County.

11.7 In the event that either party is prevented or delayed in the performance of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight embargoes, shortages or unavailability of materials or supplies, unusually severe weather conditions, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Agreement, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

11.8 If the parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the obligations and privileges of this Franchise shall nonetheless continue in full force and effect until renewed or otherwise terminated by either party through written notice to that effect.

11.8 Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the County Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the County Code and other Applicable Laws governing the work performed by them.

11.9 If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

11.10 This Franchise may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

11.11 Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, either County or Grantee may have under Federal or state law unless such waiver is expressly stated herein.

11.12 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

11.13 No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the County and the Grantee,

which amendment shall be authorized on behalf of the County through the adoption of an appropriate resolution or order by the County, as required by applicable law.

11.14 Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

11.15 All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the County:

County Executive Whatcom County Courthouse 311 Grand Ave., Suite 108 Bellingham, WA 98225-4038

To the Grantee:

WaveDivision I, LLC 401 Parkplace Center, Suite 103 Kirkland, WA 98033 Attn: Legal Department

With copies to:

RCN Telecom 650 College Road East, Ste, 3100 Princeton, NJ 08540 Attn: Regulatory Department

RCN Telecom 105 West First Street South Boston, MA 02127 Attn: Regulatory Department

Cable Services Franchise

Exhibit A

FCC Customer Service Standards

76 CFR Section 309

76 CFR Section 1602

76 CRF Section 1603



Federal Communications Commission

depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program cablecast on the system in question.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to advertisements or lists of prizes or information concerning:

(1) A lottery conducted by a State acting under authority of State law which is transmitted:

(i) By a cable system located in that State;

(ii) By a cable system located in another State which conducts such a lottery; or

 $(\overline{i}ii)$ By a cable system located in another State which is integrated with a cable system described in paragraphs (c)(1)(i) or (c)(1)(i) of this section, if termination of the receipt of such transmission by the cable systems in such other State would be technically infeasible.

(2) Any gaming conducted by an Indian Tribe pursuant to the Indian Gaming Regulatory Act. (25 U.S.C. 2701 *et seq.*).

(3) A lottery, gift enterprise or similar scheme, other than one described in paragraph (c)(1) of this section, that is authorized or not otherwise prohibited by the State in which it is conducted and which is:

(i) Conducted by a not-for-profit organization or a governmental organization; or

(ii) Conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.

(d) For the purposes of paragraph (c) *lottery* means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or

parts thereof by chance to one or more chance takers or ticket purchasers. It does not include the placing or accepting of bets or wagers on sporting events or contests.

(e) For purposes of paragraph (c)(3)(i) of this section, the term "not-for-profit organization" means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.

[37 FR 3278, Feb. 12, 1972, as amended at 40
 FR 6210, Feb. 10, 1975; 42 FR 13947, Apr. 13, 1977; 54 FR 20856, May 15, 1989; 55 FR 18888, May 7, 1990]

§ 76.225 Commercial limits in children's programs.

(a) No cable operator shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

NOTE 1 TO §76.225: *Commercial matter* means air time sold for purposes of selling a product or service.

NOTE 2 TO §76.225: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

NOTE 3 TO §76.225: Section 76.1703 contains recordkeeping requirements for cable operators with regard to children's programming.

 $[56\ {\rm FR}$ 19616, Apr. 29, 1991, as amended at 65 ${\rm FR}$ 53615, Sept. 5, 2000]

§76.227 [Resserved]

Subpart H—General Operating Requirements

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards. (b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. 47 CFR Ch. I (10-1-04 Edition)

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

628

Federal Communications Commission

(3) Communications between cable operators and cable subscribers—

(i) Refunds—Refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits—Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) Normal business hours—The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions-The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-perview events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption*—The term "service interruption" means the loss of picture or sound on one or more cable channels.

NOTE TO §76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996; 65 FR 53615, Sept. 5, 2000; 67 FR 1650, Jan. 14, 2002]

Subpart I—Forms and Reports

§ 76.403 Cable television system reports.

The operator of every operational cable television system that serves 20,000 or more subscribers shall file with the Commission a Form 325 soliciting general information and frequency and signal distribution information on a Physical System Identification Number ("PSID") basis. These forms shall be completed and filed with (returned to) the Commission within 60 days after the Commission notifies the operator that the form is due.

NOTE: The Commission retains its authority to require Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers.

[64 FR 28108, May 25, 1999, as amended at 68 FR 27003, May 19, 2003]

Subpart J—Ownership of Cable Systems

§76.501 Cross-ownership.

(a)-(c) [Reserved]

(d) No cable operator shall offer satellite master antenna television service ("SMATV"), as that service is defined in \$76.5(a)(2), separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly or indirectly through an affiliate owned, operated, controlled, or under common control with the cable operator.

(e)(1) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer SMATV service within its franchise area if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of October 5, 1992.

(2) A cable operator may directly or indirectly, through an affiliate owned,

629



§76.1602

§ 76.1602 Customer service—general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services:

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service:

(5) Channel positions of programming carried on the system: and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

§ 76.1603 Customer service—rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by \$76.1602.

47 CFR Ch. I (10-1-02 Edition)

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

NOTE 1 TO §76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

§76.1602

§ 76.1602 Customer information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

service-general

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services:

(3) Installation and service maintenance policies:

(4) Instructions on how to use the cable service:

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

§ 76.1603 Customer service—rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by §76.1602.

47 CFR Ch. I (10-1-02 Edition)

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

NOTE 1 TO §76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

Federal Communications Commission

NOTE 2 TO §76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

NOTE 3 TO §76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

[65 FR 53617, Sept. 5, 2000, as amended at 66 FR 16554, Mar. 26, 2001]

§ 76.1604 Charges for customer service changes.

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in ⁶.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.

§76.1605 New product tier.

(a) Within 30 days of the offering of an NPT, operators shall file with the Commission a copy of the new rate card that contains the following information on their BSTs, CPSTs and NPTs:

(1) The names of the programming services contained on each tier; and

(2) The price of each tier.

(b) Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

§ 76.1606 Rate change while complaint pending.

A regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change.

§76.1607 Principal headend.

A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.

§ 76.1608 System technical integration requiring uniform election of mustcarry or retransmission consent status.

A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

§ 76.1609 Non-duplication and syndicated exclusivity.

Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection or syndicated exclusivity protection against it.

76.1610 Change of operational information.

Within 30 days following a change of cable television system operator, and/ or change of the operator's mail address, and/or change in the operational status of a cable television system, the operator shall inform the Commission in writing of the following, as appropriate:

(a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. See 76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied:

(b) The assumed name (if any) used for doing business in each community;

76.1610

733



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-376

File ID:	AB2019-376	Version:	1	Status:	Agenda Ready
File Created:	06/25/2019	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
First Assigned t Agenda Date:	t o: Council 07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Ordinance amending the project budget for the Agate Heights/Estate Bay Lane Storm Water Improvements Fund, request no. 3

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Requesting Council approval for additional budget authority of \$360,000 to be added to the project budget for Fund 365 - Agate Heights/Estate Bay Lane Storm Water Improvements Fund. Budget will be used to fund Phase II construction activities.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:	
Attachmen	ts: Agate Bay Amendment #3			
			Final Action:	

Enactment Date: Enactment #:

1 2 3		PROPOSED BY: Public Works INTRODUCTION DATE:7/9/19
4 5	ORDINANCE NO	D
6 7 8 9 10	AMENDMENT NO. 3 TO ORDINANCE NO. HEIGHTS/ESTATE BAY LANE STORM V ESTABLISHING A PROJECT BASED BUDG LANE STORM WATER	WATER IMPROVEMENTS FUND AND ET FOR AGATE HEIGHTS ESTATE/BAY
11 12 13 14	WHEREAS, Agate Heights Estate/Bay La item number 1 on the 2019-2024 Six-Year Wate	ne Storm Water improvements is listed as er Resources Improvement Program,
15 16 17	WHEREAS, the project will treat runoff f system upgrades to improve water quality throu vaults and channel stabilization to reduce ditch	
18 19 20 21	WHEREAS, this amendment will suppler amendments by adding funding to construct Pha	nent the original proposal and two previous ase 2 of the project, and
22 23 24 25	WHEREAS, these additional expenses w Washington State Department of Ecology grant Whatcom County Contract Number 201902012,	
26 27 28 29 30	NOW, THEREFORE, BE IT ORD Ordinance No. 2014-081 is hereby amended to described in Exhibit A, to the current project budget of \$1,668,219.	AINED by the Whatcom County Council that add \$360,000 of expenditure authority, as dget of \$1,308,219, for a total amended
31 32	ADOPTED this <u>day of July</u> , 2019.	
33 34 35 36	ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
37 38	Dana Brown-Davis, Clerk of the Council	Rud Browne, Council Chair
39 40 41 42	APPROVED AS TO FORM:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
43 44	Civil Deputy Prosecutor	Jack Louws, County Executive
45 46	Date Signed:	() Approved () Denied

Account	Descriptions	Current Project Budget	Amendment #3 to Ord. 2014- 080	Total Amended Project Budget
	Expenditures			
6110	Wages	\$127,700		\$127,700
6292	Applied Benefits	\$94,240		\$94,240
6630	Professional Services	\$405,144		\$405,144
6699	Other Services Interfund	\$66,500		\$66,500
7199	Other Misc. Interfund	\$4,635		\$4,635
7380	Other Improvements	\$610,000	\$360,000	\$970,000
		\$1,308,219	\$360,000	\$1,668,219
	Revenues			
4334.031	DOE Water Quality Grant	\$0	\$360,000	\$360,000
8301.324	WDOE Grant Reimbusement	\$1,308,219	\$0	\$1,308,219
		\$1,308,219	\$360,000	\$1,668,219

Agate Heights Estate/Bay Lane Stormwater Improvements

Jon Hutchings DIRECTOR



STORMWATER - NPDES 322 N. Commercial Street, Suite 210 Bellingham, WA 98225-4042 Stormwater: (360) 778-6210 FAX: (360) 778-6201 NPDES: (360) 778-6299 FAX: (360) 778-6211 <u>www.whatcomcounty.us</u>

r

MEMORANDUM

TO:	The Honorable Jack Louws, County Executive and Honorable Members of the Whatcom County Council
THROUGH:	Jon Hutchings, Public Works Director
FROM:	Kraig Olason, Stormwater Program Manager
DATE:	June 24, 2019
RE:	Supplemental Budget request #3 - Agate Heights Estate/Bay Lane Stormwater Improvements

Please find attached for approval a supplemental budget request from Public Works Stormwater for the Agate Heights Estate/Bay Lane Stormwater Improvement project Phase 2.

Background and Purpose

This project will improve water quality in the Lake Whatcom watershed by substantially reducing the discharge of phosphorus and other pollutants to Agate Bay. Runoff along North Shore Drive, south of the Y Road intersection will be addressed by the installation of three water quality treatment vaults to remove phosphorus and suspended solids. This is a priority capital project in the Lake Whatcom Comprehensive Stormwater Management Plan and is listed as Item No. 1 on the 2019-2024 Six-Year Water Resources Improvement Program.

Supplemental amendment request #2 did not include costs for construction of Phase 2 of this project since the potential for receiving Washington State Department of Ecology (WDOE) grant funding would require redesign of the project and final costs were not certain. The WDOE grant was approved by Council last Fall and final design has been completed. The requested funds are for a portion of the construction costs since current available balance in the Project Based Budget is sufficient to cover the remainder.

Funding Amount and Source

This request, in the additional amount of \$360,000, will be funded by WDOE. The grant will reimburse up to the seventy-five percent of eligible county expenses on this phase for a maximum reimbursement of \$550,000.

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

Encl.

	Supplen	nental Budget Red	quest		Status: P	ending	
Public W	orks		Stormw	ater			
Supp11D # 2	741 Fund	365 Cost Center 3	65100	Originator:	Kraig Olas	on	
		Year 1 2019	Add'l F	TE 🗌	Р	riority	1
Vame of R	equest: Agai	e Heights Estate/Bay Lai	ne Stormw	ater Improv.			
X Departm	Head Sid	Inature (Required on H	Jard Copy	(Submission)	41	⁽ 24/10 Date	5
Costs:	Object	Object Description			Amount Rec	194.25 (6.27	
	4334.0311	CZM-FCCAP Grant		a	(\$36	60,000)	
	7380	Other Improvements			\$36	0,000	
	Request Tot	al				\$0	

1a. Description of request:

This project will improve water quality in Lake Whatcom through the installation of three water quality treatment vaults in the Agate Bay sub-watershed in Whatcom County. This project will provide treatment for total suspended solids (TSS) and phosphorus.

1b. Primary customers:

Lake Whatcom supplies drinking water to approximately 100,000 residents in the Bellingham area all of whom are affected by this water quality impact.

