**CLEARANCES**

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<th>Originator: Peter Gill</th>
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<th>Division Head: Mark Personius</th>
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**TITLE OF DOCUMENT:**

Proposed Whatcom County Code Chapter 20.51 Lake Whatcom Watershed Overlay District; PLN2011-00015

**ATTACHMENTS:** Memo to Council, Exhibit A - code, Exhibit B - Removal of Lake Whatcom from existing code sections, Exhibit C - Definitions, Exhibit D - Comparison of existing to proposed code, Exhibit E - Potential Amendments

**SEPA review required?**

| ( X ) Yes | ( ) NO |

**SEPA review completed?**

| ( X ) Yes | ( ) NO |

Should Clerk schedule a hearing?  

| ( ) Yes | ( X ) NO |

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

Whatcom County Planning & Development Services will provide an update to the proposed WCC 20.51 Lake Whatcom Watershed Overlay District.

**COMMITTEE ACTION:**

4/09/2013: Updated. Schedule again at the first meeting in May, but confirm with Peter Gill.

5/07/2013: Discussed and held in committee to May 21. Discussion will continue at the May 14 surface water work session within context of NPDES requirements. (Proposed meeting schedule is to introduce an ordinance on June 4 and public hearing on June 10)

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Memorandum

TO: Whatcom County Council Natural Resources Committee

THROUGH: Mark Personius, Long Range Planning Manager

FROM: Peter Gill, Senior Planner

DATE: May 21, 2013

SUBJECT: Lake Whatcom Overlay District, File # PLN2011 - 00015

OVERVIEW: Staff will bring forward to the Natural Resources Committee on May 21, 2013 an update of our progress on the proposed WCC 20.51 Lake Whatcom Watershed Overlay District. The purpose of this meeting is to (1) summarize the cost estimates received by the engineering community on phosphorus neutral stormwater facilities on small lots, and (2) discuss potential code amendments for committee to consider prior to introduction of an ordinance.

BACKGROUND: Council has asked for an analysis of implementing the phosphorus neutral stormwater standards on small lots less than 10,000 ft². This analysis includes the cost of designing and installing these systems on small lots remaining in the Lake Whatcom Watershed. In December 2012, Whatcom County staff visited parcels representative of the vacant lot inventory left in the Lake Whatcom watershed with staff from the City of Bellingham, Sudden Valley Community Association, and the Conservation District. Based on these site visits, County, City, and Conservation District engineering staff agreed on an approach to phosphorus neutral stormwater facility designs in this area that were presented to the Council Natural Resource Committee on April 9, 2013. This approach was refined and sent to engineering firms that volunteered to provide the County feedback on the designs and cost estimates. Engineers will be available at the meeting to answer questions about this review and the cost estimates found in your packet.

Council Natural Resource Committee reviewed updates to the proposed code on May 7, 2013. These changes, to reflect current NPDES standards, are now incorporated, where indicated, in the proposed code (Exhibit A). The Committee withheld their recommendation on changes remaining in Exhibit E.
In your packet you will find five attachments:

- Exhibit A – Proposed code (WCC 20.51) showing Planning Commission recommended and Council changes from 5/7/2013


- Exhibit C – Definitions

- Exhibit D – Summary of Phosphorus Neutral Stormwater BMP Cost Estimates

- Exhibit E – Potential Amendments for Committee Consideration
EXHIBIT A - Whatcom County Code Proposed Chapter 20.51

Chapter 20.51

LAKE WHATCOM WATERSHED OVERLAY DISTRICT

20.51.010 Purpose.
The Lake Whatcom Watershed Overlay District is intended to manage and treat stormwater runoff and establish more stringent standards on clearing activities and reduce the phosphorus loading into Lake Whatcom in order to preserve and protect a unique and important water resource, Lake Whatcom. This district is designed to protect the long-term viability of Lake Whatcom as a drinking water source, and to comply with the requirements set forth by the Washington State Department of Ecology through the pending Lake Whatcom Total Maximum Daily Load (TMDL) by limiting the phosphorus loading into Lake Whatcom that results from land disturbing or conversion projects, and work or activities and reduces phosphorus loading from existing sources, to that of native vegetation as defined by the Washington State Department of Ecology Stormwater Management Manual for Western Washington (WSDOE SWMWWM).

20.51.030 Area and Applicability.

(1) The Lake Whatcom Watershed Overlay District is an overlay zone that covers the entire geographic area of the Lake Whatcom watershed within Whatcom County’s jurisdiction, and applies to all land disturbing or conversion projects, work or activities within the overlay zone.

(2) In the event that the provisions of this chapter conflict with the provisions of the Shoreline Management Program (WCC Title 23), Chapter 16.16 WCC, Critical Areas, the Whatcom County Development Standards, the provisions of the underlying zoning district or other applicable county policies or regulations, then the most restrictive shall apply; provided, that the minimum setback provisions established in WCC 20.51.340 shall prevail.


20.51.040 Conformance.
The provisions of this chapter overlay other permit and approval requirements of the Whatcom County Code. All use and development shall conform to all relevant requirements and standards of:

(1) Whatcom County Code, Title 20, Zoning, except as modified by this chapter;
(2) The International Building and Fire Codes;
(3) Whatcom County Critical Area Ordinance 16.16;
(4) Flood Damage Prevention, Title 17;
(5) Subdivision, Title 21, except as modified by this chapter;
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

(6) Whatcom County Development Standards - Stormwater, Chapter 2, except as modified by this chapter;
(7) Whatcom County Development Standards, Stormwater Special Districts, Chapter 2-
Section 221, except as modified by this chapter;
(8) Whatcom County Code, Title 23, Shoreline Management Program;
(9) Whatcom County Code, Title 24 Health Code; and
All other applicable official controls

20.51.050 Permitted Uses.

All permitted uses in the underlying zone districts are permitted except as expressly prohibited, made conditional, or further conditioned by this chapter.


20.51.060 Accessory uses.


20.51.070 Conditional Uses.

All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited, made conditional, or further conditioned by this chapter. In addition, the following uses shall only be conditionally permitted:

.071 On-site storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses, other than cottage industries as defined in WCC 20.51.095, subject to the most current siting criteria under Chapter 173-303 WAC within the Rural, Rural Forestry, Commercial Forestry, Neighborhood Commercial and Resort Commercial Zone Districts only.

.072 Retail or wholesale plant nurseries or greenhouses for storage, propagation and culture of plants, provided:

(1) Greenhouses shall not be larger than 1,000 square feet.
(2) Greenhouses and cultivated ground shall not be located within 250 feet of Lake Whatcom, Lake Samish, Lake Padden or streams subject to the Shoreline Management Program; 200 feet from fish-bearing streams; or 150 feet from other streams and their tributaries that flow into Lake Whatcom, Lake Samish, and Lake Padden. Staff proposal to remove other watershed references.
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

1. (3) A monitoring program has been established to ensure that chemical and pesticide quantities in stormwater runoff do not exceed state water quality standards. Complete control of drainage from the operation shall be in effect. Such runoff will be tested for pollutants bimonthly by a licensed water quality testing agency. All requirements will be met at the owner’s expense.

2. (4) No person shall apply a commercial fertilizer, either liquid or granular, that is labeled as containing more than zero percent phosphorous or other compound containing phosphorus, such as phosphate; provided, that such fertilizers may be used for establishment of new vegetation in the first growing season.

.073 Type I solid waste handling facilities, except:

1. Moderate risk waste facilities; and


20.51.080 Prohibited Uses.

In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited, except as per Chapter 20.83 WCC:

.081 Dry cleaning establishments.

.082 Gas stations, service stations, combustion engine repair garages and automotive wrecking yards.

.083 Sod farming.

.084 Aquaculture and mariculture projects.

.085 Operation of fur farms.

.086 Confinement feeding operations.

.087 Asphalt and concrete batch plants.

.088 Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.

.089 Utilization of sewage sludge on land.

.090 On-site treatment facilities for hazardous wastes.

.091 Type I solid waste handling facilities, except those specified in WCC 20.51.073.
.092 Type II, and Type III, and Type IV solid waste handling facilities.

.093 Golf courses.

.094 Cemeteries.

.095 Cottage industries that would require on-site hazardous waste storage facilities.

.096 Surface mining outside of designated Mineral Resource Lands (MRL) Special Districts; provided, that surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.02 RCW) are permitted.

.097 Major passenger intermodal terminals.

.098 Freight railroad switching yards and terminals.

.099 Agriculture, including animal husbandry, horticulture, viticulture, floriculture, and the cultivation of crops.

.100 Animal hospitals and accessory kennels and stables.


20.51.300 Open space and impervious surfaces.

.301 Open space requirements shall be as follows:

(1) For uses in the TC and NR Zones, at least 25 percent of the parcel shall be reserved as open space.

(2) For uses in the RC Zone, at least 40 percent of the parcel shall be reserved as open space.

(3) Open space areas shall be maintained in natural vegetation or landscaped per WCC 20.80.325.

(4) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations.

.302 Impervious surface requirements shall be as follows:

(1) For uses in the UR, URM and RR-Zone Districts, at least 80 percent of the lot or parcel shall be kept free of structures and impervious surfaces.
EXHIBIT A—Whatcom County Code Proposed Chapter 20.51

(2) For uses in the R Zone District, at least 90 percent of the lot or parcel shall be kept free of structures and impervious surfaces.

(3) Where subsection (1) or (2) of this section does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

(4) Two or more lots of record consolidated pursuant to the provisions of WCC 20.83.070 shall be treated as one undivided parcel for the purpose of calculating total allowable impervious surface. Where two or more lots or parcels are consolidated; are not subject to the provisions of WCC 20.83.070; and are not subject to a permanent restrictive covenant that precludes development of buildings, structures or other improvements not otherwise identified by said covenant, 4,000 square feet of impervious surface shall be allowed.

(5) Preexisting nonconforming impervious surfaces may be routinely maintained/repaired or redeveloped; provided, that if 50 percent or greater of the preexisting nonconforming impervious area is to be redeveloped, then the applicable impervious surface limitations of subsections (1), (2) and (3) of this section shall apply. However, if a legal nonconforming structure is destroyed, the nonconforming use may be reconstructed using the pre-existing footprint. Expansion of nonconforming impervious surfaces shall be prohibited.

(6) A mobile home within an existing mobile home park may be replaced with a larger mobile home (not to exceed a maximum of 1,500 square feet), provided there is not an increase in the overall number of mobile homes in the park or any increase in other impervious surfaces beyond the new mobile home footprint.

(7) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in impervious/pervious surface calculations.

(8) Any portion of a roof overhang or other overhanging architectural feature which projects further than three feet from the footprint of a structure shall be calculated as impervious surface.


20.51.310 Cluster subdivisions.

The purpose of cluster subdivision is to provide a method of creating building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure efficiency. Clustering is also intended to help preserve open space and the character of areas, reduce total impervious surface area, and minimize development effects on critical areas and associated
EXHIBIT A—Whatcom County Code Proposed Chapter 20.51


20.51.320 Cluster design standards. The creation of new building lots within the Water Resource Protection Area, Whatcom Watershed Overlay Districts shall be subject to the following design standards:

1. Cluster subdivisions shall be required for all land divisions resulting in lots less than five acres in size, with the exception of boundary line adjustments.
2. A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC 20.51.330.
3. The minimum cluster lot size requirements of the underlying zone district shall apply.
4. The maximum number of building lots in a lot cluster shall be 10.
5. Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least 80 feet.
6. Clustered building lots may only be created through the subdivision, short subdivision or binding site plan process pursuant to WCC Title 21.
7. Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas or other valuable or unique natural resources, known archaeological sites, as well as physical constraints of the site.
8. Building lots shall be arranged in a cluster/concentrated pattern.
9. A cluster subdivision shall have no more than two common encroachments on existing county roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid development forms commonly known as linear, straight line or highway strip patterns.
10. As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots; provided, that the required permanent open space reserve area, pursuant to WCC 20.51.330, shall not be further subdivided. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-048 Exh. A, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).

20.51.330 Open space reserve area.
EXHIBIT A - Whatcom County Code Proposed Chapter 20.51

(1) For purposes of this title, an "open space reserve area" shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of "open space" pursuant to WCC 20.97.275.

(2) The open space reserve area shall be subject to the following provisions:

(a) The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.