2. Problem to be solved:

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 water body. 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 phosphorus laden runoff from 87 percent of currently developed areas must be reduced so that Lake Whatcom can meet state water guality standards.

3a. Options / Advantages:

Initially. media filter drains were proposed for this area. This type of water quality treatment relies on a depth of free draining material above the winter high-water table. Unfortunately, site analysis showed that the area has a high water table through the winter months. While the media filter drains would have been less expensive, they would have provided questionable treatment. In addition, a Washington State Department of Ecology Grant, applied for several years ago for this project has become available due to the county regaining compliance with the Growth Management Act in the fall of 2018. Media filter drains as contemplated for this area wouldn't meet Best Management Practice Standards necessary to comply with Washington State Department of Ecology (WDOE) guidelines and would therefore not be eligible for 75% cost reimbursement up to \$552,500.

3b. Cost savings:

Water quality protection of the lake is comprised of many discrete activities. The overall collective effort is intended to limit impacts to the lake, not all of which are easily quantified in financial terms. The treatment vaults proposed provide reasonable treatment within the county's existing ROW thus saving land acquisition costs. Because the maintenance consists of vactoring and replacing the cartridges annually or semi-annually, the costs are much more predictable than for more elaborate and complex treatment

Monday, June 24, 2019

Rpt: Rpt Suppl Regular

Supplemental Budget Request					Pending
Public Works	S	Stormw	vater		
Supp'l ID # 2741	Fund 365	Cost Center 365100	Originator:	Kraig Ola	ison

facilities.

4a. Outcomes:

The areas treated by the three cartridge vaults will have total suspended solids and phosphorus quantities reduced by over 50% from what is now entering the lake form these sites. The life cycle for these vaults is at least 50 years. Construction is scheduled for the Summer/early Fall of 2019.

4b. Measures:

The outcome of reducing the phosphorus in the water treated by these systems by 50% is based on the presumed quantity of runoff generated from the land draining to these treatment systems. The assumed 50% treatment is based on testing done by WDOE to certify this treatment option. Treatment percentages are most likely higher than listed due to the conservative approach applied by WDOE.

5a. Other Departments/Agencies:

The treatment vaults will be added to the Public Works Maintenance and Operations Division work load and expenses. They will also require annual inspection and filter media replacement which is coordinated through the NPDES program under the Stormwater Division of Public Works.

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

Vernon Brown, crew leader of the NPDES program works cooperatively with NPDES program staff to provide needed maintenance and repair to all of the stormwater infrastructure under the NPDES Permit. Vernon will manage the crew and schedule their work for cartridge media replacement, vault vactoring (cleaning) and any other necessary maintenance requirements of the treatment system.

6. Funding Source:

Washington State Department of Ecology "Water Quality Combined Financial Assistance" grant is providing the funds included in this supplemental request. The entire design and construction costs are eligible for 75% reimbursement. The total reimbursement available through the grant exceeds the supplemental request.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-377

File ID:	AB2019-377	Version:	1	Status:	Agenda Ready
File Created:	06/25/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance		
First Assigned	to: Council				
Agenda Date:	07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code Chapter 16.30 entitled "Lake Whatcom Stormwater Utility Funding Mechanism"

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Click here to enter text. (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

HISTORY OF LEGISLATIVE FILE

Date:	Acting	Body:	Action:	Sent To:	
Attachmer		the Whatcom County Code	e Chapter 16.30.pdf, Ordinan	Itility Funding Mechanism to be added to ce entitled Lake Whatcom Stormwater a County Code Chapter 16.30.pdf	
				Final Action:	
				Enactment Date:	
				Enactment #:	

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings Director



NATURAL RESOURCES

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

MEMORANDUM

- TO: Honorable Members of the Whatcom County Council, and The Honorable Jack Louws, Whatcom County Executive
 THROUGH: Jon Hutchings, Public Works Director
 FROM: Gary Stoyka, Natural Resources Manager Important Council And Council An
- DATE: June 26, 2019
- **RE:** Proposed ordinance entitled "Lake Whatcom Stormwater Utility Funding Mechanism" to be added to the Whatcom County Code Chapter 16.30.

At the July 9, 2019 Council Committee meeting, Public Works staff will introduce for discussion a proposed new ordinance entitled "Lake Whatcom Stormwater Utility Funding Mechanism" to be added to the Whatcom County Code Chapter 16.30. Public Works staff will discuss the proposed ordinance at the Natural Resources Committee meeting on July 23, 2019. A public hearing will be held and potential adoption will be scheduled for later that evening.

Requested Action

Public Works is requesting introduction of the proposed new ordinance at the July 9, 2019 council meeting. Public Works is requesting discussion by County Council on the proposed ordinance at the following Natural Resources Committee meeting on July 23, 2019. The proposed ordinance creates a funding mechanism for the Lake Whatcom Stormwater Utility Service area established by the Council via Ordinance No. 2017-076 on December 5, 2017. Public Works staff worked with the Lake Whatcom Stormwater Utility Advisory Committee from May 2018 through March 2019 to develop the rate structure. If adopted, the new fees will be imposed on property owners in the service area beginning in 2020. Public Works staff anticipates bringing the ordinance to the Council for adoption at the July 23rd meeting.

Please contact Gary Stoyka at extension 6218 if you have any questions regarding this information.

1 2	PROPOSED BY:
3	
4 5 6	ORDINANCE NO. <u>2019-</u>
7 8 9 10 11	AN ORDINANCE AUTHORIZING A CHARGE FOR THE FURNISHING OF SERVICE TO THOSE WHO ARE RECEIVING OR WILL RECEIVE BENEFITS FROM STORMWATER CONTROL FACILITIES OR PROGRAMS AND WHO ARE CONTRIBUTING TO AN INCREASE IN SURFACE WATER RUNOFF IN THE LAKE WHATCOM STORMWATER UTILITY SERVICE AREA
12	
13 14 15 16 17 18	WHEREAS, RCW 36.89.080 authorizes a charge for the furnishing of service to both those who are receiving or will receive benefits from stormwater control facilities and programs and to those who are contributing to an increase in surface water runoff; and,
19 20 21 22	WHEREAS, the Lake Whatcom Stormwater Utility Service Area was adopted with Ordinance 2017-076 to include the entire unincorporated Lake Whatcom watershed; and,
23 24 25 26	WHEREAS, implementation of the Lake Whatcom Stormwater Utility is needed to solve many of the current stormwater management problems in the Lake Whatcom Watershed including the removal of phosphorus; and,
27 28 29	WHEREAS, annual revenue is needed to implement the Lake Whatcom Stormwater Utility; and,
30 31 32 33 34	WHEREAS, on May 8, 2018 the Whatcom County Council selected a citizen advisory committee consisting of Lake Whatcom Utility Service Area rate payers to advise Whatcom County Public Works and the Whatcom County Council on a recommended stormwater rate structure; and,
35 36 37 38 39 40	WHEREAS, beginning in June 2018, Whatcom County Public Works conducted a funding study to evaluate stormwater rate structure options for the Lake Whatcom Stormwater Utility Service Area and to determine the unit rates, equivalent service unit value, and capital facility charge needed to provide revenue sufficient to support the implementation of the Lake Whatcom Stormwater Utility; and,
41 42 43 44	WHEREAS, the citizen advisory committee considered and provided stakeholder input and recommendations during the funding study; interested members of the public attended advisory committee meetings and provided comments to the committee for their deliberation; and,

WHEREAS, that a Public Hearing to consider the authorization of unit
 rates, the equivalent service unit value, and the capital facility charge (CFC) for the
 Lake Whatcom Stormwater Utility was held July 23, 2019, at the regular County Council
 meeting.

6 7

8

1

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

9 Section 1. A new article entitled "Lake Whatcom Stormwater Utility Funding

10 Mechanism" shall be added to the Whatcom County Code Chapter 16.30. Complete 11 text of this section is included in **Exhibit A** of this ordinance.

12

Section 2. Challenges to the validity of any of the sections, clauses, or provisions of
 this ordinance shall not affect or impair the validity of the ordinance as a whole or any
 part thereof other than the part so declared to be invalid.

16

17 Section 3. This ordinance shall become effective January 1, 2020.

BE IT FURTHER ORDAINED that a new fund is hereby established effective January 1,
2020 titled "Lake Whatcom Stormwater Utility Fund". This fund shall be used to account
for the revenues and expenditures related to operation of Lake Whatcom Stormwater
Utility.

BE IT FURTHER ORDAINED that the value of one equivalent service unit for the Lake
 Whatcom Stormwater Utility is hereby established to be 4,200 square feet of impervious
 surface area.

27

BE IT FURTHER ORDAINED that the following annual unit rates are hereby established
 for the Lake Whatcom Stormwater Utility:

30

Customer Type	Fee for 2020
Single Family – Small Footprint	\$55.32
Single Family – Medium Footprint	\$73.76
Single Family – Large Footprint	\$147.52
Other Developed Parcels	\$73.76 per ESU

31

Customer Type	Fee Beginning in 2021
Single Family – Small Footprint	\$110.64
Single Family – Medium Footprint	\$147.52
Single Family – Large Footprint	\$295.04
Other Developed Parcels	\$147.52 per ESU

1

BE IT FURTHER ORDAINED that the following capital facilities charge (CFC) is hereby
 established for the Lake Whatcom Stormwater Utility, for new development or
 expansion or densification of existing development:

		Customer Type		CFC
		Single Family Parcels		\$1,730 per Parcel
		Other Developed Parcels		\$1,730 per ESU
6	1	•		
7 8	ΔΟΟΡΤΕΟ	this day of, 20		
9		uns uuy or, zo		
10				
11				COUNTY COUNCIL
12 13	ATTEST:		WHATCOM	COUNTY, WASHINGTON
14				
15	Dana Brow	n-Davis, Clerk of the Council	Rud Brown	e, Council Chair
16				
17 18	WHATCOM	COUNTY EXECUTIVE		
19		AS TO FORM:	WHATCOM	COUNTY, WASHINGTON
20 21	C	leci		
22	Christophe	r Quinn, Civil Deputy	Jack Louws	, County Executive
23	Prosecutor			
24 25			() Appro	ved () Denied
26			Date Signe	d:
27			5	

EXHIBIT A

3 Section 1.0 Title

This ordinance shall be titled "Lake Whatcom Stormwater Utility Funding Mechanism".

Section 2.0 Purpose

7 8

20

22 23

24

25

27 28

29 30

31

32

33

34

35

36

37

38

1

2

4 5

6

9 The purpose of this chapter is to provide revenue for the Lake Whatcom Stormwater Utility 10 (LWSU) to plan, manage, design, construct, establish, acquire, develop, maintain, use, finance, operate, 11 control or improve storm and surface water control facilities, and to carry out activities related thereto. 12 This chapter provides these revenues by fixing rates and charges pursuant to RCW 36.89 for the 13 furnishing of service to those served or receiving benefits or those to be served or to receive benefits from 14 any stormwater control facility, or those contributing to an increase of surface water runoff in the LWSU 15 Service Area. This authority is invoked in order to minimize property damage; promote and protect public 16 health, safety and welfare; minimize water quality degradation by preventing siltation, contamination and 17 erosion of the waterways; protect aquifers; ensure the safety of County roads and rights-of-way; increase 18 educational and recreational opportunities; encourage the retention of open space; and foster other 19 beneficial public uses within the LWSU Service Area.

21 Section 3.0 Applicability

The requirements of this ordinance shall apply to all parcels of real property in the LWSU Service Area, including public and private property.