(b) A permanent open space reserve area shall be protected using one of the following mechanisms:

(i) Placement in a separate nonbuilding tract owned in common by all lots within the subdivision; or

(ii) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required cluster reserve area specified in the underlying zone district; or

(iii) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (2)(b)(i) of this section as determined by the county zoning administrator or hearing examiner which applies to at least the minimum required cluster reserve area specified in the underlying zone district.

(c) The boundaries of the open space portion of the reserve area may be altered only if the county finds that in dedicating adjacent reserve areas it would further the objectives listed in WCC 20.51.310 by altering the reserve area and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.

(d) The purpose of the open space reserve area as defined in subsection (1) of this section shall be recorded on the face of the final plat or short plat.

(e) The remaining unused development density and/or impervious surface allowances remaining on the parcel containing the open space reserve area, based on the gross density of the parent parcel, may be assigned to that portion of the reserve tract not subject to the minimum area requirements of subsection (2)(b) of this section. The density shall be recorded on the face of the final plat or short plat. The development rights assigned to the reserve tract in accordance with this subsection may not be transferred if the impervious surface area associated with the reserve tract has been transferred to the other building lots within the subdivision.

(f) The requirements stated in subsections (2)(c) and (d) of this section shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute...
EXHIBIT A—Whatcom County Code Proposed Chapter 20.51

1 an agreement between Whatcom County and the current/future owner(s) of record
2 that shall run with the land. Said restriction(s) may be amended by mutual agreement
3 between said parties after review for consistency and compliance with the official
4 Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance, and
5 the Whatcom County Comprehensive Plan.

6 (a) For cluster subdivisions approved after December 7, 1999, that portion of the
7 reserve tract which is kept in pervious open space may be counted toward pervious
8 surface area requirements for the building lots in the subdivision on a prorated basis.

12 20.51.340 Building setback/Buffer areas.
13 .341 Setbacks for all properties within the overlay district shall be as follows: Class I and
14 Class II roads shall have a minimum setback of 30 feet; and Class III, IV and V roads shall
15 have a minimum setback of 20 feet; provided, that the road right-of-way meets the
16 minimum standard for road rights-of-way pursuant to the Whatcom County Development
17 Standards.

18 .342 Roof overhangs or other overhanging architectural features shall not project further
19 than 18 inches into the side or rear yard setbacks. Such overhangs may extend three feet
20 into the front yard setback; however, in no case shall they extend more than one-half the
23 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-062 § 1, 2001; Ord. 2001-021 § 1,

25 20.51.350 Development criteria.

29 20.51.360 Parking space dimensions.
30 A standard parking space shall have the rectangular dimensions of 10 feet in width and 20
31 feet in length; provided, that for any parking area of six or more spaces, 50 percent of all
32 spaces may have the rectangular dimensions of eight feet in width and 15 feet in length;
33 and further provided, that these spaces are marked for use by compact automobiles. Except
34 in single-family residential areas, all dimensions shall be exclusive of driveways, aisles and
35 other circulation areas required under WCC 20.80.560 and 20.80.570. (Ord. 2009-009 Exh.
38 § 1, 2001; Ord. 99-086, 1999).

39 20.51.370 Parking requirements.
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Parking shall conform to the requirements of WCC 20.80.500 through 20.80.590 unless otherwise specified in this section. Minimum parking requirements may be reduced through any of the following methods:

(1) A shared parking agreement has been filed with the county auditor establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.

(a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.

(b) Mixed use developments with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.

(2) A 20 percent reduction may be approved if an establishment is located within 1,000 feet of any regularly scheduled bus stop.


### 20.51.280 Alternative surfacing methods

Alternative surfaces including, but not limited to, bark or wood mulch, washed gravel, grid/lattice systems, permeable interlocking pavers, pervious concrete, porous asphalt, and other similar approved materials are encouraged. Alternative surfacing methods may be approved for fringe or overflow parking areas, emergency parking areas, private roads, fire lanes, road shoulders, bike paths, walkways, patios, driveways, and easement service roads in residential or commercial zones unless site constraints make use of such materials detrimental to water quality. Utilization of alternative surfacing methods shall be subject to review and approval by the Whatcom County public works department, the fire marshal, and/or the county ADA coordinator for compliance with other applicable regulations and development standards. Surfaces shall be considered impervious surfaces under WCC 20.71.020 unless the following conditions are met:

(1) Bark, wood mulch, and washed gravel shall be designed and installed so that all rainwater falling upon the alternative surface will be infiltrated directly beneath the alternative surface without generating surface runoff based on the one-year, 24-hour storm event.

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20.51.390 Vehicular access.
Driveways and curb cuts shall be minimized along all arterial and collector roads. Each
existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to
share access points. In new developments, lots or leased sites shall be oriented toward
internal driveways, parking areas, or roads with limited access to arterial or collector roads.

20.51.400 Roads, curbs, gutters and sidewalks.
The intent of this section is to reduce impervious surfaces and stormwater runoff.
Innovative street sections, which do not compromise public safety, shall be encouraged in
the watershed. Narrow streets and reduced sidewalk standards that satisfy pedestrian and
vehicular circulation requirements may be implemented with the approval of the Whatcom
County public works department. Unless specifically required, roads shall not be wider than
the minimum applicable standard. A rural road standard may be approved by the Whatcom
County public works department for urban density residential areas where the developer
provides adequate off-street parking and pedestrian walkways. (Ord. 2009-009 Exh. A,
2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1,

20.51.410 Seasonal Clearing Activity Limitations
The intent of seasonal clearing activity limitations is to establish a more stringent standard
for clearing activity in highly valued water resource areas, environmentally sensitive areas,
or areas where natural conditions are so unstable that clearing activity in the areas can
result in hazardous conditions. Implementation of best management practices, including
phased clearing, tree retention and seasonal clearing limitations, is intended to limit the
amount of exposed soils on site that are susceptible to erosion at any one time, thereby
improving site stability during development and reducing potential for transport of dissolved
pollutants and sediments off site. Preservation of existing trees on site also reduces the
quantity and maintains the quality of stormwater leaving a site during and after
development activities by encouraging interception, infiltration and evapotranspiration of
rainfall and surface runoff.

(1) County review and approval shall be required for all clearing activities associated with a
fill and grade permit, building permit or other development proposal.
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

(2) Clearing activity, as defined in WCC 20.97.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1st through May 31st; provided, that:

(3) The zoning administrator may approve an exemption to this requirement for the following activities:

(a) Routine maintenance and repair of erosion and sediment control measures;

(b) Activities located at or waterward of the ordinary high water mark subject to state, federal, and/or local (per Chapter 16.16 WCC and/or WCC Title 23) conditions of approval requiring commencement of clearing activity between October 1st and May 31st for purposes of minimizing surface water disturbance and site inundation by high water or wave action;

(c) Activities necessary to address an emergency that presents an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this section. Upon abatement of the emergency situation, the clearing activity shall be reviewed for consistency with this chapter and may be subject to additional permit requirements; provided, that the applicant shall make a reasonable attempt to contact the zoning administrator prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the zoning administrator as soon as the emergency is addressed and no later than two business days following such action. Emergency construction does not include development of new permanent protective structures where none previously existed.

(d) The proposed activity does not involve the conversion of forest land, is outside critical areas and associated buffers, and is exclusively related to agriculture as defined in this title; or

(e) The proposed activity consists of nonconversion forest practices, other than Class IV-General forest practices on platted land, and other than those with an approved COHP regulated under Chapter 76.09 RCW; or

(4) To ensure compliance with subsection (2) of this section, Whatcom County planning and development services shall not issue development permits requiring more than 500 square feet of land disturbance located within the Lake Whatcom watershed within two weeks prior to the watershed seasonal closure on October 1st.

(5) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The zoning administrator shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

(6) An exemption from the seasonal land clearing requirements of this section does not grant authorization for any work to be done in a manner that does not comply with other provisions of this chapter or other applicable development regulations.

(7) Within the Lake Whatcom Watershed Overlay District, clearing activity must conform to the following conditions:

(a) Temporary erosion and sediment control shall be installed and inspected prior to any clearing activity. The technical administrator shall conduct periodic inspections to ensure the integrity of temporary erosion and sediment controls. Temporary erosion and sediment control measures include, but are not limited to, installation of silt fencing, installation of check dams, covering of excavation piles, and mulching of exposed soils, as specified in the Whatcom County Development Standards.

(b) Phased Clearing. Construction activities and clearing activities shall be phased to limit the amount of exposed soil that occurs at any one time, if determined to be appropriate by the technical administrator, based on site characteristics or constraints including, but not limited to, slopes, proximity to shorelines and wetlands. A phased clearing plan may be required. A phased clearing plan, if required, shall be submitted for review and approval by the technical administrator prior to any clearing activity and shall contain a detailed construction schedule or timeline.

(c) Soil Stabilization. All disturbed areas shall be provided with soil stabilization within two days of the time of disturbance. The technical administrator may approve an exemption to this requirement when a tree canopy area retention plan includes a soil stabilization plan. This plan component must specifically detail erosion and sediment control and stormwater runoff measures that provide runoff control equal to or greater than the protection provided by the standard two-day soil stabilization requirements of this section.

20.51.420 Permanent Stormwater Management Systems

(1) Exemptions. This section does not apply to any of the following projects, work, or activities (which does not necessarily exempt them from other stormwater related titles and/or standards that might otherwise apply; see WCC 20.51.040(6), WCC 20.51.040(7) and WCC 20.80.630(3)) within the Lake Whatcom Watershed Overlay District:

(a) Installations of, and/or repairs to, and/or replacements of, any of the following facilities:

1. Below grade:
   i. Pipe,
   ii. Conduit,
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

   iii. Ductwork,
   iv. Cabling and wiring (direct burial or conduit encased),

2. Above grade:
   i. Utility or light poles,
   ii. Communication and/or data transmission systems pedestals,

3. Below grade, at grade, and/or above grade appurtenances to any of the above respective facilities.

(b) Roof replacements and/or conversions at the same, or less, surface area.
Conversions to metal roofs require coatings with inert non-leachable materials.

(c) Deck, porch, and/or other raised surfaces area replacements at the same, or less, surface area.

(d) Land disturbing activities (per WCC 20.97 definition) of less than 5,000 square feet in total area, excluding any impervious surface area work within the land area disturbed.

(e) Projects, work, or activities that will create less than:
   
   1. 501 square feet of previously nonexistent impervious surface area and/or permeable pavement area (per WCC 20.97 definitions), and/or
   
   2. 1,501 square feet of replaced impervious surface area and/or replaced permeable pavement area (per WCC 20.97 definitions).

(f) Any new parcels created by a proposed subdivision or short subdivision (per WCC 21.10.020(32) definition) that creates parcel(s) is/are greater than 22,000 gross square feet in area.

(g) Maintenance (e.g., debris, moss, and/or mildew removal) of existing impervious surface areas and/or permeable pavement areas. Pre-existing nonconforming impervious surfaces may be routinely maintained/repaired.

(h) If a legal nonconforming structures are destroyed, the nonconforming use may be reconstructed using the pre-existing footprint. Damage repairs (e.g., from fire, wind, falling trees or limbs, flooding) to existing impervious surface areas and/or permeable pavement areas within their same respective existing footprints. Expansion of nonconforming impervious surfaces shall be subject to this ordinance.

(2) Best Management Practices.

(a) Unless otherwise exempt per WCC 20.51.420(1), or unless a standard land use vesting determination concludes otherwise, all projects, work, or activities, including subdivisions, binding site plans, and non-exempt new short subdivision parcels, proposed to occur within the Lake Whatcom Watershed Overlay District
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

shall incorporate presumptive BMPs and/or demonstrative BMPs, per WCC
20.51.420(2)(c) and/or WCC 20.51.420(2)(d), respectively, to:

(1) All project, work, or activity affected:
   i. Net land area disturbed (per WCC 20.97 definition, and/or
   ii. Newly created and/or replaced:
      A. Net new impervious surface area (per WCC 20.97 definition), and/or
      B. Net replaced impervious surface area (per WCC 20.97 definition), and/or
      C. Net new permeable pavement area (per WCC 20.97 definition), and/or
      D. Net replaced permeable pavement area (per WCC 20.97 definition), and/or
      iii. The land area subdivided, and/or

   (2) Existing off-parcel phosphorus-unmitigated areas and/or on-parcel phosphorus-
       unmitigated areas within the entire Lake Whatcom Watershed at a 2:1 ratio of
       phosphorus-unmitigated area to the corresponding project, work, or activity
       affected area(s) that WCC 20.51.420(2)(a)(1)(i) – (ii) outlines.

   (b) The development stormwater runoff (per WCC 20.97 definition) phosphorus loading
       profile from each phosphorus-mitigated area noted in WCC 20.51.420(2)(a)(1) &
       (2) shall not exceed by a factor of 1.25 the corresponding natural stormwater
       runoff (per WCC 20.97 definition) phosphorus loading profile from each respective
       phosphorus-mitigated area.

   (c) Presumptive BMPs (per WCC 20.97 definition). Presumptive BMPs, which are
       combinable with each other and with demonstrative BMPs, follow:

       1. Full infiltration and downspout full infiltration. See the 2012 current
          Stormwater Management Manual for Western Washington (per WCC 20.97
          definition)-BMP TS.10A Volume III Section 3.1.1 and (per WCC 20.97 definition)
          Volume III Chapter III Section 3.3.9(A). Use of these BMPs may requires an
          engineered design (per WCC 20.97 definition).

       2. Full dispersion:

       i. See current Stormwater Management Manual for Western Washington
          Volume V Chapter 5 BMP TS.30. This BMP might, but does not necessarily,
          require an engineered design. See current the 2012 Stormwater
          Management Manual for Western Washington Volume V, Chapter 5, pages
          5-30 through 5-38 for further design requirements and infeasibility criteria.

       i-Chapter 3 page 3-1 to determine need for an engineered design.
EXHIBIT A-Whatcom County Code Proposed Chapter 20.51

2. Use of this BMP requires an engineered design. If impervious surface areas exceed 10% of the site, those excess impervious surface areas shall not drain to the native vegetation area. The excess impervious surface areas are subject to the treatment and flow control requirements of WCC 20.51.420(2)(a)(f), and/or WCC 20.51.420(2)(a)(f), and/or WCC 20.51.420(2)(a)(f), and/or WCC 20.51.420(2)(a)(f).


Use of this BMP requires an engineered design.


This BMP, which is primarily used for road projects, is adaptable to residential projects where Type A Outwash Soils already exist, and/or are imported and established per the stated criteria.

(d) Demonstrative BMPs (per WCC 20.97 definition). Demonstrative BMPs, which are combinable with each other and with presumptive BMPs, use engineered designs that, once constructed or installed, and presumed that system preservation activities occur as prescribed by the design engineer, will satisfy current-the 2012 Stormwater Management Manual for Western Washington Minimum Requirements numbers 3-8, and 10 through 5, disregarding any Minimum Requirement applicability thresholds therein, while also conforming to at least one of the following:

1. The engineered design limits the estimated phosphorus loading in development stormwater runoff to less than 0.1875 lb of P/acre/year. Engineered designs shall cite and use only WSDOE-approved references for estimated phosphorus loading information and criteria.

2. The monthly development stormwater runoff volume does not exceed the monthly natural stormwater runoff volume of the project, work, or activity affected areas, as determined by a WSDOE-approved continuous runoff model.

3. Development stormwater runoff does not occur

(3) System Recording, Protection, and Maintenance. A declaration of covenant shall be recorded for each property where permanent stormwater BMPs exist. The covenant is used to protect the stormwater management facilities from cover by structures or impervious material, soil compaction, and damage by soil removal and grade alteration. A draft of the proposed covenant shall be approved. All required covenants must be recorded prior to final issuance for the proposed project.

(a) Notice on Title: for all permanent stormwater facilities, the type of stormwater system and location shall be recorded with the County Auditor real estate records in a format similar to the recording documents in Whatcom County Development.
Standards, Chapter 2, Section 221. The recording document provides notice to future owners of the presence of stormwater system on the lot, and shall contain:

(i) A site plan to scale, showing the location and descriptions of stormwater facilities, treatment BMPs, terrain features, Protective Native Growth Areas, and stormwater flowpaths.

(ii) Notice of the property owner's responsibility to retain, uphold, and protect the devices, features, pathways, Protective Native Growth Areas, and operate and maintain BMPs at the owner's expense.

(b) Protected Native Growth Area (PNGA): For projects that utilize dispersion for their stormwater system, a Protected Native Growth Area covenant shall be required to meet the following criteria:

(i) Include native plant species including, but not limited to, those on approved lists provided by Whatcom County common to this region.

(ii) Be described in the recorded documents as "a Protected Native Growth Area established for the purposes of dispersing and treating stormwater flows."

(iii) Retain all vegetation and trees within the PNGA at the time of permit application aside from approved timber harvest activities and the removal of hazardous and diseased trees. Hazard trees, as defined in Chapter 20.97 WCC, are identified an evaluation and determination by an ISA licensed arborist may be required.

(iv) The PNGA can include onsite critical areas and its buffer.

(v) Limit uses in the PNGA shall be limited to those specified in WCC 16.16.

(vi) Provide a Notice of Activity consistent with WCC 16.16.235, to remove trees within a PNGA when a permit is not required by 20.51.420(1), trees may be removed within a PNGA with a Notice of Activity consistent with 16.16.235 under the following circumstances:

1. Fire prevention methods when supported by the county fire marshal;
2. Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist may be required);
3. Encroachments where the trunk, branches, or roots would be, or are in contact with main or accessory structures; or
4. Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system.

20.51.430 Forest Area Preservation.
EXHIBIT A - Whatcom County Code Proposed Chapter 20.51

For the intent and purpose of this chapter, the term "Forested Area" shall refer to the tree canopy and any native vegetation (as defined by the most current version of the Washington State Department of Ecology Stormwater Management Manual for Western Washington) that occurs within the boundaries of the tree canopy. (1) When a permit is not required by 20.51.420(1), tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:

(1) Fire prevention methods when supported by the county fire marshal;

(2) Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist may be required);

(3) Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or

(4) Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system;

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Chapter 20.71
WATER RESOURCE PROTECTION OVERLAY DISTRICT

Sections:

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20.71.020 Application.
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20.71.700 Roads, curbs, gutters and sidewalks.

*Prior legislation: Ord. 2008-035, which expired March 20, 2009, was formerly codified in this chapter.

20.71.010 Purpose.
The Water Resource Protection Overlay District is an overlay zone that is intended to impose additional controls to preserve and protect unique and important water resources within Whatcom County. This district is designed to protect the long-term viability of the Lake Whatcom, Lake Samish and Lake Padden watersheds while creating a regulatory framework to address the needs of these watersheds that are not otherwise provided for in the underlying zone districts. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.71.020 Application.

20.71.021 Area and applicability.
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

(1) The Water Resource Protection Overlay District is an overlay zone that covers the entire geographic area of the Lake Whatcom, Lake Samish and Lake Padden watersheds within Whatcom County’s jurisdiction. For purposes of this title, the Lake Samish watershed shall consist of that portion of the Friday Creek subbasin of the Samish River watershed that lies within Whatcom County.

(2) This district may be expanded to include other areas through the annual zoning text amendment process.

(3) The Lake Whatcom, Lake Samish and Lake Padden watersheds are also designated as stormwater special districts pursuant to WCC 20.80.635 and water resource special management areas pursuant to WCC 20.80.735.

(4) In the event that the provisions of this chapter conflict with the provisions of the Shoreline Management Program (WCC Title 23), Chapter 16.16 WCC, Critical Areas, the Whatcom County Development Standards, the provisions of the underlying zoning district or other applicable county policies or regulations, then the most restrictive shall apply; provided, that the minimum setback provisions established in WCC 20.71.401 shall prevail. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.71.050 Permitted uses.
All permitted uses in the underlying zone districts are permitted except as expressly prohibited, made conditional, or further conditioned by this chapter.


20.71.100 Accessory uses.

20.71.150 Conditional uses.
All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited, made conditional, or further conditioned by this chapter. In addition, the following uses shall only be conditionally permitted:

.151 On-site storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses, other than cottage industries as defined in WCC 20.71.215, subject to the most current
siting criteria under Chapter 173-303 WAC within the Rural, Rural Forestry, Commercial Forestry, Neighborhood Commercial and Resort Commercial Zone Districts only.

.152 Retail or wholesale plant nurseries or greenhouses for storage, propagation and culture of plants, provided:

(1) Greenhouses shall not be larger than 1,000 square feet.

(2) Greenhouses and cultivated ground shall not be located within 250 feet of Lake Whatcom, Lake Samish, Lake Padden or streams subject to the Shoreline Management Program; 200 feet from fish-bearing streams; or 150 feet from other streams and their tributaries that flow into Lake Whatcom, Lake Samish or Lake Padden.

(3) A monitoring program has been established to ensure that chemical and pesticide quantities in stormwater runoff do not exceed state water quality standards. Complete control of drainage from the operation shall be in effect. Such runoff will be tested for pollutants bimonthly by a licensed water quality testing agency. All requirements will be met at the owner’s expense.

(4) No person shall apply a commercial fertilizer, either liquid or granular, that is labeled as containing more than zero percent phosphorous or other compound containing phosphorous, such as phosphate; provided, that such fertilizers may be used for establishment of new vegetation in the first growing season.

.185 Type I solid waste handling facilities, except:

(1) Moderate risk waste facilities; and


20.71.200 Prohibited uses.
In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited, except as per Chapter 20.83 WCC:

.201 Dry cleaning establishments.

.202 Gas stations, service stations, combustion engine repair garages and automotive wrecking yards.

.203 Sod farming.

.204 Aquaculture and mariculture projects.
Exhibit B – Removal of "Lake Whatcom watershed" reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

.205 Operation of fur farms.

.206 Confinement feeding operations.

.207 Asphalt and concrete batch plants.

.208 Gravel bar scalping projects within the jurisdiction of the Shoreline Management Program.

.209 Utilization of sewage sludge on land.

.210 On-site treatment facilities for hazardous wastes.

.211 Type I solid waste handling facilities, except those specified in WCC 20.71.185.

.212 Type II and Type III solid waste handling facilities.

.213 Golf courses.

.214 Cemeteries.

.215 Cottage industries that would require on-site hazardous waste storage facilities.

.216 Surface mining outside of designated Mineral Resource Lands (MRL) Special Districts; provided, that surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW) are permitted.

.217 Major passenger intermodal terminals.

.218 Freight railroad switching yards and terminals.

.219 Agriculture, including animal husbandry, horticulture, viticulture, floriculture, and the cultivation of crops.

.220 Animal hospitals and accessory kennels and stables.


20.71.300 Open space and impervious surfaces.

.301 Open space requirements shall be as follows:

(1) For uses in the TC and NC Zones, at least 25 percent of the parcel shall be reserved as open space.
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

(2) For uses in the RC Zone, at least 40 percent of the parcel shall be reserved as open space.

(3) Open space areas shall be maintained in natural vegetation or landscaped per WCC 20.80.325.

(4) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations.

.302 Impervious surface requirements shall be as follows:

(1) For uses in the UR, URM and RR Zone Districts, at least 80 percent of the lot or parcel shall be kept free of structures and impervious surfaces.

(2) For uses in the R Zone District, at least 90 percent of the lot or parcel shall be kept free of structures and impervious surfaces.

(3) Where subsection (1) or (2) of this section does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

(4) Two or more lots of record consolidated pursuant to the provisions of WCC 20.83.070 shall be treated as one undivided parcel for the purpose of calculating total allowable impervious surface. Where two or more lots or parcels are consolidated; are not subject to the provisions of WCC 20.83.070; and are not subject to a permanent restrictive covenant that precludes development of buildings, structures or other improvements not otherwise identified by said covenant, 4,000 square feet of impervious surface shall be allowed.

(5) Preexisting nonconforming impervious surfaces may be routinely maintained/repaid or redeveloped; provided, that if 50 percent or greater of the preexisting nonconforming impervious area is to be redeveloped, then the applicable impervious surface limitations of subsections (1), (2) and (3) of this section shall apply. However, if a legal nonconforming structure is destroyed, the nonconforming use may be reconstructed using the pre-existing footprint. Expansion of nonconforming impervious surfaces shall be prohibited.

(6) A mobile home within an existing mobile home park may be replaced with a larger mobile home (not to exceed a maximum of 1,500 square feet), provided there is not an increase in the overall number of mobile homes in the park or any increase in other impervious surfaces beyond the new mobile home footprint.