26 Section 4.0 Definitions

For the purposes of this Chapter, the words or phrases below shall have the following meanings:

- (1) "County" means Whatcom County, or as indicated by the context, may mean the Department of Public Works, Public Works Director, County Engineer, or other employee or agent representing the County in the discharge of his or her duties.
- (2) "County Council" means the Whatcom County Council, which is the legislative branch of Whatcom County government.
 - (3) "County roads" means public rights-of-way, excluding State roads, in the unincorporated areas served by the LWSU.
 - (4) "Developed parcel" means a parcel of real property which has been altered by impervious surface coverage.
- (5) "Enterprise fund" means a fund established to account for operations that are financed
 and operated in a manner similar to private business enterprises where the intent of the
 governing body is that the costs (expenses, including depreciation) of providing goods or
 services to the general public on a continuing basis be financed or recovered primarily
 through user charges. As such, enterprise funds must report actual financial position and
 results of operations, such as actual assets, liabilities, fund equity balances, revenues,
 expenditures, and expenses.
- 46 (6) "Equivalent service unit" (ESU) means a configuration of impervious surface estimated to 47 contribute an amount of runoff to the County's stormwater management system which is

1 2		approximately equal to that created by the average single-family residential developed parcel in the service area.
3 4 5 6	(7)	"Forestland" or "Timberland" means forestland or timberland parcels on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW (including forest roads and or any roads on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW).
7 8 9 10 11 12 13	(8)	"Impervious surface" means hard surfaced areas which prevent or retard the entry of water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow than under natural conditions. Common impervious surfaces include, but are not limited to: rooftops, concrete or asphalt roads, sidewalks and paving, walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed dirt, oiled or other surfaces which similarly impede the natural infiltration of surface water or runoff patterns existent prior to development.
14	(9)	"Manager" means the Public Works Director or his/her designee.
15 16 17	(10)	"Other Developed Parcel" means a parcel that contains impervious surface area and is not a single-family residence, including but not limited to, commercial, industrial, multifamily apartment, and public property.
18 19 20 21	(11)	"Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries and surface area which is documented for real property purposes and a tax account number assigned by the Whatcom County Assessor- Treasurer.
22 23	(12)	"Private roads" means a road which is on private property and is maintained with private funds and requires a name per WCC 12.60.050.
24 25 26	(13)	"Service charge" means the fee in an amount to be determined by applying the appropriate rate to a particular parcel of real property based upon factors established by this Chapter.
27 28 29	(14)	"Single-family residence" means a residential structure designed exclusively for occupancy by one family, including but not limited to mobile homes, cabins and duplex units, as defined by the Whatcom County Land Use and Development Code.
30 31		 "Small single-family residential footprint" means a parcel containing a single- family residence that has less than or equal to 2,500 impervious square feet.
32 33		 "Medium single-family residential footprint" means a parcel containing a single- family residence with 2,500 to 8,400 impervious square feet.
34 35		iii. "Large single-family residential footprint" means a parcel containing a single- family residence with more than 8,400 impervious square feet.
36 37	(15)	"Undeveloped parcel" means any parcel of real property which has not been altered by construction of any structure or other impervious surface area.
38	(16)	"Unit rate" means the dollar amount charged per ESU.
39	(17)	"WSDOE" means the Washington State Department of Ecology.
40 41	Section 5.0 P	ata Structura
41	Section 5.0 R	
43 44 45	A. terms consiste	Service charges for the LWSU are hereby authorized and imposed, in amounts and on nt with this Chapter.

Page 5

1 2 3 4		stormwa	tes and service charges shall be based on the service provided and the relative ater runoff from a given parcel. The estimated or measured impervious surface termine the relative contribution of stormwater runoff from the parcel.
5 6 7	C. in impervious s		ounty Council shall establish from time to time, by resolution, the value of one ESU area, as measured in square feet.
8 9	D.	The Co	ounty Council shall establish from time to time, by resolution, the unit rate per ESU.
10 11		Service	e charges shall be determined as follows:
12 13 14		1.	Small Single-Family Residential Footprint – The service charge for each small single-family parcel shall be the unit rate times 0.75 ESU.
14 15 16 17		2.	Medium Single-Family Residential Footprint – The service charge for each medium single-family parcel shall be the unit rate times 1.00 ESU.
18 19 20		3.	Large Single-Family Residential Footprint – The service charge for each large single-family parcel shall be the unit rate times 2.00 ESUs.
21 22 23 24 25		4.	Other Developed Parcels – The service charge for all other developed parcels, including publicly-owned properties, shall be computed by multiplying the unit rate times the number of ESUs on the parcel minus any approved rate adjustment for the parcel as determined under Section 7.0. There shall be a minimum service charge for all other developed parcels equal to the unit rate.
26 27 28 29 30			For the purpose of computation of service charges for Other Developed Parcels, the number of equivalent service units shall be rounded to the nearest whole number.
31 32			The minimum service charge per individual timeshare owner shall be \$5.00 in order to help cover processing fees.
33 34 35		The fol	lowing shall be exempt from service charges:
36 37		1.	Undeveloped Parcels – Undeveloped parcels shall not be charged.
38 39		2.	County and Private Roads – County and Private roads shall not be charged.
40 41 42		3.	Forestland and Timberland – Forestland or timberland parcels (lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW) shall not be charged.
43 44	Section 6.0 Bi	lling	
45 46 47	A. added to and ir	Proper ncluded i	ty Tax Statements. Rates and charges as authorized by this Chapter shall be in Whatcom County's annual tax statements.
48 49 50	B. or before the 30		nt Date. The total amount of the stormwater charge shall be due and payable on of April and shall be delinquent after that date; however, if one-half of such rate

and charge is paid on or before the said 30th day of April, the remainder shall be due and payable on or
before the 31st day of October and shall be delinquent after that date.

Section 7.0 Service Charge Adjustments and Appeals

- A. Any person billed for service charges may file a written "Request for Service Charge
 Adjustment" with the Manager within thirty (30) days of the date of the bill. However, submittal of such a
 request does not extend the period of payment for the charge.
- 11 B. A request for service charge adjustment may be granted or approved by the Manager 12 only when one or more of the following conditions exist:
 - 1. The single-family residential footprint designation (small, medium, large) is in error, based on the measured impervious footprint, as demonstrated to the satisfaction of County staff; or
 - 2. The amount charged to Other Developed Parcels is in error; however, no adjustment will be made unless the calculation of the impervious surface area on the parcel is shown to be in error by at least ten percent (10%), as demonstrated to the satisfaction of County staff; or
 - 3. The parcel contains no impervious surfaces as defined in section 4.8 and no County or private roads as defined in section 4.3 and 4.12; or
 - 4. Upon application by the owner to the Manager, entire properties developed in compliance with WCC 20.51.420 as demonstrated by an approved building permit which for single family residences includes final inspection signoff, or for commercial structures, a certificate of completion, or in the event that structures were constructed prior to adoption of WCC 20.51.420, as evidenced by a report written by a licensed civil engineer confirming the project is conforming to or exceeding WCC 20.51.420 shall be eligible for a reduction of 35 percent of the service charge established in Section 5.0.
 - 5. The parcel contains a new or remodeled commercial building that utilizes a permissive rainwater harvesting system that is properly sized to utilize the available roof surface of the building; or
 - For qualifying permissive rainwater harvesting systems as provided for under RCW 36.89.080 and eligible under section 7.0(B)(4) of this chapter the formula is expressed mathematically as follows:

 $A = F \times 10\%$

1			Where:
2			A = The credit amount to be subtracted from
3			the annual fee; and
4			F = The total fee without credit.
5			
6 7	6.		arcels are determined by the Manager to be contiguous. For ous lots to qualify for a rate adjustment, the appellant must
8			strate that parcels:
9			
10		(i)	Are contiguous; and
11		(ii)	Are owned by the same entity; and
12		(iii)	Are single-family residential in use / dwelling and appurtenant
13		. ,	accessory structures.
14			
15 16			etermined to be contiguous by the Manager will be considered as to tor the purposes of fee calculations;
17			ill be recalculated to reflect any such change from the date of the
18 19			and applied to the individual parcels pursuant to the rate le in effect at the time of the change.
20		schedu	le in enect at the time of the change.
21	C. Service	charge	adjustments will only apply to the bill then due and payable and bills
22			berty owner shall have the burden of proving that the service charge
23	adjustment should be gr	anted. A	Adjustments shall not be made retroactively.
24			
25	D. Decisio	ns on se	ervice charge adjustment requests shall be made by the Manager based
26 27			e applicant and by the County within sixty (60) days of receipt by Public nt request, except when additional information is needed. The applicant
28	shall be notified in writin		
29		0	0
30	E. Decisio	ns of th	e Manager on requests for service charge adjustments shall be final
31	unless appealed within	thirty (30	0) days of the date the decision. The Whatcom County Hearing Examiner
32 33	shall review appeals co facts that further the inte	nsiderin	g the requirement and the intent of this ordinance and any other relevant
34			s ordinance.
35	Section 8.0 Exemption		
36		<u>.</u>	
37	Property that is	owned b	by, and is the personal residence of, a person or persons approved by the
38			itizen or disabled persons property tax exemption under RCW 84.36.381
39	shall be exempt from the	e service	e charge.
40			
41	Section 9.0 Use of Fun	ds	
42	o	п	
43	Service charges	s collecte	ed under this ordinance shall be deposited into a special fund or funds to

be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of administering, planning, designing, establishing, acquiring, developing, constructing, maintaining and improving the program and
 facilities of the Lake Whatcom Stormwater Utility.

3

Section 10.0 Lien for Delinquent Charges

4 5 6

7

8

9

10

A. Liens. Pursuant to RCW 36.94.150, Whatcom County shall have a lien for delinquent service charges, including interest thereon, against any property against which they were levied, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such liens shall be effective and shall be enforced and foreclosed as provided in RCW 36.94.150. Therefore, the County may commence to foreclose such liens sixty (60) days after the attachment of the lien.

11 12

B. Interest. Delinquent service charges shall bear interest as provided in RCW 36.94.150 at the rate
of eight percent (8%) per annum, or such rate as may hereafter be authorized by law, computed on a
monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at
the time of payment of the charges regardless of when the charges were first delinquent.

17

C. Penalties. Penalties of not more than ten percent of the amount due may be imposed in case of
 failure to pay the charges at times fixed by resolution, as provided in RCW 36.94.150.

21 Section 11.0 Capital Facilities Charge

22

20

The County Council shall establish from time to time, by resolution, the unit rate per ESU for a one-time, capital facilities charge (CFC) applicable to new development, expansion, or densification of existing development.

26

Single-family Residential Parcels that are being developed would pay the CFC equal to one ESU whendeveloping a new single-family residence.

29

30 Other Developed Parcels would pay the CFC rate times the number of ESUs on the parcel as determined 31 by County approved site plan (Binding Site Plan) when constructing a new development or when the 32 expansion or densification of existing development results in additional ESUs being assessed to the 33 property.

34

35 Section 12.0 Future Fee Adjustments 36

County Council will review fee levels at least every five years to align fee revenue with prevailing needs.

3940 Section 13.0 Severability.

41

37

38

If any section, clause or provision of this Chapter be declared by the courts to be invalid, the same shall not affect the validity of the Chapter as a whole or any part thereof, other than the part so declared to be invalid.

45

46



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-378

Agenda Date: 07/09/2019		Next Mtg. Da	ite:	Hearing	Date:
First Assigned t	o: Council				
Department:	Finance Division	File Type:	Ordinance		
File Created:	06/25/2019	Entered by:	MCaldwel@co.whatcom.wa.us		
File ID:	AB2019-378	Version:	1	Status:	Agenda Ready

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

TITLE FOR AGENDA ITEM:

Ordinance amending the 2019 Whatcom County Budget, request no. 9, in the amount of \$282,122

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #9 requests funding from the General Fund:

- 1. To appropriate \$120,000 in District Court Probation to provide additional fund for the electronic equipment program.
- 2. To appropriate \$129,122 in Non Departmental to fund 2019-2020 Opportunity Council Public Services CDBG program from grant proceeds.
- 3. To appropriate \$5,000 in Sheriff to fund additional recreational boating safety patrols from grant proceeds.

From the Storm Water Fund:

4. To appropriate \$28,000 to provide additional funding to develop the fee roll for the Lake Whatcom Storm Water Utility.

Also requests amending Exhibit C - Position Control Changes to add 1 FTE in Superior Court Administration.

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Sent To:

Action:

Attachments: Amendment No 9 of 2019 budget

Final Action: Enactment Date: Enactment #:

ORDINANCE NO. AMENDMENT NO. 9 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				
District Court Probation	120,000	-	120,000	
Non-Departmental	129,122	(129,122)	-	
Sheriff	5,000	(5,000)		
Total General Fund	254,122	(134,122)	120,000	
Storm Water Fund	28,000	(28,000)		
Total Supplemental	282,122	(162,122)	120,000	

In addition, Exhibit C – Position Control Changes should be amended to add 1 FTE Pretrial Services Officer in Superior Court Administration.

ADOPTED this _____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

() Approved () Denied

Jack Louws, County Executive

Rud Browne, Chair of Council

Date: _____

Civil Deputy Prosecutor

APPROVED AS TO FORM:

WHATCOM COUNTY				
Summary of the 2019 Supplemental I	Budget Ordinance No. 9			
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
District Court Probation	To provide additional funding for the electronic equipment program.	120,000	×=:	120,000
Non-Departmental	To fund 2019-2020 Opportunity Council Public Services CDBG program from grant proceeds.	129,122	(129,122)	12
Sheriff	To fund additional recreational boating safety patrols from grant proceeds.	5,000	(5,000)	
Total General Fund		254,122	(134,122)	120,000
Storm Water Fund	To provide additional funding to develop the fee roll for the Lake Whatcom Storm Water Utility.	28,000	(28,000)	
Total Supplemental		282,122	(162,122)	120,000

	Supplemental Budget Request					Pending
)istrict C	Court Probation					
Supp'I ID # - 2	2748 Fund 1	Cost Center 1	310 (Originator:	Bruce V	an Glubt
		Year 1 2019	Add'l FTE			Priority 1
ame of R	Request: Electronic	Equipment Progra	m			
	. 21	1 .				1
X Departm	ent Head Signatu	re (Required on H	Hard Copy Sub	omission)	e zy	19 Pate
Costs:	Object Of	bject Description			Amount	Requested
	6610	Contractual Services				\$120,000
	Request Total				\$	120,000

1a. Description of request:

x

This money has been used to pay for electronic alcohol monitoring equipment. Those with a pending pretrial case may be ordered by a Judicial Officer to use the equipment when they are deemed to be at high risk of failure to comply with court ordered alcohol abstinence conditions, or who failed to follow the conditions without the equipment and consumed alcohol. Post-conviction probation violation defendants ordered to use the equipment are most commonly individuals, who have failed to comply with alcohol abstinence conditions, failed to comply with treatment or support group requirements, refused to provide urine and breath test samples, or who had positive substance test results.

New technology has expanded the court's range of supervision options for those who are ordered by a Judicial Officer to abstain from the use of alcohol. The three types of equipment used are a portable hand held breath test machine (Soberlink), a transdermal device attached to the ankle that measures alcohol use through an individual's sweat, and a GPS device, also attached at the ankle, that tracks the geographic movements of an individual when they have been ordered to avoid specific areas as a court ordered condition in no contact order.

1b. Primary customers:

The primary customer of the program are the defendants who are able to be released from jail on their own personal recognizance or with a reduced bail amount, along with those defendants who are place on the the program for probation violations rather than serving a jail sanction.

Judges and Commissioners, Prosecutors, Probation Officers, and defendants being supervised by District Court Probation.

2. Problem to be solved:

For pending pretrial cases, the court and Judicial Officers have had few options available monitor a defendant's compliance with court ordered alcohol abstinence requirements. As a result, those that were deemed high risk by a Judge for compliance due to the alleged elements of the crime for which they were charged, past criminal history, or past failure to comply with pre and post-trial abstinence conditions, may have been held on a higher bail amount. According to the District Court Judges, Prosecutors, and Public defenders, this program has allowed for more defendants to be released at a lower bail amount, or on their own personal recognizance.

For post-conviction probation violation cases, this program has provided for a non-jail sanction, when ordered by a Judicial Officer, when a defendant fails to comply with court ordered treatment, substance abstinence, criminal activity, or other condition of the probation. The use of this equipment for these cases is usually in the range of 5-30 days. Probation Officers report that they have been able to use the equipment option when in the past a jail sanction was the only alternative.

Supplemental Budget Request

Status: Pending

District Court Probation

Supp"ID # 2748 Fund 1

Cost Center 1310

Originator: Bruce Van Glubt

The electronic alcohol monitoring equipment provides for more consistent and continuous monitoring of a defendant's compliance with alcohol abstinence requirements. Detection of alcohol use is determined much more quickly with the electronic equipment than with other options.

3a. Options / Advantages:

For pending pretrial cases, imposing a high bail amount and placing the defendant on pretrial monitoring continues to be an option used by the courts. For offenses that are alleged to be alcohol involved the court most often will order the defendant to submit to breath and urine tests to assure that the alcohol abstinence. Probation Officers meet regularly with these defendants to encourage compliance with the court ordered conditions, monitor state criminal and driving records databases, remind them of future court hearings, and to assess the need for substance testing.

For post-conviction cases, the Judicial Officers continue to place many of those convicted of alcohol driving and domestic violence cases, as well as other types of cases, on monitored supervision. In these cases the Probation Officer continues to monitor compliance with court ordered evaluation and treatment, substance abstinence requirements, monitor state criminal and driving record databases, assess the need for substance testing, remind them of future court hearings, as well as other requirements ordered by the court.

3b. Cost savings:

A strong case can be made for the increase quality of life that this program offers defendants and their families. An electronic alcohol monitoring device allows the defendant to remain in their home, with their family, and to keep their job. A strong case can be made that nearly all of the post conviction probation violation defendants placed on the program would otherwise have been required to serve a jail sanction.

Although those recommending and requiring the use of the equipment strongly believe the program has reduced jail incarceration for those defendants, it is very difficult to find a way to quantify the financial results.

4a. Outcomes:

Since February, 2018, there have been 114 individual court ordered to use the electronic alcohol monitoring equipment.

*67% have been pretrial defendants.

*33% have been post-conviction defendants.

*4% of those places on the program have had a warrant issued for their arrest for the charge for which they were place on the program.

*Charges:

---20% of the charges were for assault, most of which were domestic violence related.

---78% were for charges that were alcohol driving offenses.

---2% were other charges including stalking and theft.

---Companion charges to those noted above include communication with a minor for immoral purposes, violations of no contact orders, harassment, malicious mischief, operating a vehicle with no ignition interlock device, and reckless endangerment.

*Device Use

***83%transdermal devices that measure alcohol use through sweat (TAD).

***15% portable hand held breath testing equipment (Soberlink).

**2% GPS monitoring devices.

4b. Measures:

Records have been kept and a report issued regarding the effectiveness of this pilot program in impacting compliance with court orders.

5a. Other Departments/Agencies:

Whatcom County Sheriff's Department.

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

Supplemental	Budget Request
--------------	----------------

Status: Pending

District Court Pro	bation			
Supp'I ID # 2748 Fur	nd 1	Cost Center 1310	Originator:	Bruce Van Glubt

6. Funding Source: General Fund

.

сę.

÷

Rpt: Rpt Suppl Regular

District Court Probation Electronic Equipment Program Budget Supplemental ID #2748 June 24, 2019

 ~ 8

1

	<u>Monthly</u> Invoice	<u>Month to</u> <u>Month \$</u> <u>Increase</u>	Month to Month % Increase	<u>#New</u> Devices Each Month	<u># of</u> <u>Devices</u> Ended Each <u>Month</u>	<u>Total</u> Defendants On Devices Each Month	<u># of</u> <u>"Device</u> Days" Each <u>Month</u>
Feb-18	\$ 451.50			2	0	2	42
Mar-18	\$ 1,282.13	\$ 830.63	184.0%	5	2	6	110
Apr-18	\$ 2,972.95	\$ 1,690.82	131.9%	7	1	11	244
May-18	\$ 4,469.75	\$ 1,496.80	50.3%	7	4	17	370
Jun-18	\$ 4,701.83	\$ 232.08	5.2%	10	5	20	388
Jul-18	\$ 6,188.84	\$ 1,487.01	31.6%	7	1	19	499
Aug-18	\$ 6,550.54	\$ 361.70	5.8%	9	5	24	599
Sep-18	\$ 6,509.90	\$ (40.64)	-0.6%	9	4	27	601
Oct-18	\$ 8,316.76	\$ 1,806.86	27.8%	20	10	36	761
Nov-18	\$ 8,487.97	\$ 171.21	2.1%	12	7	32	774
Dec-18	\$10,172.83	\$ 1,684.86	19.8%	21	1	36	926
Jan-19	\$13,404.24	\$ 3,231.41	31.8%	14	5	49	1230
Feb-19	\$13,765.22	\$ 360.98	2.7%	14	11	58	1308
Mar-19	\$16,245.29	\$ 2,480.07	18.0%	20	13	66	1531
Apr-19	\$17,100.00	\$ 854.71	5.3%	18	16	65	1526
May-19	\$20,600.00	\$ 3,500.00	20.5%	10	17	63	1559

Supplemental Budget Request Pending Status: Executive Fund 1 Supp'I ID # 2746 Cost Center 4288 Originator: Suzanne Mildner Year 1 2019 Add'I FTE Priority 1 Name of Request: OppCo Public Services CDBG Grant 2019-20 6.24.19 Х Department Head/Signature (Required on Hard Copy Submission) Date Costs: Object **Object Description** Amount Requested 4333.1422 HUD-CDBG (\$129,122) 6610 Contractual Services \$129,122 **Request Total** \$0

1a. Description of request:

This request is for grant revenue from the Washington State Department of Commerce, for pass through to Opportunity Council as subrecipient. This is an annual formula grant for direct public services, delivering housing services to low- and moderate-income residents in Whatcom, Island and San Juan Counties.

1b. Primary customers:

Low- and moderate-income residents of Whatcom, Island and San Juan Counties

2. Problem to be solved:

This grant must be accessed through the local government, in partnership with our local community action agency, Opportunity Council. It provides support for the following public services: community outreach, resource referral, client housing education, energy conservation education and other housing services.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

Accomplish HUD's objective of increasing the availability and accessibility of housing public services. The grant contract period is July 1, 2019 to June 30. 2020.

4b. Measures:

Opportunity Council submits ongoing reports regarding service delivery and numbers of persons served. A final report will be issued at grant closeout.

5a. Other Departments/Agencies:

Opportunity Council and 3 community resource centers in San Juan County.

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

Sheri Emerson, Associate Director of Opportunity Council is responsible for overseeing program services.

6. Funding Source:

Federal grant from HUD through the Washington State Dept. of Commerce's CDBG Program.

Rpt: Rpt Suppl Regular

	Supplem	nental Budget Request		Status: Pending	
neriff		Operation	ns		
ipp'l ID # 2	2745 Fund 1	Cost Center 1003512006	Originator:	Jacque Korn	
		Year 1 2019 Add'l FTE		Priority	1
ame of R	Request: Recr	eational Boating Safety Grant Increa	se 2019		
Departm	ent Head Sig	Inature (Required on Hard Copy S	Submission)	Date	
Costs:	Object	Object Description		Amount Requested	1
	4333.8701	Boating Safety		(\$5,000)	
	6140	Overtime		\$4,318	
	6210	Retirement		\$235	
	6230	Social Security	Social Security		
	6259	Worker's Comp-Interfund	Worker's Comp-Interfund		
	6269	Unemployment-Interfund		\$6	

1a. Description of request:

The Sheriff's Office received a Recreational Boating Safety (RBS) Grant from Washington State Parks and Recreation Commission. The Sheriff's Office will conduct additional on-the-water patrols to increase education and enforcement activities encouraging greater compliance with boating safety laws in an effort to reduce boating-related loss of life, personal injury, and property damage.

1b. Primary customers:

Whatcom County citizens and visitors.

2. Problem to be solved:

The Sheriff's Office is currently the only law enforcement agency in Whatcom County hat operates a state approved boating safety program under WAC 352-65. The Sheriff's Office provides recreational boating safety patrols and enforcement of both county code and state law.

3a. Options / Advantages:

Grant funds are awarded specifically for boating safety education, assistance, and enforcement activities.

3b. Cost savings:

\$5,000.00

4a. Outcomes:

Marine patrols will be conducted during the peak boating period from May to September 2019.

4b. Measures:

Written vessel inspections will be conducted and submitted to State Parks.

5a. Other Departments/Agencies:

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

6. Funding Source:

Washington State Parks and Recreation Commission, RBS Federal Financial Assistant Grant. Funds originate from Department of Homeland Security, CFDA No. 97.012.

Tuesday, June 18, 2019

	Supplen	nental Budg	get Red	quest		Status:	Pending	
Public W	orks			Stormwa	ater			
Supp'l ID # 2	747 Fund	123 Cost	Center 1	23201	Originator:	Kraig O	lason	
		Year 1	2019	Add'l FT	E		Priority	1
Name of R	equest: Deve	eloping 2020 Fee	Roll Lk	Whatcom S	SW Utility			
X C	Ju -	gnature (Requi	ired na l	ard Copy	Submission	(/g/24/ Date	119
		and and Dieda		ard oopy	oubinisaion)			
Costs:	Object	Object Descrip	tion			Amount	Requested	
	6630	Professional S	Services				\$28,000	
	8301.169	Operating Tra	nsfer In				(\$28,000)	
	Request Tot	al					\$0	

1a. Description of request:

Additional funds are required to develop the fee roll for the Lake Whatcom Stormwater Utility and to prepare the fee roll for 2020. The fee roll is required to implement the fee adopting ordinance and resolution establishing rates adopted by Whatcom County Council. The work entails coordinating fee roll data, developing methodology to determine individual parcel fees based on fee adopting ordinance and resolution establishing rates, creating the fee roll and providing on call fee roll support once fee roll has been sent to Treasurer's Office. The collected fees provide the funds required to supplement the Lake Whatcom Watershed Program.

1b. Primary customers:

Whatcom County government is utilizing the expertise of a consulting service that specializes in this type of work. The ultimate customers are residents of Lake Whatcom and others who rely on the lake for drinking water and or recreation.