(7) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in impervious/pervious surface calculations.
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

(8) Any portion of a roof overhang or other overhanging architectural feature which projects further than three feet from the footprint of a structure shall be calculated as impervious surface.


20.71.350 Cluster subdivisions.
The purpose of cluster subdivision is to provide a method of creating building lots with spatially efficient sizes. Clustering is intended to consolidate development and associated infrastructure, reduce development costs, and increase infrastructure efficiency. Clustering is also intended to help preserve open space and the character of areas, reduce total impervious surface area, and minimize development effects on critical areas and associated buffers, as defined in Chapter 16.16 WCC, and resource lands. Preservation of open space is thereby intended to reduce potential stormwater runoff and associated impacts while assuring protection of viable, undeveloped, and naturally vegetated corridors for wildlife habitat, protection of watersheds, preservation of critical areas, preservation of aesthetic values including view corridors, and preservation of trail and/or recreation areas. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-048 Exh. A, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.71.351 Cluster design standards.
The creation of new building lots within Water Resource Protection Overlay Districts shall be subject to the following design standards:

(1) Cluster subdivisions shall be required for all land divisions resulting in lots less than five acres in size, with the exception of boundary line adjustments.

(2) A cluster subdivision shall include a permanent open space reserve area meeting the criteria established in WCC 20.71.352.

(3) The minimum cluster lot size requirements of the underlying zone district shall apply.

(4) The maximum number of building lots in a lot cluster shall be 10.

(5) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least 80 feet.

(6) Clustered building lots may only be created through the subdivision, short subdivision or binding site plan process pursuant to WCC Title 21.
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

(7) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas or other valuable or unique natural resources or known archaeological sites, as well as physical constraints of the site.

(8) Building lots shall be arranged in a cluster/concentrated pattern.

(9) A cluster subdivision shall have no more than two common encroachments on existing county roads unless site constraints require additional road access. The arrangement of clustered building lots shall be designed to avoid development forms commonly known as linear, straight line or highway strip patterns.

(10) As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots; provided, that the required permanent open space reserve area, pursuant to WCC 20.71.352, shall not be further subdivided. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-048 Exh. A, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002).

20.71.352 Open space reserve area.

(1) For purposes of this title, an “open space reserve area” shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of “open space” pursuant to WCC 20.97.275.

(2) The open space reserve area shall be subject to the following provisions:

   (a) The minimum open space reserve area shall be determined by the minimum cluster subdivision reserve area requirements of the underlying zone district.

   (b) A permanent open space reserve area shall be protected using one of the following mechanisms:

      (i) Placement in a separate nonbuilding tract owned in common by all lots within the subdivision; or

      (ii) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required cluster reserve area specified in the underlying zone district; or

      (iii) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (2)(b)(i) of this section as determined by
the county zoning administrator or hearing examiner which applies to at least the minimum required cluster reserve area specified in the underlying zone district.

(c) The boundaries of the open space portion of the reserve area may be altered only if the county finds that in dedicating adjacent reserve areas it would further the objectives listed in WCC 20.71.350 by altering the reserve area and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.

(d) The purpose of the open space reserve area as defined in subsection (1) of this section shall be recorded on the face of the final plat or short plat.

(e) The remaining unused development density and/or impervious surface allowances remaining on the parcel containing the open space reserve area, based on the gross density of the parent parcel, may be assigned to that portion of the reserve tract not subject to the minimum area requirements of subsection (2)(b) of this section. The density shall be recorded on the face of the final plat or short plat. The development rights assigned to the reserve tract in accordance with this subsection may not be transferred if the pervious surface area associated with the reserve tract has been transferred to the other building lots within the subdivision.

(f) The requirements stated in subsections (2)(c) and (d) of this section shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute an agreement between Whatcom County and the current/future owner(s) of record that shall run with the land. Said restriction(s) may be amended by mutual agreement between said parties after review for consistency and compliance with the official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance, and the Whatcom County Comprehensive Plan.


20.71.400 Building setback/buffer areas.

.401 Setbacks for all properties within the overlay district shall be as follows: Class I and Class II roads shall have a minimum setback of 30 feet; and Class III, IV and V roads shall have a minimum setback of 20 feet, provided, that the road right-of-way meets the minimum standard for road rights-of-way pursuant to the Whatcom County Development Standards.

.402 Roof overhangs or other overhanging architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend three feet into the front yard setback;

20.71.600 Development criteria.

20.71.601 Parking space dimensions.
A standard parking space shall have the rectangular dimensions of 10 feet in width and 20 feet in length; provided, that for any parking area of six or more spaces, 50 percent of all spaces may have the rectangular dimensions of eight feet in width and 15 feet in length; and further provided, that these spaces are marked for use by compact automobiles. Except in single-family residential areas, all dimensions shall be exclusive of driveways, aisles and other circulation areas required under WCC 20.80.560 and 20.80.570. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.71.602 Parking requirements.
Parking shall conform to the requirements of WCC 20.80.500 through 20.80.590 unless otherwise specified in this section. Minimum parking requirements may be reduced through any of the following methods:

(1) A shared parking agreement has been filed with the county auditor establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.

   (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.

   (b) Mixed use developments with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.

(2) A 20 percent reduction may be approved if an establishment is located within 1,000 feet of any regularly scheduled bus stop.

(3) The zoning administrator determines that a reduced requirement will reduce overall impervious surfaces while maintaining consistency with this title. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1,
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735


20.71.603 Alternative surfacing methods.
Alternative surfaces including, but not limited to, bark or wood mulch, washed gravel, grid/lattice systems, permeable interlocking pavers, pervious concrete, porous asphalt, and other similar approved materials are encouraged. Alternative surfacing methods may be approved for fringe or overflow parking areas; emergency parking areas, private roads, fire lanes, road shoulders, bike paths, walkways, patios, driveways, and easement service roads in residential or commercial zones unless site constraints make use of such materials detrimental to water quality. Utilization of alternative surfacing methods shall be subject to review and approval by the Whatcom County public works department, the fire marshal and/or the county ADA coordinator for compliance with other applicable regulations and development standards. Surfaces shall be considered impervious surfaces under WCC 20.71.300 unless the following conditions are met:

(1) Bark, wood mulch, and washed gravel shall be designed and installed so that all rain water falling upon the alternative surface will be infiltrated directly beneath the alternative surface without generating surface runoff based on the one-year, 24-hour storm event.


20.71.604 Vehicular access.
Driveways and curb cuts shall be minimized along all arterial and collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads with limited access to arterial or collector roads. (Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

20.71.700 Roads, curbs, gutters and sidewalks.
The intent of this section is to reduce impervious surfaces and stormwater runoff. Innovative street sections, which do not compromise public safety, shall be encouraged in the watershed. Narrow streets and reduced sidewalk standards that satisfy pedestrian and vehicular circulation requirements may be implemented with the approval of the Whatcom County public works department. Unless specifically

20.80.635 Stormwater special districts.
(1) Whatcom County shall establish the following geographical areas as stormwater special districts:

(a) Drayton Harbor watershed.

(b) Lake Whatcom watershed.

(c) Lake Samish watershed.

(d) Birch Bay watershed.

(e) Lake Padden watershed.


20.80.636 Stormwater special district requirements.
In areas designated as stormwater special districts (per WCC 20.80.635), permanent on-site stormwater quality and quantity facilities shall be required on all lots less than five acres in size for projects that meet either of the following criteria:

(1) New construction or remolds that increase impervious surfaces by more than 500 square feet; or

(2) Renovation projects where the estimated cost of the work exceeds 50 percent of the assessed value of the existing structure. Interior remolds, nonpolluting roof replacements, house maintenance and energy upgrades shall be exempt from this requirement.

If stormwater quality and quantity facilities are required based on either of these criteria, the provisions of the Whatcom County Development Standards, Chapter 2, Section 221, shall apply to the entire property, unless it can be demonstrated that off-site facilities would provide better treatment, or unless common detention and water quality facilities meeting the standards of the 1996 Whatcom County Development Standards or the 1992 Department of Ecology Stormwater Management Manual for the Puget Sound
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735


20.80.735 Water resource special management areas.
The purpose of a water resource special management area is to establish a more stringent standard for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions. Implementation of best management practices, including phased clearing, tree retention and seasonal clearing limitations, is intended to limit the amount of exposed soils on site that are susceptible to erosion at any one time, thereby improving site stability during development and reducing potential for transport of dissolved pollutants and sediments off site. Preservation of existing trees on site also reduces the quantity and maintains the quality of stormwater leaving a site during and after development activities by encouraging interception, infiltration and evapotranspiration of rainfall and surface runoff.

Whatcom County shall establish the following geographic areas as water resource special management areas:

• Lake Whatcom watershed;

• Drayton Harbor watershed;

• Lake Padden watershed;

• Lake Samish watershed; and

• Birch Bay watershed.

(1) Water Resource Special Management Area Review Thresholds. County review and approval shall be required for clearing activities which exceed the following thresholds. If the clearing activity does not meet the threshold criteria, county review is not required. However, the owner is still subject to, and must comply with, the minimum requirements established in this chapter and in the Whatcom County Development Standards.

(a) Lake Whatcom, Lake Samish and Lake Padden Watersheds. County review and approval shall be required for all clearing activities associated with a fill and grade permit, building permit or other
development proposal. Clearing activities which are not associated with a development permit shall require county review if they are:

(i) Five thousand square feet or greater during the dry season, June 1st through September 30th; or

(ii) Five hundred square feet or greater during the wet season, October 1st through May 31st.

(2) Within water resource special management areas, clearing activity must conform to the following conditions:

(a) Temporary erosion and sediment control shall be installed and inspected prior to any clearing activity. The technical administrator shall conduct periodic inspections to ensure the integrity of temporary erosion and sediment controls. Temporary erosion and sediment control measures include, but are not limited to, installation of silt fencing, installation of check dams, covering of excavation piles, and mulching of exposed soils, as specified in the Whatcom County Development Standards.

(b) Phased Clearing. Construction activities and clearing activities shall be phased to limit the amount of exposed soil that occurs at any one time, if determined to be appropriate by the technical administrator, based on site characteristics or constraints including, but not limited to, slopes, proximity to shorelines and wetlands. A phased clearing plan may be required. A phased clearing plan, if required, shall be submitted for review and approval by the technical administrator prior to any clearing activity and shall contain a detailed construction schedule or timeline.

(c) Soil Stabilization. All disturbed areas shall be provided with soil stabilization within two days of the time of disturbance. The technical administrator may approve an exemption to this requirement when a tree canopy area retention plan includes a soil stabilization plan. This plan component must specifically detail erosion and sediment control and stormwater runoff measures that provide runoff control equal to or greater than the protection provided by the standard two-day soil stabilization requirements of this section.

(d) Tree Canopy Area Retention. In the Lake Whatcom, Lake Samish and Lake Padden watersheds, in addition to compliance with all other requirements of this title and other titles of the Whatcom County Code, clearing activities on any lot or parcel, with the exception of nonconversion forest practices occurring on lands platted after January 1, 1960, shall comply with the following provisions:

(i) Existing tree canopy areas, as defined by the dripline of the tree(s), may be removed for purposes of a building site, driveways, parking areas, and areas to be landscaped, but such
areas shall not exceed a cumulative total of 5,000 square feet or 35 percent of the existing tree canopy area, whichever is greater.

(ii) The following criteria shall be used to determine which tree canopy areas are to be prioritized for retention:

(A) Stands of mature native trees;

(B) Trees on sensitive slopes, on lands classified as having landslide hazards, or high erosion hazards, as defined under the critical areas ordinance;

(C) Trees within critical areas or their associated setback and/or buffer areas as defined under WCC Title 16 or 23; or

(D) Trees with significant habitat value as identified by a qualified wildlife biologist or by the technical administrator, per WCC Title 16.

(iii) Existing trees and vegetation may be used to meet all or part of the landscaping requirements of this title.