2. Problem to be solved:

Whatcom County Council authorized the creation of a stormwater utility in the Lake Whatcom watershed to provide supplemental revenues to make up for the additional costs associated with implementing the Lake Whatcom TMDL and to make up for shortfalls in grant revenues. The Stormwater Utility is intended to collect approximately \$820,000 annually from rate payers in the Stormwater Utility Service Area.

3a. Options / Advantages:

One option considered was to conduct the development and running of the fee roll in house. This option was rejected due to the lack of staffing with the expertise required to develop a computer based fee roll system which combines Assessor parcel layer, tabular data and Geographical Information system software to semi-automate the process of fee roll development and processing.

The Birch Bay Watershed and Aquatic Resources Management District (BBWARM) has been successfully using this type process for several years now. The Lake Whatcom Stormwater Utility is similar in design to BBWARM and will also benefit from this cost effective approach.

Experienced consulting services are available in the region to provide this service.

3b. Cost savings:

Establishing an efficient, cost effective computer based fee roll system greatly reduces staff time and can be predictably produced for a modest fee while leaving existing staff free to carryout their regular duties.

4a. Outcomes:

A draft fee model will be developed and dry run by October of this year with the final fee roll for 2020 completed near the first of November

Monday, June 24, 2019

Rpt: Rpt Suppl Regular

Su	Status: Pending				
Public Works Stormwate			/ater		
Supp'I ID # 2747	Fund 123	Cost Center 123201	Originator:	Kraig Olason	

4b. Measures:

Stormwater staff will be working with the consultant to review and monitor their progress toward completing the draft fee model through late summer/early fall 2019. Results of the dry run will also be reviewed to evaluate quality of the fee roll. Any glitches will be addressed prior to running the final run in November of 2019. The most obvious measure of success is incorrect bills reported by property owners. In past years these have been minimal with the BBWARM program.

5a. Other Departments/Agencies:

This process will be managed through the Stormwater Division of Public Works. It is not anticipated that any other departments will be extensively involved. However, Information Technology will be included in the review process and will assist with coordination of the Assessor data and parcel layer.

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

Mike Pelela of Information Technology will assist the consultant with accessing current Assessor data.

6. Funding Source:

Flood Fund 169 through a companion SBR.

Monday, June 24, 2019



July 3, 2019

TO: Whatcom County Council

- FROM: David Reynolds, Director of Superior Court Administration
- RE: Budget Supplemental: Position Control for Pre-Trial Services Officer

The 2019 Budget Supplemental set for the July 23, 2019 Council Meeting reflects a position control for a Pre-Trial Services Officer in Superior Court. Budget authority to support this position was approved as part of the 2019-2020 budget, however, determination of how the position would be filled was to be determined.

After hiring a Pre-Trial Services Coordinator who began this past June, and consulting with Superior Court Judge Garrett, we have determined filling this position as a Pre-Trial Services Officer is the appropriate next step.

Should you have any questions, please do not hesitate in contacting me at X 5565.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-383

File ID:	AB2019-383	Version:	1	Status:	Agenda Ready
File Created:	07/01/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
First Assigned t Agenda Date:	to: Council 07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

Primary Contact Email:

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 11.32 to protect Lake Samish water quality

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance amending Whatcom County Code 11.32 to protect Lake Samish water quality

HISTORY OF LEGISLATIVE FILE

Date: Acting Body:

Body:

Action:

Sent To:

Attachments: Ordinance

Final Action: Enactment Date: Enactment #:

PROPOSED BY: <u>DONOVAN</u> INTRODUCTION DATE: <u>JULY 9, 2019</u>

ORDINANCE NO._____

AMENDING WHATCOM COUNTY CODE CHAPTER 11.32 TO PROTECT LAKE SAMISH WATER QUALITY

WHEREAS, Lake Samish functions simultaneously as an important recreational resource, and as an important drinking water source for residents in the area, and

WHEREAS, the Whatcom County code currently recognizes that older, two-stroke boat motors are inappropriate for use on Lake Whatcom, a lake that also serves as a source for drinking water, but this provision has not been extended to Lake Samish, and

NOW, THEREFORE, BE IT ORDAINED that Chapter 11.20 of County Code shall be amended such that vessels will not operate within 300 feet from the shore of Lake Samish when waterskiing and wakesurfing as defined in Exhibit A to this ordinance; and

BE IT FINALLY ORDAINED that Chapter 11.32.020 of the County Code shall be amended to phase in a prohibition of two-stroke engine powered watercraft on Lake Samish as defined in Exhibit A.

ADOPTED this <u>day of</u>, 2019.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY EXECUTIVE APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON

Rud Browne, Council Chair

WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____

EXHIBIT A

Chapter 11.32 SPECIAL RESTRICTIONS

Sections:

11.32.010 Lake Whatcom.

11.32.020 Lake Samish.

11.32.030 Silver Lake.

11.32.040 Birch Bay.

11.32.050 Cain Lake and Toad Lake.

11.32.060 Reed Lake.

11.32.070 Wiser Lake.

11.32.080 Lake Terrell.

11.32.090 Exceptions.

11.32.095 Severability.

11.32.010 Lake Whatcom.

The following restrictions shall apply on Lake Whatcom:

A. Water skiing is permitted only in a counterclockwise direction.

B. Maximum speed of vessels shall be 40 miles per hour, except for vessels taking part in a boating event authorized by sheriff's permit, and except for seaplanes using normal procedures during periods of takeoff or landing.

C. Waters adjacent to Morning Beach Park Sudden Valley shall be restricted to swimming only.

D. The water adjacent to Afternoon Beach Park is restricted to no public access on the west side of a line that extends northerly from Point A of a point on the easterly line of Parcel A to Point B as shown on Exhibit "A" attached to the ordinance codified in subsections C and D of this section, and swimming and nonpower boats on the east side of said line.

Sudden Valley Community Association is authorized to cordon off the specific areas of Lake Whatcom to accomplish the purpose of subsections C and D of this section.

E. The operation of all two-stroke engine-powered watercraft on Lake Whatcom is hereafter prohibited, effective January 1, 2009, except as follows:

1. Watercraft powered by a two-stroke-powered engine whose engine is certified and labeled as meeting the 2006 or later model year United States Environmental Protection Agency (EPA) emissions standards, as specified in Title <u>40</u>, Code of Federal Regulations, Part 91; or

2. Effective only until January 1, 2013, all carbureted two-stroke auxiliary sailboat engines; or

3. Effective only until January 1, 2013, all carbureted two-stroke engines of 10 horsepower or less; or

4. Effective only until January 1, 2013, all electronic fuel-injected (EFI) two-stroke engines originally purchased before August 2004; or

 Effective only until January 1, 2013, watercraft powered by a two-stroke-powered engine whose engine is certified and labeled as meeting the United States Environmental Protection Agency (EPA) 2001 emissions standards, including Rotax fuel-injected (RFI) two-stroke engines. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 90-83 (part)).

11.32.020 Lake Samish.

(Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 90-83 (part)).

The operation of all two-stroke engine-powered watercraft on Lake Samish is hereafter prohibited, effective November 1, 2019, except as follows:

1. Watercraft powered by a two-stroke-powered engine whose engine is certified and labeled as meeting the 2006 or later model year United States Environmental Protection Agency (EPA) emissions standards, as specified in Title 40, Code of Federal Regulations, Part 91.

11.32.030 Silver Lake.

The following restrictions shall apply on Silver Lake:

A. Water skiing is permitted only in a counterclockwise direction.

B. An official buoyline may be established cooperatively between the Whatcom County sheriff's department, Whatcom County park department and representatives from the Silver Lake Property Owners' Association; speed limits between the buoyline and the shoreline shall be idling or no wake.

C. For the entire area of Silver Lake the idling speed or no-wake provision shall be in force at all hours from the official opening day of fishing season until May 20th of each year; thereafter, until June 30th, the no-wake restriction shall be in force in the mornings before 10:00 a.m. and in the evenings after 7:00 p.m. Use of motorized vessels with more than 10 horsepower is prohibited. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 90-83 (part)).

11.32.040 Birch Bay.

It is unlawful for any person to water ski within 600 feet of the shoreline of all Birch Bay waters. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 90-83 (part)).

11.32.050 Cain Lake and Toad Lake.

The following restrictions shall apply on Cain Lake and Toad Lake:

A. Operation of boats and other conveyances having nonelectric motors is prohibited on Cain Lake and Toad Lake.

B. Speed shall be restricted to idling and/or no wake at all times. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 94-019; Ord. 90-83 (part)).

11.32.060 Reed Lake.

Only all-electric motors and/or manually powered boats are permitted to operate on Reed Lake. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 90-83 (part)).

11.32.070 Wiser Lake.

The following restrictions shall apply on Wiser Lake:

A. Speed is restricted to idling and/or no wake at all times from 8:00 p.m. to 12:00 noon the following day.

B. Water skiing is permitted from 12:00 noon to 8:00 p.m.

C. Speed is restricted to idling and/or no wake at all times west of the Guide Meridian from March 1st to October 15th.

D. Use of motorized vessels is prohibited upon the waters of Wiser Lake from October 15th to March 1st.

E. No water skiing is permitted from the public access dock.

F. Water skiing is permitted up to a maximum of six ski boats at any one time traveling in a counterclockwise direction.

G. Water skiing is permitted only in a counterclockwise direction. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 90-83 (part)).

11.32.080 Lake Terrell.

Speed is restricted to idling and/or no wake at all times. (Ord. 2008-012 Exh. A).

11.32.090 Exceptions.

No restrictions contained in this chapter shall be deemed to apply to persons or vessels engaged in emergency operations necessary to save life or property or in the performance of wildlife management activities undertaken by either county or state governmental agencies or their designees. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 2002-008; Ord. 94-019).

11.32.095 Severability.

If any provision of this chapter is held to be invalid, all other provisions shall remain in effect. (Ord. 2008-012 Exh. A; Ord. 2007-038 Exh. A; Ord. 2004-042; Ord. 94-019).



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-389

File ID:	AB2019-389	Version:	1	Status:	Agenda Ready
File Created:	07/02/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
First Assigned t Agenda Date:	:o: Council 07/09/2019	Next Mtg. Da	ite:	Hearing	Date:

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

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 2.46.020 and 2.46.030 to revise the Whatcom County Incarceration Prevention and Reduction Task Force purpose and function

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance amending Whatcom County Code 2.46.020 and 2.46.030 to revise the Whatcom County Incarceration Prevention and Reduction Task Force purpose and function

HISTORY OF LEGISLATIVE FILE

 Date:
 Acting Body:
 Action:
 Sent To:

 Attachments:
 Ordinance

Final Action: Enactment Date: Enactment #:

ORDINANCE 2019-____

AMENDING WHATCOM COUNTY CODE 2.46.020 AND 2.46.030, TO AMEND THE WHATCOM COUNTY INCARCERATION PREVENTION AND REDUCTION TASK FORCE PURPOSE AND FUNCTION

WHEREAS, the Whatcom County Council created the Incarceration Prevention and Reduction Task Force (IPRTF) in 2015 to provide recommendations, oversight, and specific timeframes on the development of new, or enhancement of existing, programs designed along a continuum that effectively reduces incarceration of individuals struggling with behavioral health challenges (mental illness and chemical dependency), and minimizes jail use by pretrial defendants who can safety be released; and

WHEREAS, the IPRTF completed its initial tasks and also provided to the County Council its Phase I, Phase II, and Phase III Reports, as required by Ordinance 2015-037 to develop plans for a new or expanded crisis triage center for individuals struggling with behavioral health challenges; and

WHEREAS, the IPRTF continues to work with all stakeholders on creating new and enhancing existing criminal justice and behavioral health programs and processes to reduce the number of individuals with behavioral health challenges who use costly interventions like jail, emergency rooms, and hospitals and to divert them from initial or further justice system involvement; and

WHEREAS, there is ample evidence that interventions and investments in social determinates of health have positive impacts on people's lives; and

WHEREAS, investment in birth to three help children succeed in school and in life; and

WHEREAS, the PITA continuum (Prevention, Intervention, Treatment and Aftercare) provides a structure for policy makers to follow; and

WHEREAS, investments in the zero intercept in the Sequential Intercept Model help people stay out of the Criminal Justice System.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that County Code Chapter 2.46 is hereby amended as outlined in **Exhibit A** to this ordinance.

APPROVED this _____ day of _____, 2018.

ATTEST:

Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON

Rud Browne , Council Chair

WHATCOM COUNTY EXECUTIVE WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

() Approved () Denied

Date Signed:

EXHIBIT A

Chapter 2.46 INCARCERATION PREVENTION AND REDUCTION TASK FORCE LAW AND JUSTICE COUNCIL

Sections:

- 2.46.010 Established.
- 2.46.020 Purpose.
- 2.46.030 Function.
- 2.46.040 Permanent Members.
- 2.46.050 Additional Appointed Members.
- 2.46.060 Term of Office.
- 2.46.070 Organization Meetings.
- 2.46.080 Staff and Funding Support.
- 2.46.090 Reporting.