(iv) The county shall require that tree canopy areas to be retained are identified on a site plan and clearly flagged, or delineated, on the site. A tree canopy area retention plan must accompany a project or clearing permit application and be approved by the technical administrator before clearing activity takes place. The plan shall contain the following components:

(A) A scaled drawing identifying the following:

1. North arrow;

2. Property boundaries;

3. Existing structures;

4. Site access;

5. Tree canopy areas to be removed;

6. The outer dripline of tree canopy areas to be retained;

7. Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

8. Protection measures to be utilized for areas that will be undisturbed; and

9. Areas to be replanted pursuant to subsection (2)(d)(vii) of this section;

(B) A planting schedule that indicates the time frame for replanting of trees as applicable; and

(C) Provisions for maintenance and monitoring.

(v) Prior to any clearing activity or development activity, any tree canopy area designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage to roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of the tree canopy areas designated for retention.

(vi) Tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:

(A) Fire prevention methods when supported by the county fire marshal;

(B) Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist or forester may be required);

(C) Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or

(D) Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system.

(vii) In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:

(A) Be of the same, or similar, native species as those trees removed from site;

(B) Be planted to re-establish tree clusters where they previously existed, or to enhance protected tree clusters;
(C) Be planted in locations appropriate to the species’ growth habitat and horticultural requirements; and

(D) Be located away from areas where damage is likely.

(viii) If any trees within canopy areas designated for retention are damaged or destroyed through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.

(ix) The county may require a bond or other security in an amount not to exceed 125 percent of the merchantable timber to guarantee retention of existing trees within designated canopy areas during construction. In the event of a dispute between the landowner and the county over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the county and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party. In the event any trees designated to be retained are removed, the county shall require that sufficient trees be re-planted to replace those previously in existence. In the event that replanting does not occur, the county may enforce upon any bond posted. Each tree removed or destroyed shall constitute a separate violation.

(e) Seasonal Clearing Activity Limitations. In the Lake Whatcom, Lake Samish and Lake Padden watersheds, clearing activity, as defined in WCC 20.87.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1st through May 31st; provided, that:

(i) In addition to the clearing activities exempted under WCC 20.80.733, the zoning administrator may approve an exemption to this requirement for the following activities:

(A) Routine maintenance and repair of erosion and sediment control measures;

(B) Activities located at or waterward of the ordinary high water mark subject to state, federal, and/or local (per Chapter 16.16 WCC and/or WCC Title 23) conditions of approval requiring commencement of clearing activity during the wet season, as defined in subsection (1)(a)(ii) of this section, for purposes of minimizing surface water disturbance and site inundation by high water or wave action;

(C) Activities necessary to address an emergency that presents an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this section. Upon abatement of the emergency situation, the clearing activity shall be reviewed for consistency with this chapter and may be subject to additional permit requirements; provided, that the
Exhibit B – Removal of “Lake Whatcom watershed” reference in Whatcom County Code Sections 20.71, 20.80.635, and 20.80.735

applicant shall make a reasonable attempt to contact the zoning administrator prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the zoning administrator as soon as the emergency is addressed and no later than two business days following such action. Emergency construction does not include development of new permanent protective structures where none previously existed.

(ii) To ensure compliance with subsection (2)(e) of this section, Whatcom County planning and development services shall not issue development permits requiring more than 500 square feet of land disturbance located within the Lake Whatcom, Lake Samish or Lake Padden watersheds within two weeks prior to the watershed seasonal closure on October 1st.

(iii) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The zoning administrator shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.

(iv) An exemption from the seasonal land clearing requirements of this section does not grant authorization for any work to be done in a manner that does not comply with other provisions of this chapter or other applicable development regulations.

EXHIBIT C—Proposed definitions for WCC 20.97

**Current Stormwater Manual**—The Washington State Department of Ecology (WSDOE) Stormwater Management Manual for Western Washington edition that is in effect on the date that the County receives a complete application for the project, work, or activity.

**Demonstrative BMPs**—Those BMPs that do not otherwise qualify as presumptive.

**Development stormwater**—Stormwater that results from non-native vegetated areas.

**Development runoff**—Runoff that results from non-native vegetated areas.

**Development stormwater runoff**—Stormwater runoff that originates from non-native vegetated areas.

**Engineered design**—A design performed, and/or supervised, by a Washington State licensed professional engineer.

**Forested Area**—The area encompassed by the tree canopy and any native vegetation that occurs within the boundaries of the tree canopy.

**Hazard Tree**—Any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

**Interflow**—The portion of precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface, e.g., in a roadside ditch, a wetland, a spring, or a seep. Interflow is a function of the soil system depth, permeability, and water-holding capacity.

**Land disturbing activity**—Activity that results in a movement of earth or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

**May**—Permissive action.

**Native Vegetation**—Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been
EXHIBIT C-Proposed definitions for WCC 20.97

expected to naturally occur on the site. Examples include trees such as Douglas Fir, Western Hemlock, Western Red Cedar, Alder, Big-leaf Maple, and Vine Maple; shrubs such as willow, elderberry, salmonberry and salal; and herbaceous plants such as sword fern, foam flower, and fire weed. (From Department of Ecology Stormwater Manual)

**Natural runoff**- Runoff that originates from native vegetated areas.

**Natural stormwater**- Stormwater that originates from native vegetated areas.

**Natural stormwater runoff**- Stormwater runoff that originates from native vegetated areas.

**Net land area disturbed**- The quantity of disturbed native vegetated land area minus the quantity of any non-native vegetated land area converted to native vegetation by a proposed project, work, or activity.

**Net new impervious surface area**- The quantity of new minus the quantity of any existing impervious surface area converted to native vegetation by a proposed project, work, or activity.

**Net new permeable pavement areas**- The quantity of new permeable pavement area minus the quantity of any existing permeable pavement area converted to native vegetation by a proposed project, work, or activity.

**Net replaced impervious surface area**- The quantity of replaced impervious surface area minus the quantity of any existing impervious surface area converted to native vegetation by a proposed project, work, or activity.

**Net replaced permeable pavement areas**- The quantity of replaced permeable pavement area minus the quantity of any existing permeable pavement area converted to native vegetation by a proposed project, work, or activity.

**Permeable pavement**- Pervious concrete, porous asphalt, permeable pavers, or other forms of pervious or porous paving material intended to allow passage of water through the pavement section. It often includes an aggregate base that provides structural support and acts as a stormwater reservoir.

**Phosphorus-mitigated**- Areas where the development stormwater runoff phosphorus loading profile does not exceed the corresponding natural stormwater runoff phosphorus loading profile.
EXHIBIT C-Proposed definitions for WCC 20.97

**Phosphorus neutral**- Areas where the development stormwater runoff phosphorus loading profile does not exceed the natural stormwater runoff phosphorus loading profile from that area.

**Phosphorus-unmitigated**- Areas where the development stormwater runoff phosphorus loading profile exceeds the corresponding natural stormwater runoff phosphorus loading profile.

**Presumptive BMPs**- Those BMPs that will require no additional development stormwater runoff flow control or treatment per current Stormwater Manual declaration once physically established in compliance with all current Stormwater Manual criteria.

**Replaced impervious surface** – For structures, the removal and replacement of impervious surfaces down to the foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement. (From Draft-2012 DOE Stormwater Manual)

**Replaced impervious surface area**- For structures, the removal and replacement of impervious surfaces down to the foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.

**Replaced permeable pavement area**- The removal and replacement of permeable pavement areas down to bare soil or base course and replacement.

**Runoff**- The portion of precipitation that does not evaporate or naturally percolate into the ground, but flows via one or more of the following means:

- surface or overland flow,
- interflow,
- shallow ground water,
  - into one or more of the following:
- stormwater drainage facilities,
- defined surface waterbodies (e.g., rivers, streams, creeks, sloughs, ponds, lakes),
- springs,
- seeps,
- wetlands

**Shall**- Mandatory action.

**Should**- Recommended action, but not mandatory or required.
EXHIBIT C-Proposed definitions for WCC 20.97

**Stormwater**- The portion of precipitation that does not evaporate or naturally percolate into the ground, but flows via one or more of the following means:

- surface or overland flow,
- interflow,
- pipes and other features of a stormwater drainage system, into one or more of the following:
  - defined surface waterbodies (e.g., rivers, streams, creeks, sloughs, ponds, lakes),
  - constructed infiltration facilities.

**Stormwater runoff**- The portion of precipitation that does not evaporate or naturally percolate into the ground, but flows via one or more of the following means:

- surface or overland flow,
- interflow,
- shallow ground water,
- pipes and other features of a stormwater drainage system, into one or more of the following:
  - defined surface waterbodies (e.g., rivers, streams, creeks, sloughs, ponds, lakes),
  - springs,
  - seeps,
  - wetlands.
Phosphorus Neutral Stormwater BMP Cost Estimates for Small Lots

County Council has asked staff to provide design and cost estimates for stormwater systems on parcels smaller than 10,000 ft². Staff from the County, City, and Conservation District framed up an approach, and the Engineering Services Division has drawn up detailed designs and review sheets to facilitate the review.

Private engineering firms (Jones Engineers, Wilson Engineering, 2020 Engineering, Freeland & Associates, RH2 Engineering) have volunteered their time to evaluate the proposed designs and provide budget level cost estimates for each of the four phosphorus neutral designs, and one design that meets the existing NPDES stormwater standard. Table 1 is the cost to design and build the five different stormwater systems reported as an average of the estimates provided by the private engineering community.

These estimates will help inform County Council’s decision on whether or not to exempt small lots from the proposed new development phosphorus neutral ordinance that would apply within the County’s portion of the Watershed.

**Table 1.**

<table>
<thead>
<tr>
<th>Stormwater System</th>
<th>Landscaping, $/SF</th>
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</thead>
<tbody>
<tr>
<td>No.</td>
<td>1</td>
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<tr>
<td>Description:</td>
<td>Current Standard(1)</td>
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<tr>
<td>Phosphorus Neutral:</td>
<td>NO</td>
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<tr>
<td>Average:</td>
<td>$9,500.00</td>
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</table>

(1) The NPDES 2012 WSDOE SWMMWW Minimum Requirement No 5 applies

**Lot Particulars:**

- **Description:** Sudden Valley D10 L11
- **Land area:** 7,865 SF
- **Average slope:** 40%
- **Roof Area:** 2100 SF
- **Driveway area:** 400 SF
- **Lawn area:** 0 SF
The respective cost estimate for each individual stormwater system design reflect:

- "Budget level" accuracy (i.e., +/- 15%), and

- All costs, including those for:
  
  o Geotechnical engineer or equivalent consulting services for site evaluations and corresponding report preparation (i.e., for sites with steep slopes and/or landslide hazard areas), and

  o Engineered design document preparation (including but not limited to, site visits, alternatives analysis, and necessary modeling (i.e., for System Nos 2B, 3, and 4), as if you were designing the corresponding system for a client), and

  o Stormwater Site Plan (per 2012 WSDOE SWMWW definition) preparation, and

  o Construction costs (labor and material).
EXHIBIT E - CODE AMENDMENTS TO WCC 20.51 FOR
NATURAL RESOURCE COMMITTEE DISCUSSION MAY 21, 2013

CHANGE 1
Clarifies the requirements for Stormwater installation of BMP's on Plats creating parcels < 22,000 sqft, based on comments at 5/7/2013 Natural Resource Committee.

(2) Best Management Practices.
(a) Unless otherwise exempt per WCC 20.51.420(1), or unless a standard land use vesting determination concludes otherwise, all projects, work, or activities, including subdivisions, binding site plans, and non-exempt new short subdivision parcels, proposed to occur within the Lake Whatcom Watershed Overlay District shall incorporate presumptive BMPs and/or demonstrative BMPs, per WCC 20.51.420(2)(c) and/or WCC 20.51.420(2)(d), respectively, to:

(i) All project, work, or activity affected:
   i. Net land area disturbed (per WCC 20.97 definition, and/or
   ii. Newly created and/or replaced:
      A. Net new impervious surface area (per WCC 20.97 definition), and/or
      B. Net replaced impervious surface area (per WCC 20.97 definition), and/or
      C. Net new permeable pavement area (per WCC 20.97 definition), and/or
      D. Net replaced permeable pavement area (per WCC 20.97 definition), and/or

(ii) The developable areas and infrastructure as required for long and short subdivision approval. Installation of stormwater BMPs according to stormwater management plan is required prior to final plat approval, and/or

New Exemption in WCC 20.51.420(1)

(K) Projects, work, or activity that is within the planned developed land area of plats approved according to WCC 20.51.420(2)(a)(3) that have phosphorus neutral stormwater community systems

CHANGE 2
Changes the phosphorus loading factor to 1 in order to meet County and TMDL goals. Currently written it is 25% above the natural loading conditions, which makes it difficult to utilize the prescriptive design standards for full dispersion and infiltration.