2.46.010 Established.

There is hereby established a Whatcom County Incarceration Prevention and Reduction Task Force.

2.46.020 Purpose.

The purpose of the Incarceration Prevention and Reduction Task Force is to continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released, <u>and identify, examine, and recommend implementing programs and policies</u> that focus on intervention and prevention strategies that are pursuant to incarceration.

The purpose of the Incarceration Prevention and Reduction Task Force is also to function as the Whatcom County Law and Justice Council as required by RCW 72.09.300 and to carry out the function described in in RCW 72.09.300(d).

2.46.030 Function.

The Task Force will consider national best practices and report on and make recommendations to the County Council, Executive, and other appropriate officials regarding:

A. The construction and operation of a new or expanded multi-purpose crisis triage facility to assist with jail and hospital diversion of individuals struggling with mental illness and chemical dependency;

B. Development of new, or enhancement of existing, programs designed along a continuum that effectively reduces incarceration of individuals struggling with mental illness and chemical dependency;

C. Effective pretrial service programs that assure that defendants appear for court proceedings while minimizing jail utilization by defendants who can safely be released;

D. Necessary and effective programs and services that can assist offenders with successful transition from both the jail and triage center back to the community to reduce rates of recidivism and improve public health and safety;

E. The ongoing staff support and funding for the Task Force;

F. Review of the diversion programs of the County and all cities, and establishment of benchmarks to measure the effectiveness of the programs in reducing incarceration.

G. Practice evidence-based strategies and interventions that positively impact the social determinants of health that address interventions for criminogenic factors.

The Task Force, as the Law and Justice Council, will meet the requirements of RCW 72.09.300.

2.46.040 Permanent Members.

The Incarceration Prevention and Reduction Task Force shall include the following 13 designated officials or their representative:

- A. One Member of the Whatcom County Council
- B. Whatcom County Executive
- C. Whatcom County Sheriff/Jail Administrator
- D. Whatcom County Prosecuting Attorney
- E. Whatcom County Public Defender Director
- F. Juvenile Court Administrator/Superior Court Clerk
- G. One Representative from the Whatcom County Superior Court
- H. One Representative from the Whatcom County District Court
- I. Tribal representation from the Lummi Nation and/or the Nooksack Tribe
- J. One representative from the Whatcom County Health Department Human Services
- K. Emergency Medical Services (EMS) Representative
- L. PeaceHealth St. Joseph's Medical Center
- M. Secretary of the State Department of Corrections or his/her designee

One each of the following, or their designee, to represent municipal courts, prosecutors, police, and legislative authorities:

- N. Bellingham Mayor
- O. Small City Mayor, designated by the Small City Partnership
- P. Bellingham Council Member
- Q. Small City Council Member, designated by the Small City Partnership
- R. Bellingham Police Chief
- S. Small City Police Chief, designated by the Small City Partnership
- T. Bellingham Municipal Court Administrator
- U. Small City Municipal Court, designated by the Small City Partnership

2.46.050 Additional Appointed Members.

In addition to the officials designated above, the Incarceration Prevention and Reduction Task Force shall include the following 11 members appointed by the Whatcom County Council:

- A. Health and Social Service Providers (4)
- B. Consumer of Services or Family Member of Consumer (2)
- C. Concerned Citizens (2)

2.46.060 Terms of office for appointed members.

The term of office for appointed members shall be four years. Appointment of members shall comply with Chapter 2.03 WCC.

2.46.070 Organization – Meetings.

A. Meetings of the Task Force shall be open and accessible to the public and shall be subject to the Open Public Meetings Act.

B. At every meeting, the Task Force will schedule an open session to take public comment.

C. The Task Force shall keep written records of meetings, resolutions, research, findings and recommendations; and such records shall be submitted to county staff and shall be made public, including posting on the county website.

D. The Task Force shall adopt its own rules and procedures for the conduct of business.

E. The Task Force shall elect a chairperson from among its members who shall preside at its meetings.

F. The Task Force shall determine its meeting schedule and agenda, but shall meet at least quarterly.

G. The Task Force may form and appoint ad hoc committees to work on specific issues and may designate non-members to participate as committee members.

2.46.080 Staff and Funding Support.

The Task Force will have full support from the Council, the County Executive's Office, Health Department staff, and locally delivered paid consultant assistance to conduct and complete its tasks in an efficient and effective manner.

2.46.090 Reporting.

The Task Force will provide at least two updates per year to the County Council and Executive. One of the two reports will be an annual written report presented no later than June 30 of each year, and will provide recommendations to the County Council and Executive on outcomes of existing incarceration prevention and reduction programs throughout Whatcom County, new innovative programs being used in other communities, and recommendations for changes or additional programs.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-380

File ID:	AB2019-380	Version:	1	Status:	Agenda Ready	
File Created:	06/25/2019	Entered by:	MCaldwel@co.whatcom.wa.us	6		
Department:	Finance Division	File Type:	Resolution of the WCFCZDBS or Other Special District			
First Assigned Agenda Date:	to: Council 07/09/2019	Next Mtg. Da	ate:	Hearing	Date:	

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

TITLE FOR AGENDA ITEM:

Resolution amending the 2019 Flood Control Zone District and Subzones Budget, request no. 4, in the amount of \$218,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental No. 4 requests from the Flood Control Zone District Fund:

1. To appropriate \$28,000 to fund transfer to the Storm Water Fund to develop the fee roll.

From Birch Bay Watershed & Aquatic Resources Management District:

2. To appropriate \$190,000 to fund drainage improvements along Birch Bay Drive.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:	
Attachments	s: FloodSupplemental#4-2019			
			Final Action:	
			Enactment Date:	

Enactment #:

PROPOSED BY: <u>Public Works</u> INTRODUCTION DATE: 07/9/19

RESOLUTION NO.

(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 4 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 Fund	28,000	-	28,000
Birch Bay Watershed & Aquatic Resources Management District	190,000	<u> </u>	190,000
Total Supplemental	218,000		218,000

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 #4					
		Expenditures	Revenues	Fund Balance	
Flood Control Zone District Fund					
Flood Control Zone District Fund	To fund transfer to the Storm Water Fund to develop the fee roll.	28,000	-	28,000	
Birch Bay Watershed & Aquatic Resources Management District	To fund drainage improvements along Birch Bay Drive.	190,000		190,000	
Total Flood Control Zone District	218,000		218,000		

Supplemental Budget Request							Status:	Pending	
Public Works Flood Control Zone						Control Zone D	istrict		
Supp'l ID # 2	749 Fund	169 C	ost Cei	nter 1	69100	Originator:	Kraig O	lason	
		Yea	r 1 20	019	Add'l l	TE 🗔		Priority	1
Vame of R	equest: Con	npanion requ	lest to	SBR-2	2747 from	Stormwater			
X Departm	Jh. ent Head Si	gnature (Re		d on l) Hard Cop	y Submission)	6,	/24 /1 Date	9
		dependition de la companya de la com				· · · · · · · · · · · · · · · · · · ·			_
Costs:	Object	Object De	-				Amount	Requested	
	8351.128	Operatin	ig Transfe	er Out				\$28,000	
	Request To	tal						\$28,000	

1a. Description of request:

This is a companion request to SBR-2747 for the Stormwater Fund to provide support for Developing the 2020 Fee Roll for the Lake Whatcom Stormwater Utility.

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:

Flood fund balance

Monday, June 24, 2019

Rpt: Rpt Suppl Regular

Supplemental Budget Request							Status:	Pending	
Public Works Stormwater									
Supp'I ID # 2	2744 Fund	16925	Cost	Center 9	25901801	Originator:	Kraig O	lason	
			Year 1	2019	Add'l FT	E 🗆		Priority	1
Name of R	lequest: BB	Outfall II	nprove	- PW3					
X	tri	+2	\sim					6/24	./19
Departm	ent Head S	ignature	(Requ	ired on I	Hard Copy	Submission)		Date	
Costs:	Object	Obje	ct Descrip	otion			Amount	Requested	
	6630	Pro	ofessional	Services		10.59K.0 .07C		\$18,000	
	6699	Ot	ner Service	es-Interfund				\$10,000	
	7380	Oti	ner Improv	ements				\$162,000	
	Request T	otal	1				\$	190,000	

1a. Description of request:

This project will improve drainage along Birch Bay Drive by installing an upsized storm pipe conveyance system along Birch Bay Drive between Pt. Whitehorn Road and Holeman Ave. This project will also construct a new outfall off of Pt. Whitehorn Road into an existing pond as the existing outfall ditch to the Beaver Pond is becoming heavily incised and eroded. The project is being done in conjunction with the Birch Bay Water and Sewer District who will be connecting residents to an existing eight inch water main and abandoning and older 4 inch waterline along the same portion of Birch Bay Drive as the stormwater improvement project. Combining these two activities will reduce the impact to the property owners and provide some savings to both Whatcom County and Birch Bay Water and Sewer District

1b. Primary customers:

Property owners along both sides of Birch Bay Drive will receive benefits from a properly working stormwater drainage system. Whatcom County Parks/Whatcom County will receive benefits from the new outfall to the beaver dam just east of Point Whitehorn Road. This section of the existing drainage system was excessively eroded and contributing sediment to the beaver pond and Terrell Creek.

2. Problem to be solved:

In December 2017, the failure of a corrugated metal outfall pipe on Birch Bay Drive caused a significant slope failure on a steep bluff to the shoreline, posing a critical public safety issue. The replacement of this outfall was scheduled for construction in 2021, but this pipe failure called for emergency action. Temporary repairs were installed immediately, with the majority of the final slide repair constructed in early January 2019. The temporary pipe, essentially an 18 inch fire hose, installed to the beach is a stop gap measure to allow for the construction of the upgraded conveyance system which will provide capacity to drain all of the neighborhood water to a new outfall just east of Point Whitehorn Road.

The project allows for the abandonment of the failed outfall and is designed to collect and convey the surface water generated in the area. Currently much of the stormwater surface flow is not collected by the existing drainage system and in places crosses the road and runs across the water ward lots draining on the unstable slope above the beach. The Birch Bay Watershed Aquatic and Resources Management District has prioritized all stormwater conveyance projects adjacent to unstable bluffs as a high priority.

Both public and private property are affected by surface water flows in this sensitive area. The installation of this system will greatly reduce those stormwater impacts.

Several factors have contributed to the additional costs which were not originally contemplated in the original estimate. These include determining that replacing the outfall in the original location was nearly

Monday, June 24, 2019

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Public Works	Stormwater							
	-	-	-					_

Supp'l ID # 2744 Fund 16925 Cost Center 925901801 Originator: Kraig Olason

impossible due to lack or room between the two adjacent houses and excessive permitting hurdles. A second alternative involved upsizing the current crossing at Birch Bay Drive and Point Whitehorn Road, this option was rejected due to extensive underground utilities. The final option, discharging to the beaver pond east of Point Whitehorn Road, is currently a highly eroded channel and required a new outfall conveyance system. This required significant effort to arrive at an acceptable outfall considering the permit implications and archaeological reviews required. The final system design includes accommodating the Birch Bay Water and Sewer District's connection of nearly 20 single family homes, installing the new drain line in a very congested and narrow ROW with extensive existing utilities to coordinate with and subsequent additions to design efforts and total project costs.

3a. Options / Advantages:

The project was initiated as an emergency fix when an existing metal outfall culvert to Birch Bay failed causing a landslide and safety concern for the two houses adjacent to the slide. The initial plan considered was to replace the outfall in place. Upon further analysis, which included extremely limited work area between the two existing houses and potential difficulty with obtaining permits, the marine outfall was abandoned. The existing conveyance system along the Southside of Birch Bay Drive was determined to be marginally functional and lacking the capacity to convey the stormwater now exiting via the damaged marine outfall. In addition, the existing stormwater conveyance system does not collect surface flows resulting in sheet flow across Birch Bay Drive to the highly unstable marine bluff.

The system as designed will intercept sheet flow and provide for residential downspout connections to greatly reduce any stormwater impacts to the sensitive marine bluff.

3b. Cost savings:

Cost savings are related to risk avoidance by mitigating the impact for surface stormwater flows to marine bluffs and subsequent damaging resulting to public and private properties from surface flow based slides,

4a. Outcomes:

The new stormwater conveyance system will consist of approximately 3,000 feet of storm drains and over 30 catch basins. The system is designed to contain a 100 year storm event and includes and outfall design that meets water quality requirements and includes a dissipation tee and rock dispersion pad that discharges into the beaver pond. The project will begin in early September and will be completed by November of this year (2019).