- Changes to meet phosphorus neutral goal

Exhibit A, Page 14, line 17
20.51.420(2)(b) The development stormwater runoff (per WCC 20.97 definition) phosphorus loading profile from each phosphorus-mitigated area noted in WCC 20.51.420(2)(a)(1) & (2) shall not exceed by a factor of 1.25 the corresponding natural stormwater runoff (per WCC 20.97 definition) phosphorus loading profile from each respective phosphorus-mitigated area.
CHANGE 3
This change exempts small lots below a certain size to be from meeting the Phosphorus neutral standard.

- Removing small lots from the phosphorus Neutral Standard

Within 20.51.030 Area and Applicability, "(1) The Lake Whatcom Watershed Overlay District is an overlay zone that covers the entire geographic area of the Lake Whatcom watershed within Whatcom County's jurisdiction, and applies to all land disturbing or conversion projects, work or activities within the overlay zone, for parcels that are greater than X,XXX square feet. For parcels less than X,XXX square feet, any proposed project shall follow the applicable NPDES standards in WCC 20.630 and in 20.71 Water Resource Protection Overlay, WCC 20.80.635 Stormwater Special Districts, and WCC 20.80.735 Water Resource Special Management Areas."
## WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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### TITLE OF DOCUMENT:
Update from the Commission Against Domestic Violence

### ATTACHMENTS:
None

### SEPA review required? ( ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO

### Should Clerk schedule a hearing? ( ) Yes ( ) NO
Requested Date:

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
(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.)

Update from the Commission Against Domestic Violence

### COMMITTEE ACTION:
5/07/2013: Canceled and will reschedule.

### COUNCIL ACTION:

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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</thead>
</table>

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
## WHATCOM COUNTY COUNCIL AGENDA BILL

### CLEARANCES

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<th>Date</th>
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<th>Agenda Date</th>
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<td>04/29/2013</td>
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<td>06/18/2013</td>
<td>Finance/Admin Services Committee</td>
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### Division Head:
- [ ]

### Dept. Head:
- 04/29/2013

### Prosecutor:
- [ ]

### Purchasing/Budget:
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### Executive:
- 5-14-13

### TITLE OF DOCUMENT:
Annual presentation from the Washington Counties Risk Pool

### ATTACHMENTS:

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<th>( ) Yes ( ) NO</th>
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<th>Should Clerk schedule a hearing?</th>
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### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
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### COMMITTEE ACTION:

### COUNCIL ACTION:

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:

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**TITLE OF DOCUMENT:** 2013 Supplemental Budget Request #6

**ATTACHMENTS:** Ordinance, Memoranda & Budget Modification Requests

<table>
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<tr>
<th>SEPA review required?</th>
<th>( ) Yes ( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
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<tr>
<td>SEPA review completed?</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

Supplemental #6 requests funding from the General Fund:

1. To appropriate $60,000 in Heath to establish 2013 On-Site Sewage System Deferred Loan Program.
2. To appropriate $61,859 in Non Departmental to fund additional amounts added to the FY2012-13 WhatComm E911 operations contract from grant proceeds.
3. To appropriate $10,000 in the Sheriff’s Office to fund Leads Online web service and radio system improvements from Lunmi donation.
4. To appropriate $40,000 in the Sheriff’s Office to fund 2013 Boating Safety Program patrols from restricted fund balance.

Low Income Housing Fund:

5. To appropriate $26,670 to fund expanded capacity at Northwest Youth Service and Sun House.

Mental Heath / Chemical Dependency Fund:

6. To appropriate $450,000 to fund additional behavioral health programs and services.

Conservation Futures Fund:

7. To appropriate $50,000 to fund PDR program professional services.

Parks Improvement Fund:

8. To remove appropriation of $94,183 to remove 2013 Budget.

Public Utilities Improvement Fund:

9. To appropriate $44,100 to fund transfer to Civic Center project fund for parking lot security gate.

Real Estate Excise Tax II Fund:

10. To appropriate $42,950 to provide additional funding for Lookout Mountain Trailhead Project.

Administrative Services Fund:

11. To appropriate $10,713 in Information Services to fund 2013 Data Integration Grant activities.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

5/07/2013: Introduced

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:** 48
ORDINANCE NO.

AMENDMENT NO. 6 OF THE 2013 BUDGET

WHEREAS, the 2013-2014 budget was adopted November 20, 2012; and,
WHEREAS, changing circumstances require modifications to the approved 2013-2014 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 2013-2014 Whatcom County Budget Ordinance #2012-048 is hereby amended by adding the following additional amounts to the 2013 budget included therein:

<table>
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<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
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<td>General Fund</td>
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<tr>
<td>Health</td>
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<tr>
<td>Sheriff</td>
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<td>Total General Fund</td>
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<td>Low Income Housing Fund</td>
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<td>Mental Health / Chemical Dependancy Fund</td>
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<td>Conservation Futures Fund</td>
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<td>Parks Improvement Fund</td>
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<td>Public Utilities Improvement Fund</td>
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<td>Total Supplemental</td>
<td>702,109</td>
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ADOPTED this ___ day of ___________________, 2013.

ATTEST:

Dana Brown-Davis, Council Clerk

Kathy Kershner, Chair of the Council

APPROVED AS TO FORM:

( ) Approved       ( ) Denied

Daniel L. Gibson, Civil Deputy Prosecutor

Jack Louws, County Executive

Date: ____________________

I:\BUDGET\SUPPLS\2013_Suppl\Supplemental #6-2013.doc
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased Expenditure (Decrease)</th>
<th>(Increased) Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>To establish 2013 On-Site Sewage System Deferred Loan Program</td>
<td>60,000</td>
<td>(60,000)</td>
<td>-</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To fund additional amounts added to the FY2012-13 WhatCom E911 operations contract from grant proceeds.</td>
<td>61,859</td>
<td>(61,859)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund Leads Online web service and radio system improvements from Lummi donation.</td>
<td>10,000</td>
<td>(10,000)</td>
<td>-</td>
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<tr>
<td>Sheriff</td>
<td>To fund 2013 Boating Safety Program patrols from restricted fund balance.</td>
<td>40,000</td>
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<tr>
<td>Total General Fund</td>
<td></td>
<td>171,859</td>
<td>(131,859)</td>
<td>40,000</td>
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<td>Low Income Housing Fund</td>
<td>To fund expanded capacity at Northwest Youth Service and Sun House.</td>
<td>26,670</td>
<td>(21,247)</td>
<td>5,423</td>
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<tr>
<td>Mental Health / Chemical Dependancy Fund</td>
<td>To fund additional behavioral health programs and services.</td>
<td>450,000</td>
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<td>450,000</td>
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<tr>
<td>Conservation Futures Fund</td>
<td>To fund PDR program professional services</td>
<td>50,000</td>
<td></td>
<td>50,000</td>
</tr>
<tr>
<td>Parks Improvement Fund</td>
<td>To remove 2013 Budget</td>
<td>(94,183)</td>
<td>7,870</td>
<td>(86,313)</td>
</tr>
<tr>
<td>Public Utilities Improvement Fund</td>
<td>To fund transfer for Civic Center parking lot security gate.</td>
<td>44,100</td>
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<td>44,100</td>
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<tr>
<td>Real Estate Excise Tax Fund II</td>
<td>To provide additional funding for Lookout Mountain Trailhead Project</td>
<td>42,950</td>
<td>(8,500)</td>
<td>34,450</td>
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<tr>
<td>Administrative Services Fund - Information Technology</td>
<td>To fund 2013 Data Integration grant activities</td>
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<tr>
<td>Total Supplemental</td>
<td></td>
<td>702,109</td>
<td>(164,449)</td>
<td>537,660</td>
</tr>
</tbody>
</table>
Memorandum

TO: Jack Louws, County Executive
FROM: Regina Delahunt, Director
DATE: April 22, 2013
RE: Supplemental Budget Request

We are submitting three supplemental budget requests for your consideration. These are to address situations that were not fully developed when we prepared our 2013-14 budget development process. The requests are as follows:

- **On-site sewage deferred payment loan program.** This request appropriates funds for the purpose of making deferred payment loans to repair or replace failing on-site sewage systems. This program is fully funded by a grant from the Washington State Department of Ecology. This was not included in the 2013-14 budget because of uncertainty regarding the level of funding needed for loans during the biennium. The amount included in this supplemental is our estimate of funding needed to fund deferred payment loans. This supplemental request includes funding for 2013.

- **Behavioral health -- health care reform, and sheriff training.** This request includes funding for health care reform care integration projects, and for sheriff deputy crisis negotiation training. This training relates to responding appropriately to mental health crisis situations. This request is fully funded by 0.1% Behavioral Health sales tax revenue.

- **Low income housing support to Northwest Youth Services and Sun Community Services.** This request increases funding to these two agencies and is fully funded by Auditor’s recording fees which are dedicated to this purpose. This request also includes an increase in the revenue estimate for 2013 based on improvements in the real estate market.

Additional information is included in the attached supplemental requests. Please let me or Terry Hinz know if you have any questions.

Cc: Marianne Caldwell, Senior Budget Analyst
Supplemental Budget Request

Status: Pending

<table>
<thead>
<tr>
<th>Health</th>
<th>Environmental Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supp ID # 1484</td>
<td>Fund 1</td>
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<tr>
<td>Cost Center 654400</td>
<td>Originator: Sandi Hughes-McMillian</td>
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<td>Expenditure Type: Ongoing</td>
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<tr>
<td>Year 1 2013</td>
<td>Add'l FTE □ Add'l Space □ Priority</td>
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<tr>
<td>Name of Request: Establish OSS Deferred Loan Program (Yr 1)</td>
<td></td>
</tr>
<tr>
<td>Department Head Signature (Required on Hard Copy Submission)</td>
<td>4/26/13</td>
</tr>
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</table>

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
<tr>
<td>4334.0325</td>
<td>OSS Loan Program</td>
<td>($60,000)</td>
</tr>
<tr>
<td>6610</td>
<td>Contractual Services</td>
<td>$60,000</td>
</tr>
<tr>
<td></td>
<td>Request Total</td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
Establish appropriation for on-site sewage system (OSS) repair loans under the Deferred Loan Program which utilizes grant funding through the Department of Ecology (Ecology). Once the loans are funded, an invoice for grant fund reimbursement will be submitted to Ecology.

1b. Primary customers:
There are many anticipated water quality and environmental improvements from the project which will indirectly benefit many Whatcom County citizens. Direct primary customers for this service will be awardees of Deferred Loans for the purpose of repairing failing OSS.

2. Problem to be solved:
Replacement of failing on-site sewage systems.

3a. Options / Advantages:
na

3b. Cost savings:
na

4a. Outcomes:
The repair of failing OSS, ensuring that sewage is properly treated on the site.

4b. Measures:
Number of OSS failures repaired utilizing this funding option.

5a. Other Departments/Agencies:
This Deferred Loan Program is administered under contract by the Opportunity Council, with final funding approval by WCHD.

5b. Name the person in charge of implementation and what they are responsible for:
Kyle Dodd is the OSS Program Supervisor, responsible for managing all three contracts associated with this loan program (Ecology, Industrial Credit Union, and Opportunity Council) to ensure that grant funding and loan program guidelines are met.

6. Funding Source:
Ecology, Centennial Clean Water Program grant funding.
MEMORANDUM

To: Whatcom County Council Members
From: Suzanne Mildner, Grants Coordinator
Subject: Supplemental Budget Request for E911 funding (Pass through Grant to What-Comm)
Date: April 24, 2013

The County is currently under contract (by way of subrecipient agreement) with the City of Bellingham to facilitate a pass-through grant from The Washington State Military Department. The grant funding is for FY2012-13 Emergency 911 operational expenses for What-Comm Communications.

The grant contract period is July 2011 through September 2013, for a total of $83,000. We previously requested spending authority for a portion of the contract amount and to date, all but approximately $23,792 has been expended under this contract. In addition to this remaining balance, the State has approved a contract amendment that will allow an additional $38,067 – for use by What-Comm to upgrade their current logging recorder system.

We are now requesting approval for supplemental funding in the amount of $61,859 to support 911 operations at What-Comm Communications.
Supplemental Budget Request

Executive

Suppl' ID # 1513  Fund 1  Cost Center 4261  Originator: Suzanne Mildner

Expenditure Type: One-Time  Year 1  2013  Add'l FTE □  Add'l Space □  Priority 1

Name of Request: WhatComm E911 Operations for 2013

X  4/25/13
Department Head Signature (Required on Hard Copy Submission)  Date

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>4334.0182</td>
<td>State Enhanced 911 Funds</td>
<td>($61,859)</td>
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<tr>
<td>7220</td>
<td>Intergov Subsidies</td>
<td>$61,859</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
This is a pass through grant from the Washington State Military Department to reimburse What-Comm Communication Center for eligible E911 operating expenditures under WAC 118-66-050 (professional development and operational expenses). We have an existing subrecipient agreement with What-Comm and this additional funding authority allows for continued reimbursements for the remainder of the contract term, through September 30, 2013. It also allows for state-approved additional funding for an upgrade to the What-Comm logging recorder system.

1b. Primary customers:
City of Bellingham, What-Comm Communications

2. Problem to be solved:
What-Comm is able to access this State Military Department funding only by way of pass through the local county government. The acceptance of these grant funds ultimately reduces the cost to the community for 911 services.

3a. Options / Advantages:
The intergovernmental (subrecipient) grant agreement is the only way in which to access this source of funding on behalf of What-Comm Communications.

3b. Cost savings:
N/A

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:
City of Bellingham, What-Comm Communications

5b. Name the person in charge of implementation and what they are responsible for:
Lt. Craig Ambrose, What-Comm Director

6. Funding Source:
Washington State Military Department

Thursday, April 25, 2013  Rpt: Rpt Suppl Regular
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: April 22, 2013
SUBJECT: Supplemental Budget ID# 1515
Leads Online Software Subscription Renewal
Radio System Improvements

The attached Supplemental Budget requests budget authority to use a recent Community Contribution Award from Lummi Indian Business Council to continue Leads Online service and for radio system improvements in 2013.

Background and Purpose

The Sheriff’s Office received a contribution from Lummi Indian Business Council (LIBC) to support community safety projects. These funds will be used to renew the Leads Online (Pawed Property Database) service for one year and to help finance a communications project on Sumas Mountain, relocating radio equipment to the new Washington State Patrol tower.

Funding Amount and Source

A contribution of $10,000 was received from Lummi Indian Business Council.

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions.

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff

Supp'I ID # 1515

Fund 1 Cost Center 2900 Originator: Dawn Pierce

Expediture Type: One-Time Year 1 2013 Add'l FTE Add'l Space Priority 1

Name of Request: Leads Online and Radio System Improvements 2013

Department Head Signature (Required on Hard Copy Submission) Date 4/22/13

Costs:

<table>
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<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
<tr>
<td>4367.1000</td>
<td>Donations</td>
<td>($10,000)</td>
</tr>
<tr>
<td>6625</td>
<td>Software Maint Contracts</td>
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<tr>
<td>7060</td>
<td>Repairs &amp; Maintenance</td>
<td>$4,665</td>
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<tr>
<td>Request Total</td>
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<td>$0</td>
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</table>

1a. Description of request:

The Sheriff’s Office received a $10,000 contribution from Lummi Indian Business Council (LIBC) in April 2013 to support community safety projects. These funds will be used to continue the Leads Online service and for Radio System Improvements.

1b. Primary customers:

The Sheriff’s Office and citizens of Whatcom County

2. Problem to be solved:

LEADS ONLINE

Leads Online is a web-based service used for entry and tracking of pawned and second hand property. This program is used by all law enforcement agencies in Whatcom County and allows investigators to monitor such transactions and work with second-hand dealers to enforce laws and recover stolen property. Unfortunately, Federal grant funds used to pay for Leads Online in the past have ended. Annual cost for Leads Online is $5,335. The Sheriff’s Office will use a portion of the contribution from LIBC to continue this important service.

RADIO SYSTEM IMPROVEMENTS

Relocation of radio equipment from an old building and tower on Sumas Mountain to the new Washington State Patrol (WSP) tower is required to improve reception, coverage, and connectivity to What-Comm dispatch. The cost of this project is estimated at $6,500. The contribution from LIBC will be used to help finance this project. Additional funds needed for this project will come from the existing Sheriff's Office budget.

3a. Options / Advantages:

The contribution from Lummi Indian Business Council is to support community safety projects headed by the Sheriff's Office. Specific community safety projects include Information and Data Sharing (Leads Online) and Radio System Improvement Projects (radio equipment relocation).

3b. Cost savings:

Cost savings of $5,335 for Leads Online and $4,665 for radio system improvements.

4a. Outcomes:

LEADS ONLINE

Continue Leads Online for one year without disruption of service.

RADIO SYSTEM IMPROVEMENTS

The Sheriff's Office anticipates relocation of radio equipment from Sumas Mountain to the new WSP

Monday, April 22, 2013

Rpt: Rpt Suppl Regular
tower will be complete in 2013.

4b. Measures:

LEADS ONLINE
Investigators will monitor transactions and work with second-hand dealers to enforce laws and recover stolen property.

RADIO SYSTEM IMPROVEMENTS
Relocation of radio equipment will improve reception, coverage, and connectivity to What-Comm dispatch thereby increasing community safety.

5a. Other Departments/Agencies:

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

6. Funding Source:

$10,000 contribution from Lummi Indian Business Council
Memorandum

TO:        Jack Louws, County Executive
FROM:      Sheriff Bill Elfo
DATE:      April 22, 2013
SUBJECT:   Supplemental Budget ID# 1517
           2013 Boating Safety Program Patrols

The attached Supplemental Budget requests budget authority for 2013 Boating Safety Program Patrols.

Background and Purpose
The Sheriff's Office is currently the only law enforcement agency in Whatcom County that operates a state approved boating safety program under WAC 352-65. State approved boating safety programs require that certified deputies patrol the waterways during peak recreational boating periods. The Sheriff's Office provides recreational boating safety patrols and enforcement of both county code and state law. In the past, federal grant funds have been used for water patrols. However, federal funds are currently limited and Vessel Registration Fee (VRF) Reserve Account funds are needed in 2013 for water patrols.

Funding Amount and Source
$40,000 from the Vessel Registration Fee (VRF) Reserve Account.

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions.

Thank you.
Supplemental Budget Request

Sheriff

Operations

<table>
<thead>
<tr>
<th>Fund 1</th>
<th>Cost Center 2960</th>
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</thead>
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<tr>
<td>Originator: Dawn Pierce</td>
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<tr>
<td>Expenditure Type: One-Time</td>
<td>Year 1 2013</td>
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</table>

Name of Request: 2013 Boating Safety Program Patrols

Department Head Signature (Required on Hard Copy Submission) 4/22/13

Date

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
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<td>2910.1000</td>
<td>Fund Balance</td>
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<tr>
<td>6140</td>
<td>Overtime</td>
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<tr>
<td>6210</td>
<td>Retirement</td>
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<tr>
<td>6230</td>
<td>Social Security</td>
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<tr>
<td>6259</td>
<td>Worker's Comp-Interfund</td>
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</table>

1a. Description of request:

The Sheriff's Office is currently the only law enforcement agency in Whatcom County that 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.

Vessel Registration Fees (VRF) are collected by Washington State and allocated to counties by the state treasurer for approved boating safety/education and law enforcement programs. In accordance with state law, these funds are deposited into an account dedicated solely for supporting the jurisdiction's boating safety programs.

1b. Primary customers:

Whatcom County citizens and visitors

2. Problem to be solved:

State approved boating safety programs require that certified officers patrol the waterways during peak recreational boating periods. The Sheriff's Office schedules water patrols during the boating season from Memorial Day weekend through Labor Day weekend on an off-duty overtime basis so as not to adversely impact the regular on-duty patrol schedule. In the past, federal grant funds have been used for overtime water patrols. However, federal funds are currently limited and VRF Reserve Account funds are needed in 2013 for water patrols.

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

Water patrols will be conducted in accordance with requirements of the state approved Boating Safety Program.

4b. Measures:

The Sheriff's Office will provide recreational boating safety patrols and enforcement of both county code and state law.

5a. Other Departments/Agencies:

Monday, April 22, 2013

Rpt: Rpt Suppl Regular
N/A

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

6. Funding Source:
$40,000 from the Vessel Registration Fee (VRF) Reserve Account.
Supplemental Budget Request

Health Human Services

<table>
<thead>
<tr>
<th>Supp I/D #</th>
<th>Fund 121</th>
<th>Cost Center 121100</th>
<th>Originator: Sandi Hughes-McMillan</th>
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</table>

Expenditure Type: One-Time Year 1 2013 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: 2060 Affordable Housing Fund

X

Department Head Signature (Required on Hard Copy Submission)

Date 4-22-13

<table>
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<tr>
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<th>Object</th>
<th>Object Description</th>
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<tr>
<td></td>
<td>4341.2100</td>
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<tr>
<td></td>
<td>6610</td>
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</tr>
<tr>
<td>Request Total</td>
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<td><strong>$5,423</strong></td>
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</table>

1a. Description of request:

2060 Affordable Housing revenues fund housing programs for very low income individuals and families. These funds are for the operation and maintenance of housing units occupied by eligible households.

1b. Primary customers:

Homeless individuals and families with children living in shelters or transitional housing facilities.

2. Problem to be solved:

The 2060 fund is designed to support operations of shelters and transitional housing facilities. Northwest Youth Services (NWYS) has expanded its shelter facility in order to serve more homeless youth and these funds will allow for expanded services. Sun House, a shelter for homeless individuals suffering from mental illness has expanded its capacity to house more of the homeless, transitional population. These funds will be used to fund expanded capacity.

3a. Options / Advantages:

These funds provide resources to address the needs of persons who are homeless and allows the County to carry out the strategies of Whatcom County Plan to End Homelessness.

3b. Cost savings:

These funds will allow vulnerable and at risk Youth a safe place to live while they are reunited safely with family or allowed to remain housed while they continue education and skill learning, thus saving future costs to community. This request also provides expanded capacity at Sun House for homeless individuals with mental illness.

4a. Outcomes:

Reduce number of unsheltered homeless mentally ill individuals. Reduced number of homeless or street youth. Increased number of youth who return safely to family.

4b. Measures:

Homeless database (HMIS) and the Annual Point in Time Count of homeless persons

5a. Other Departments/Agencies:

Northwest Youth Services, Whatcom Homeless Service Center, Sun House, Whatcom County Jail, St. Joseph's Hospital

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

Gail de Hoog, Housing Specialist & Contract Administrator.

6. Funding Source:

Local Recording Fee Revenue. Increase in revenue collection plus fund balance allows for an increase in services.

Monday, April 22, 2013
Supplemental Budget Request

Health Human Services

Expenditure Type: One-Time Year 1 2013 Add'l FTE □ Add'l Space □ Priority 1

Name of Request: Behavioral health

Costs:

<table>
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<td>6610</td>
<td>Contractual Services</td>
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<tr>
<td>6699</td>
<td>Other Services-Interfund</td>
<td>$8,000</td>
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</table>

Total Request: $430,000

1a. Description of request:

Additional programs and services will be contracted, using the fund balance, to meet objectives supported by the Health Department and advised by the Behavioral Health Revenue Advisory Committee (aka Chemical Dependency/Mental Health Program Fund Oversight Advisory Committee). Those objectives include promotion of Health Care Reform projects, recovery support activities, housing, and services targeted to at-risk youth.

1b. Primary customers:

Whatcom County residents living with serious behavioral health challenges. Although the burden of mental and substance use disorders, in terms of economic and social costs, has been well documented to effect a much wider portion of Whatcom County citizens.

2. Problem to be solved:

People living with significant behavioral health challenges are more likely to receive inadequate health care, experience housing instability, and are at higher risk of serious conditions like depression and suicidal ideation.

3a. Options / Advantages:

Programs and services that target the problems noted above reduce the risk of poor health and early mortality, increase stable recovery, and prevent suicide.

3b. Cost savings:

Actual dollar savings are unknown at this time.

4a. Outcomes:

Increased locations where primary care and behavioral health services are provided conjointly. Increased on-site behavioral health support for newly housed residents. Increased programs and services aimed at preventing suicide in our youth while also promoting more accessible behavioral health treatment.