4b. Measures:

At the conclusion of the construction a record drawing will be produced which will provide detailed locations for all installed components. Monitoring through the winter rainy season will confirm that the project was adequately designed and installed.

5a. Other Departments/Agencies:

The project will increase the number of catch basins in the project area. This will increase time required for inspections and will require maintenance as needed. Staff from Stormwater and Maintenance and Operations will be involved in this increased workload.

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

WC Public Works Maintenance and Operations NPDES crew leader Vernon Brown will be in charge implementing any required maintenance on the new system.

6. Funding Source:

The additional funding requested is from 169250 - Birch Bay Sub-Flood Zone.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-379

First Assigned t Agenda Date:	o: Council 07/09/2019	Next Mtg. Da	ate:	Hearing	Date:
Department:	Public Works Department	File Type:	Resolution		
File Created:	06/25/2019	Entered by:	AHester@co.whatcom.wa.us		
File ID:	AB2019-379	Version:	1	Status:	Agenda Ready

Primary Contact Email: <u>Sdraper@co.whatcom.wa.us <mailto:Sdraper@co.whatcom.wa.us></u>

TITLE FOR AGENDA ITEM:

Resolution vacating Safsten Road

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The attached Resolution Vacating Safsten Road is submitted per RCW 36.87 and WCC 12-20.

The County Engineer's report has been prepared and is being submitted in favor of this road vacation. A public hearing will need to be scheduled

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:	
Attachments		cating Safsten Road.pdf, Resolution V ion.pdf, Engineers Report Safsten Rd.		lf,
			Final Action: Enactment Date:	
			Enactment Date:	

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



MEMORANDUM

The Honorable County Executive Jack Louws and Honorable Members of the County Council
Jon Hutchings, Director
Andrew Hester, Real Estate Coordinator
June 25, 2019
A Resolution Vacating Safsten Road

The attached petition asks for vacation of Safsten Road.

Based on a Fair Market Valuation (FMV) of surrounding comparable properties, the estimated value of the area to be vacated is approximately \$28,750.

Recommended Action

The County Engineer's report has been prepared and is being submitted as in favor of this road vacation. It is recommended that the County Council set a hearing date for the requested vacation request, publish the vacation request and direct County staff to post the appropriate public notices.

Please contact me at extension 6216 if you have any questions regarding this action.

Encl.

SPONSORED BY:

PROPOSED BY: Public Works

INTRODUCTION DATE:

RESOLUTION NO.

A RESOLUTION VACATING SAFSTEN ROAD

WHEREAS, on January 29, 2019, BP West Coast Products LLC submitted a petition for the vacation of Safsten Road lying within the unincorporated area of Whatcom County, accompanied by the penal sum of \$790.00; and,

WHEREAS, as described in RCW 36.87.010, when a county road or any part thereof is considered useless, the Whatcom County Council may declare by resolution its intention to formally consider vacation; and

WHEREAS, the County Council voted 7-0 on May 7, 2019, to consider this vacation request and directed the County Engineer's office to report; and

WHEREAS, the County Engineer's office has reviewed the portion of the street which is a Class B-1 right-of-way, wherein no public expenditures were made or they are non-ascertainable from records, and no part thereof lies in any plat, and in the exercise of his judgment has determined that the public will benefit from said vacation; and

WHEREAS, it is unknown if there are public utilities located within the portion of the right-of-way to be vacated, but an easement for said utilities will be retained by the County, and

WHEREAS, the fair market value has been determined to be \$0.33 per square foot for the approximately 87,120 square feet of Safsten Road, making the total value of the area to be vacated \$28,750.00; and

WHEREAS, the County Engineer has reviewed said compensation and determined it to be fair value; and

WHEREAS, the petitioner has met all of the petition requirements, as set forth by Chapter 12.20 Whatcom County Code, and all other applicable laws; and

WHEREAS, the applicant has six calendar months from the date of the Preliminary Order of Vacation to pay any remaining fees to the Whatcom County Council office, which checks should be made payable to the Whatcom County Treasurer, prior to the vacation becoming effective, including but not limited to the appraised value of the area sought to be vacated; and

WHEREAS, this vacation does not become effective until the fees are paid and the Final Order and Resolution are recorded with the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that it is the intention of the Whatcom County Council to vacate the following described right of way:

A strip of land 33 feet in width on and along the west line of the E ½ SW ¼ Section 6, Township 39 North, Range 1 East, W.M. Situate in Whatcom County, Washington.

SUBJECT TO and/or together with all easements, covenants, restrictions, and/or agreements of record or otherwise; and

SUBJECT TO an easement retained by the County in respect to the vacated portion of right-ofway for the construction, repair, and maintenance of any and all public utilities and services, now located on or in the vacated portion.

BE IT FURTHER RESOLVED that upon applicants' completion of payment for the property and of all other fees, a Final Order of Vacation shall be prepared by Council Staff, signed by the appropriate parties, and recorded with the County Auditor; and

BE IT FURTHER RESOLVED that if the conditions set forth above are not fulfilled within six months from the date of the passage of this Resolution, the Preliminary Order of Vacation which is hereby authorized shall be withdrawn, and the right-of-way shall not be deemed to have been vacated.

APPROVED this _____ day of _____, 2019

ATTEST: WASHINGTON WHATCOM COUNTY COUNCIL WHATCOM COUNTY,

Dana Brown-Davis, County Clerk

Rud Browne, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

BEFORE THE WHATCOM COUNTY COUNCIL

IN THE MATTER OF VACATION OF)	
THE COUNTY ROAD KNOWN AS)	PETITION FOR VACATION
SAFSTEN ROAD)	OF PLATTED ROAD
Petitioned for by:)	(RCW 58.17 AND 36.87)
BP West Coast Products LLC et. al.)))	

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, the undersigned petitioner ("Petitioner") and five land owners in the vicinity of said road for which vacation is being sought who have executed this Petition (the "Adjacent Land Owners"), all of whose signatures appear herein, hereby submit this Petition to vacate the county road hearinafter described:

- 1. Petitioners and the Adjacent Land Owners are owners of real property in the vicinity of the road sought to be vacated.
- 2. The road sought to be vacated is legally described as follows:
 - a. Safsten Road See Exhibit A, and
 - b. See Exhibit B for map identifying the location and vicinity of right-of-way described in Exhibit A.
- 3. The pertinent facts in support of this petition are as follows:

Background

- a. The Board of Supervisors of Mt. View Township, Whatcom County, Washington established Safsten Road (County Road No. 716) as a county road right-of-way on November 27, 1933.
- b. The Safsten Road Order of Establishment describes the subject right-of-way as: "A strip of land 33 ft in width on and along the west line of the E ½ SW ¼ of Section 6, Twp. 39, R 1 E, W.M. for use only for public road purposes, same to revert to grantors herein should said grantee cease to maintain said property for road purposes."

Existing Conditions

- c. Safsten Road consists of approximately 0.5 mile of unmaintained right-of-way currently owned by Whatcom County.
- d. The subject road is gated at the Safsten/Grandview Road intersection and is paved north of Grandview Road for approximately 1,500 feet to an existing BP weather station. North of the

weather station, Safsten Road continues as an unimproved compacted dirt lane that is used for periodic farm machinery ingress/egress to lands leased by BP for agricultural management.

- e. The Safsten Road right-of-way provides indirect access to the ARCO Mitigation Area, which is located northeast of said road on a portion of Whatcom County Assessor's tax parcel number 390106-211210. The ARCO Mitigation Area is subject to a Restrictive Covenant recorded under Whatcom County Auditor File No. 2010201203 on February 12, 2001.
- f. The Safsten Road right-of-way provides direct access to the BP Brown Road Materials Storage Area (BRMSA) Mitigation Area, which is located east and west of said road on portions of Whatcom County Assessor's tax parcel numbers 390106-208076 and 390106-211210. The BRMSA Mitigation Area is subject to a Restrictive Covenant recorded under Whatcom County Auditor File No. 2060102822 on January 19, 2006.
- g. The Safsten Road right-of-way provides indirect access to the BP Compensatory Mitigation Area 2 (CMA-2), which is located east of said road on portions of Whatcom County Assessor's tax parcel numbers 390106-211210 and 390106-518137. The CMA-2 area is subject to a Restrictive Covenant recorded under Whatcom County Auditor File No. 210100781 on October 6, 2010.
- h. The Restrictive Covenants recorded on the ARCO, BRMSA, and CMA-2 mitigation areas each state: "There shall be no development of the Property for any purpose by any entity whatsoever. There shall be no clearing, grading, or filling done on the Property except for changes required to meet mitigation requirements or for further habitat enhancements. The Property shall not be used as a depository for materials or fill as a result of any clearing, grading, or development of any other property."
- i. The subject road does not facilitate public access to Whatcom County's shorelines nor does it provide connectivity (primary or alternate) to the Whatcom County road system.
- j. The road proposed for vacation herein does not abut a body of water.

Public Benefit

- k. The Safsten Road right-of-way provides direct access to a proposed 135.8-acre BP Advance Mitigation Project (AMP) site north of the BRMSA Mitigation Area and west of the ARCO and CMA-2 mitigation areas. Permit applications and associated documentation for the AMP were submitted for local, state, federal and tribal agency review in February 2018. The AMP includes modification of the unimproved, compacted dirt portion of Safsten Road and removal of associated ditches to allow unimpeded surface water flow across the road that will facilitate natural hydraulic conditions supportive of on-site wetland preservation, restoration and creation.
- Following completion, the AMP site will also be subject to a restrictive covenant containing the same or similar development restrictions as those recorded on the BRMSA, ARCO, and CMA-2 mitigation sites. Therefore, there will be no future development potential on any adjacent parcels (other than the existing BP weather station site) and the Safsten Road right-of-way will serve no future public right-of-way purpose.

- m. Vacation of the described right-of-way is one component of a variety of measures that will be implemented to provide layers of protection necessary for the long-term preservation of existing and proposed wetland mitigation and critical habitat restoration areas.
- n. Consistent with adopted land use goals and policies of the 2017 Whatcom County Comprehensive Plan, particularly Comprehensive Plan Policies 2DD-4 and 2RR-1, the public interest will be served through conservation of open space, as well as voluntary restoration and protection of wetlands and critical wildlife habitat.
- o. Safsten Road is located within a portion of the BP Unit Whatcom Wildlife Area, which is managed in conjunction with the Washington State Department of Fish and Wildlife to support habitat conservation and recreational hunting. Recreational users currently access the wildlife area from an existing parking area immediately east of Safsten Road and north of Grandview Road. Vacation of Safsten Road will not eliminate or diminish existing public access to the wildlife area.
- p. Vacation will not eliminate existing public access to the Point Whitehorn Marine Reserve or Birch Bay State Park to the west, or to other public access destinations in the greater Cherry Point area.
- q. The subject right-of-way does not facilitate public access (physical or visual) to the marine shoreline.
- r. No part of the subject road right-of-way lies within any plat, nor is any residential structure or commercial business served by this road.
- s. Vacation of said right-of-way and subsequent private ownership will reduce the County's longterm fiscal responsibility to conduct on-going maintenance and repair of the existing roadway and would reduce the overall amount of public road funds that would otherwise need to be dedicated.
- t. Vacation of said right-of-way is consistent with Whatcom County Interim Ordinance No. 2018-044.

Ownership

- u. BP West Coast Products LLC (BP) owns approximately 583 acres located north of Grandview Road, east of Jackson Road, west of Blaine Road (SR 548), and south of Bay Road in Section 6, Township 39, Range 01 East, W.M.
- v. BP owns all tax parcels abutting Safsten Road and all parcels directly and indirectly served by said right-of-way.
- w. Upon vacation of Safsten Road, BP will own and maintain a portion of said vacated right-of-way for purposes of mitigation area maintenance and private security access. The remainder of said vacated right-of-way would be restored to pre-developed conditions, planted, and incorporated into the AMP.
- x. Existing utility easements within or along Safsten Road will be maintained or amended, as applicable, to facilitate continued public utility service.

- y. BP and Adjacent Land Owners are supportive of the proposed road vacation and have no objection to subsequent ownership of the vacated roadways by BP. See signature pages included herein.
- 4. The portion of road to be vacated is useless as a part of the County road system and the public will benefit by its vacation and abandonment.
- 5. Petitioner will pay all costs and expenses incurred by the County in examination, report, notice and proceedings pertaining to this petition.
- 6. The application fee in the sum of \$790.00 accompanies this petition.
- 7. A map of the road, Safsten Road, to be vacated and surrounding properties (**Exhibit C**), with each of the Petitioner and Adjacent Land Owner's properties indicated thereon, accompanies this petition.

WHEREFORE, Petitioner requests the County Road Engineer to report upon this petition, that a hearing take place on this report, and that an order be entered vacating and abandoning said road.

PETITIONER – REFINERY MANAGER: Signed this 12 day of December, 2018. Robert K. Allendorfer, BP Cherry Point Refinery

Company: BP West Coast Products LLC

Address: 4519 Grandview Road Blaine, WA 98230

Phone: (360) 371-1500

BP CONTACT PERSON:

Signed this 29 day of *January*, 2018. Pam Brady, BP Cherry Point Refinery

Company: BP West Coast Products LLC

Address: 4519 Grandview Road Blaine, WA 98230

Phone: (360) 371-1519

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road.

BIRCH BAY WATER AND SEWER DISTRICT:

Signature:	1 N N	
Printed Name:		
Signed this	day of	, 2018.
Company:	Birch Bay Water and Sewer District	
Address:	7096 Point Whitehorn Road Blaine, WA 98230-9675	
Whatcom Cou	nty Assessor parcel numbers:	

395101 066235 395101 072128 WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road.

BIRCH BAY WATER AND SEWER DISTRICT - Dan Eisses accounted concert of petition
Signature: Ala Emi
Printed Name: DAW EISSES - COEWERAL MANAGER
Signed this 23 day of MAY, 2018.
Address: 7096 Point Whitehorn Road Blaine, WA 98230-9675
Whatcom County Assessor parcel numbers:

395101 066235 395101 072128

Page 5

WASHINGTON STATE PARKS & RECREATION - Ted Morris

Signature:	Mon	÷
Printed Name: 120	MORRIS	-
Signed this 8 th day of	May, 2018.	

Park: Birch Bay State Park

Address: 5105 Helweg Road Blaine, WA 98230

Whatcom County Assessor parcel number:

395101 152375

Page 6

Ϋ́,

BLUE HERON PROPERTIES LLC:

Signature: Med Jamundson Printed Name / Title: FRED J. AMUNDSON / PRESIDENT

Signed this _ 20 day of _ SEPTEMBER _____, 2018.

Company: Blue Heron Properties LLC

Address: P.O. Box 875 Ferndale, WA 98248-0875

Whatcom County Assessor parcel numbers:

390108 434471 390108 494471

FRANK AND SHALA CROW

Signature: Printed Name / Title: FEANK E. CPaul

Signed this <u>24</u> day of <u>January</u> ___, 2019.

Address: 7193 Kickerville Rd Ferndale, WA 982480

Whatcom County Assessor parcel number:

390105 500377

DOUG AND TWILA WIEBE

	2 1	
Signature:	Ans Wich	

.

Printed Name / Title: DOUG WIEBE DWNER

Signed this MAY day of _____, 2018.

Address: 6947 Karber Road Blaine, WA 98230

Whatcom County Assessor parcel number:

395101 094050

EXHIBIT A

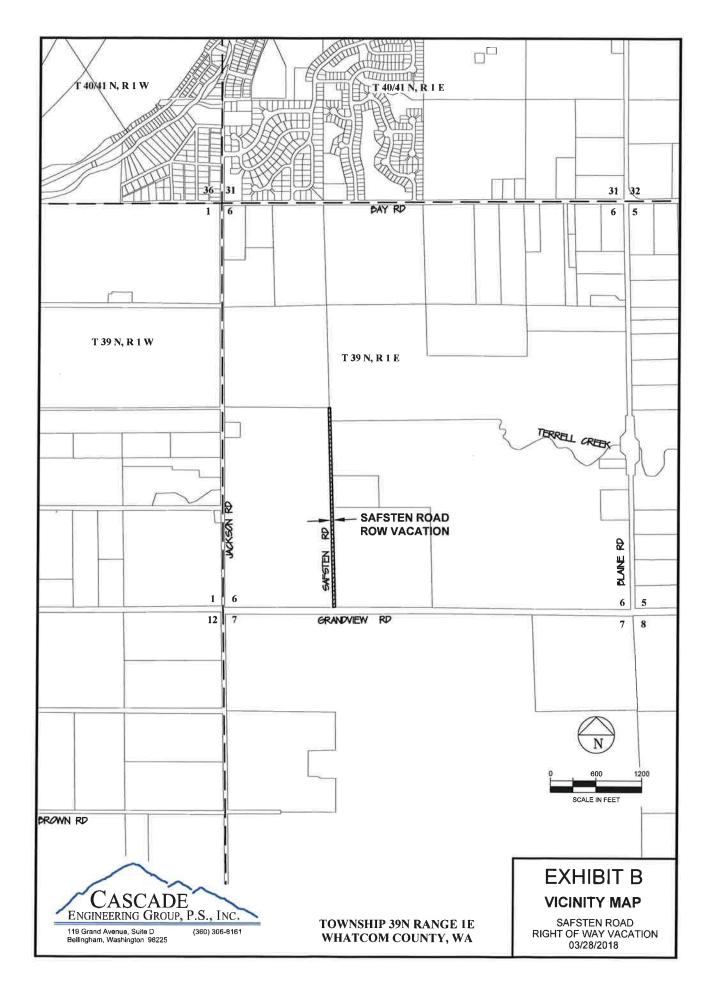
Q,

,

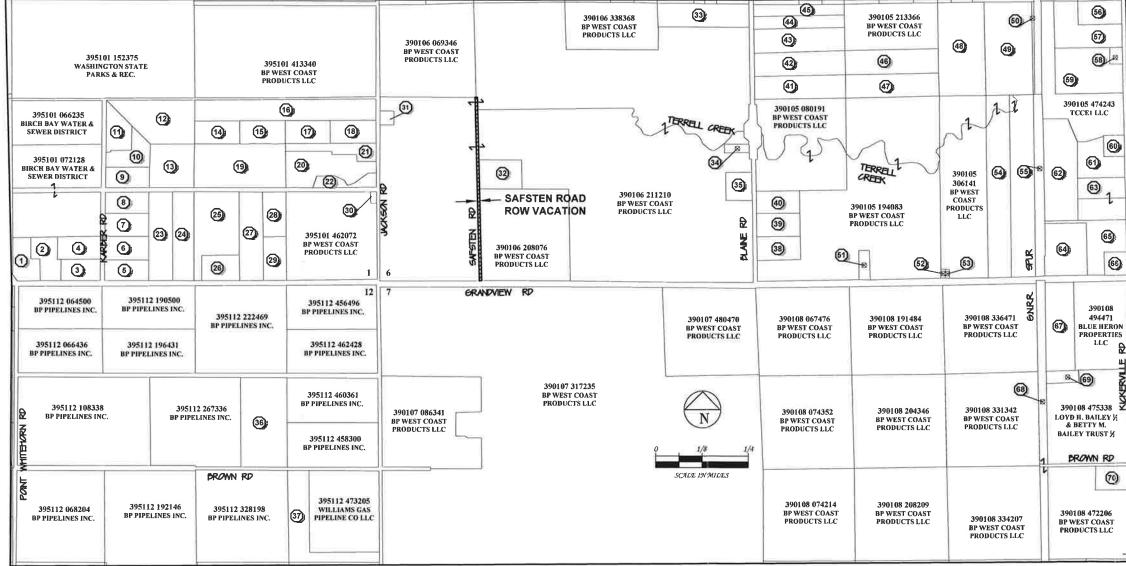
SAFSTEN ROAD

A strip of land 33 feet in width on and along the west line of the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 6, Township 39 North, Range 1 East, W.M. Situate in Whatcom County, Washington.

Page 10







PROPOSED SAFSTEN ROAD RIGHT OF WAY VACATION:

A STRIP OF LAND 33 FEET IN WIDTH ON AND ALONG THE WEST LINE OF THE E ½, SW ¼, SECTION 6, TOWNSHIP 39 NORTH, RANGE 1 EAST, W.M. SITUATE IN WHATCOM COUNTY, WASHINGTON.

390105 498167 **RUBICON PROPERTY 1 LLC** 390105 440155 WESTERN PACIFIC FUNDING CORP COAST PRODUCTS AFSTEN RD 390105 498115 RUBICON PROPERTY 1 LLC 390105 450041 WESTERN PACIFIC FUNDING CORP 390105 507060 M WESTERN PACIFIC FUNDING CORE 390105 519020 WHATCOM COUNTY, DARYL & & KRISTA JOHNSON 390108 434471 BLUE HERON PROPERTIES LLC 390108 406302 BNSF RAILWAY COMPANY 69 390108 437396 BP WEST COAST PRODUCTS LLC WEST S 390108 508254 ROBERT J SHERBY TRUST/TR ۵ 56 m 67) 68 0 61) 63 ADE 65 66 SC 390108 494471 **BLUE HERON** ROPERTIES LLC REVISIONS 0 DATE: 03/28/2018 DRAWN: ADI CHECKED SCALE: AS SHOWN PROJECT NUMBER SHEET NO. EXHIBIT A

REPORT OF THE COUNTY ENGINEER

(Whatcom County Code 12.20.050)

IN THE MATTER OF THE VACATION OF A COUNTY

ROAD Safsten Road (County Road #716)

COUNTY ENGINEER'S REPORT

PETITIONED BY BP West Coast Products LLC

I, the undersigned County Engineer of Whatcom County, State of Washington, being duly directed by the Whatcom County Council to examine and report on County Road

A strip of land 33 feet in width on and along the west line of the E ½ SW ¼ Section 6, Township 39 North, Range 1 East, W.M. Situate in Whatcom County, Washington. Proposed for vacation by the petition of: <u>BP West Coast Products LLC</u>

did examine said road and report as follows:

IN FAVOR \underline{X}

Said road should be vacated.

Fair Market Value (12.20.060 E) 2.0ac+- (87,120sf+-) acres @ \$28,750

2. Classification (12.20.060 F)

<u>NOT</u> IN FAVOR

Said road should <u>not</u> be vacated. Said road is not in use as a County road. 1. It will be advisable to preserve this road. The public will not be benefited by this vacation.

Class A		Public expenditures made
Class B	X	No public expenditures made or non-ascertainable from records
Class 1	X	No part thereof lies in any plat
Class 2		Part or all lies within a platted subdivision
Class 3		Did not remain unopened for public use for five or more years after the order made or authority granted for opening it.
Class 4		Remained unopened for public use for five or more years after the order made or authority granted for opening it.
Class 5		Is contained within that portion of a plat which is to be replatted
Class 6		Abandoned in fact due to relocation of right-of-way
Class 7		Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title, or interest in the right-of-way.

The public will be benefited by this vacation. yes X no ____

Whatcom County Engineer

6/21/19

Date 🖊



COMPARATIVE MARKET ANALYSIS – CHETS ROAD VACATION PETITION

PETITIONER: BP West Coast Products LLC PROPERTY LOCATION: Safsten Road OWNER NAME: Whatcom County CURRENT USE: Access (unopened right-of-way) AREA ZONING: Light Impact Industrial / Rural 1 Unit/5 Acres

BACKGROUND:

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, BP West Coast Products LLC are petitioning the County to vacate an area of approximately 87,120 square feet, more or less, consisting of the unopened right-of-way of Safsten Road.

SALES RELIED ON:

Five comparable land sales were used to prepare this market evaluation of the subject property and they sold between April 2018 to July 2018. Sale prices ranged from \$0.26 to \$0.50 per square foot.

Comparable #1 is located at 4253 Bay Road and is approximately 7,300 feet northeast of the subject property. It is approximately 6.71 acres and is vacant land. It sold on July 19, 2018 for \$102,000 or \$0.35 per square foot.

Comparable #2 is located at 6372 North Star Road and is approximately 20,000 feet southeast of the subject property. It is approximately 15.30 acres and is vacant land. It sold on May 3, 2018 for \$191,395 or \$0.29 per square foot.

Comparable #3 is located at 6262 North Star Road and is approximately 20,000 feet southeast of the subject property. It is approximately 4.85 acres and is vacant land. It sold on May 1, 2018 for \$105,000 or \$0.50 per square foot.

Comparable #4 is located at W. 40th Drive and is approximately 9,300 feet northeast of the subject property. It is approximately 4.77 acres and is vacant land. It sold on April 23, 2018 for \$55,000 or \$0.26 per square foot.

Comparable #5 is located at 7167 W. 40th Drive and is approximately 9,300 feet northeast of the subject property. It is approximately 4.77 acres and is vacant land. It sold on April 20, 2018 for \$55,000 or \$0.26 per square foot.



While the five comparable sales are not recent they are all vacant and of similar condition and zoning as the subject property. Averaging the five comparable property sales arrives at a price per square foot of \$0.33 per square foot and is relied on most heavily for the Fair Market Value.

RECOMMENDED COMPENSATION TO COUNTY for 87,120 net square feet X \$0.33 PSF = **\$28,750.00**

Prepared By:

Andrew Hester, Real Estate Coordinator Whatcom County Public Works

Date: 6-19-19

This market analysis does not constitute an appraisal as defined by USPAP.