4b. Measures:

To be determined as contracts are initiated we will incorporate outcomes specific to that contracted service.

5a. Other Departments/Agencies:

Within the county it will affect only the Health Department although there are many Community based social service agencies impacted.

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

Anne Deacon, Human Services Manager, will oversee the procurement and implementation of additional behavioral health programs and services.
### Supplemental Budget Request

**Status:** Pending

<table>
<thead>
<tr>
<th>Health</th>
<th>Human Services</th>
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<tbody>
<tr>
<td>Supp't ID # 1483</td>
<td><strong>Fund</strong> 124 <strong>Cost Center</strong> 124100</td>
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</table>

#### 6. Funding Source:

Chemical Dependency/Mental Health Program Fund sales tax revenue
Memorandum

TO: Jack Louws, Whatcom County Executive
FROM: Sam Ryan, Director
DATE: April 22, 2013
SUBJECT: Supplemental Budget Request

Requested Action

To appropriate funding from the Conservation Futures Fund for the Purchase of Development Rights Program.

Background and Purpose

Council, the PDR Oversight Committee, and Agricultural Advisory Committee have discussed the PDR program hoping improvements could be made to assist in protecting agricultural land through voluntary means in the core areas. A request of proposals for professional services is being developed that, if it results in a contract, would allow implementation of a reverse auction strategy to do just that. This request would transfer funds from Conservation Futures to fund the consultant services.

Funding Amount and Source

$50,000 is being requested from the Conservation Futures Fund (175).
1a. **Description of request:**

1a. Description: Appropriate funding of professional services related to development of a core agricultural development rights acquisition strategy for the Agricultural Purchase of Development Rights Program.

1b. **Primary customers:**

The citizens of Whatcom County.

2. **Problem to be solved:**

Problem to be solved: Council, the PDR Oversight Committee, and Agricultural Advisory Committee have all discussed the PDR program with an eye toward possible improvements that could assist in protecting agricultural land through voluntary means in the core areas. An request of proposals for professional services is being developed that, if it results in a contract, would allow implementation of a reverse auction strategy to do just that.

3a. **Options / Advantages:**

Options/ Advantages: The other option would be to not support professional services assistance to improve the PDR program and provide more options to ag land property owners who are interested in alternative means of preserving their land for ag use.

3b. **Cost savings:**

None

4a. **Outcomes:**

If consultants respond to the RFP and a contract is agreed upon, a voluntary reverse auction strategy would be developed and ready to implement for landowners in the agricultural core areas.

4b. **Measures:**

The contract would be completed.

5a. **Other Departments/Agencies:**

None.

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

None.

6. **Funding Source:**

Conservation Futures Fund.
Supplemental Budget Request

Parks & Recreation

**Status:** Pending

**Fund:** 330  **Cost Center:** 33000  **Originator:** M Caldwell

**Expenditure Type:** Ongoing  **Year:** 2013  **Add'l FTE:** [ ]  **Add'l Space:** [ ]  **Priority:** 1

**Name of Request:** Remove 2013 Parks Improvement Fund Budget

**Department Head Signature (Required on Hard Copy Submission):**

**Date:** 04.30.13

**Costs:**

<table>
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<td>4361.1100</td>
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</tr>
<tr>
<td>8351</td>
<td>Operating Transfer Out</td>
<td>($94,183)</td>
</tr>
</tbody>
</table>

**Request Total:** $0

1a. **Description of request:**
Remove 2013 budget for Parks Improvement Fund, except for $800 investment income.

1b. **Primary customers:**
NA

2. **Problem to be solved:**
In accordance with the State Auditors' recommendation, prior year grant funds for reimbursement of the Lily Point acquisition project were moved from the Parks Improvement Fund to the Conservation Futures Fund at the end of 2012. The Parks Improvement Fund contained budgeted items for the 2013 - 2014 biennial budget which are no longer feasible. This supplemental removes most of the investment income budget and the transfer out in support of a park ranger position to be hired when the Lake Whatcom Reconveyance is complete.

3a. **Options / Advantages:**
No other options, the Parks Improvement Fund no longer has enough funding to support the current budget.

3b. **Cost savings:**
NA

4a. **Outcomes:**
NA

4b. **Measures:**
NA

5a. **Other Departments/Agencies:**
Will impact a position in the Parks Department General Fund budget which was funded by a transfer from Parks Improvement. Alternative funding will need to be decided upon for that position.

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

6. **Funding Source:**
NA

**Monday, April 08, 2013**
Supplemental Budget Request

Non-Departmental

Supp # 1534  Fund 332  Cost Center 332206  Originator: Tawni Helms/Mike Russell

Expenditure Type: One-Time  Year: 2013  Add'l FTE □  Add'l Space □  Priority 1

Name of Request: Trf to fund Civic Ctr Parking Lot Security Gate

X

Department Head Signature (Required on Hard Copy Submission)

05/07/13

Date

<table>
<thead>
<tr>
<th>Costs:</th>
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<th>Object Description</th>
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1a. Description of request:
This supplemental request provides funding for Project Budget Supplemental ID#1534, the Civic Center Parking Lot Security Gate

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:
Rural Sales Tax/EDI fund

Tuesday, May 07, 2013
Supplemental Budget Request

Parks & Recreation

Supp'l ID # 1508  Fund 324  Cost Center 32497  Originator: Rod Lamb

Expenditure Type: One-Time  Year 1 2013  Add'l FTE [ ]  Add'l Space [ ]  Priority 1

Name of Request: Lookout/Mountain Park, Trailhead & Restroom II

X

4-15-13

Department Head Signature (Required on Hard Copy Submission)  Date

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1a. Description of request:
Purchase and install a new pre-manufactured restroom facility for the Lookout Mountain Forest Preserve. Parks is requesting an additional $42,950 in order to complete the trailhead and parking construction project at Lookout Mountain Forest Preserve. The additional funds are needed to cover anticipated construction and associated utility service fees. The initial regular additional service request (ASR #2013-5017) of $230,000 is insufficient to cover the project as proposed. That budget number was estimated from previous 2011 bids that the County received when the project was first advertised. Since that time construction costs, service fees, and other project expenses have risen. After contacting utility providers, the restroom manufacturer, and bidding the project we are confident that the additional funding will allow the project to be completed. The Whatcom Land Trust has provided the County with a letter of commitment to provide $8,500 matching donation in order to complete the proposed project.

1b. Primary customers:
County residents are the primary customers of this new facility.

2. Problem to be solved:
Construction of the new 29 car parking lot is scheduled to be completed in the Summer of 2013. These additional funds are needed to purchase the new restroom structure for the trailhead. Currently the park is well used but lacks an appropriate parking facility, we anticipate with the construction of the parking area there will be even more use by the public. A new restroom facility is needed for public health, and will also help protect water quality.

3a. Options / Advantages:
The restroom could be eliminated from the project or postponed to another date. However these options do not address the obvious public health and water quality issues.

3b. Cost savings:
Installing the restroom at Lookout Mountain during the parking lot construction is a less expensive option than postponing the project to a future phase because of escalating construction costs.

4a. Outcomes:
The completed trailhead will provide residents with a safe and enjoyable hiking experience. The restroom facility will be a welcome addition to the new trailhead, and will improve water quality and protect public health.

4b. Measures:
Parks will monitor the number of park visitors with the use of an automated trail counter. The trail counter will provide accurate data for tabulating public use.

Monday, April 15, 2013

Rpt: Rpt Suppl Regular

68
Supplemental Budget Request

Parks & Recreation

5a. Other Departments/Agencies:
   Planning & Development Services will be involved in permit review for the new restroom facility.

5b. Name the person in charge of implementation and what they are responsible for:
   Specific personnel are not known at this time.

6. Funding Source:
   REET II and donation.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Kathy Walker, Chair – Law & Justice MIS Committee
       Perry L. Rice, Information Technology Manager
RE: Supplemental Budget Request – Data Integration Grant
DATE: April 15, 2013

- Background and Purpose

This Supplemental Budget requests the appropriation of $10,713.36 in unspent grant funds relating to the WENET (Whatcom Exchange Network) regional law and justice data integration project. This additional budget authority will be utilized for professional services and Extra Help to maintain the software application used to view criminal justice information across 10 regional agencies.

- Funding Amount and Source

The funding amount of $10,713.36 is from the $200,000 federal COPS grant (#2010CKWX0078). It was awarded on August 30, 2010 and extends through December 15, 2013.

Please contact Kathy Walker at extension 50308 or Perry Rice at extension 52511 if you have any questions or concerns regarding this request.
Supplemental Budget Request

Status: Pending

Suppl ID # 1512  Fund 507  Cost Center 507118  Originator: Kathy Walker - MIS Commit

Expenditure Type: One-Time  Year 1  2013  Add'l FTE  Add'l Space  Priority 1

Name of Request: Realign Data Integration Grant V for 2013

X

Department Head Signature (Required on Hard Copy Submission)  Date 04.30.13

Costs:

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Request Total  $0

1a. Description of request:

This Supplemental Budget Request adds $10,713.36 in budget authority from the $200,000 COPS Grant (#2010CKWX0078) for the WENET (Whatcom Exchange Network) regional law and justice data integration project. The addition of $10,713.36 to the existing appropriation of $1,750.00 brings the total 2013 appropriation to $12,463.36. This is the 5th federal grant received to fund this project. It was awarded on August 30, 2010 and the award end date was extended from December 15, 2012 to December 15, 2013. This additional budget authority is being put towards professional services for vendor and Extra Help assistance to maintain the software application to view criminal justice information across 10 regional agencies.

1b. Primary customers:

All law enforcement agencies, including the Prosecutor's Office, in the Whatcom County area.

2. Problem to be solved:

Additional remaining federal Data Integration Grant funds have not yet been appropriated in the 2013 budget. This request is for professional services and Extra Help to maintain the software application used to view criminal justice information across 10 regional agencies.

3a. Options / Advantages:

3b. Cost savings:

Indirect cost savings will result in quicker access to information for law enforcement.

4a. Outcomes:

The two primary software vendors will maintain the software application in 2013 as long as funding is available.

4b. Measures:

The Whatcom Exchange Network (WENET) will continue to function.

5a. Other Departments/Agencies:

The Whatcom Exchange Network (WENET) will continue to be available for regional law enforcement agencies.
5b. Name the person in charge of implementation and what they are responsible for:

   Kathy Walker of the Prosecuting Attorney’s Office chairs the regional Law & Justice MIS Committee and WENET Working Group.

6. Funding Source:

   Federal Data Integration Grant V.

   COPS Grant #2010CKWX0078 awarded on 08/30/2010 (Contract #20100909) that is specifically designated to this law enforcement integration project.

   Award Amount:   $200,000
   Award Start Date: 12/16/2009
   Award End Date: 12/15/2012
   Extended Award End Date: 12/15/2013
# WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
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<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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**TITLE OF DOCUMENT:**
Amending Ordinance No. 81-6 an Ordinance Authorizing the Treasurer to Establish a Fund to be Known as the Whatcom County Community Development Fund

**ATTACHMENTS:**
Ordinance and Exhibit A – Original Ordinance

**SEPA review required?** ( ) Yes (X) NO  
**SEPA review completed?** ( ) Yes (X) NO  
Should Clerk schedule a hearing? ( ) Yes (X) NO  
Requested Date: 

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

This request amends Ordinance 81-6, which established the Community Development Fund, to expand its purpose to also allow for accounting for on-site sewage system deferred loans and re-loaning of repayments. The Community Development Fund was originally established to account for deferred payment loans to low and moderate income homeowners to rehabilitate their homes.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
5/07/2013: Introduced

Related County Contract #:  
Related File Numbers:  
Ordinance or Resolution Number:  

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
ORDINANCE NO. ____________

AMENDING ORDINANCE NO. 81-6 AN ORDINANCE AUTHORIZING THE TREASURER TO ESTABLISH A FUND TO BE KNOWN AS THE WHATCOM COUNTY COMMUNITY DEVELOPMENT FUND

WHEREAS, Ordinance 81-6 (Exhibit A) provided for the establishment of the Whatcom County Community Development Fund to account for delayed payment loans to low and moderate income single family home owners to rehabilitate their homes with Federal Department of Housing and Urban Development (HUD) Community Development Block Grant funds; and

WHEREAS, proceeds from delayed payment loans must be used for mental health services, and

WHEREAS, only one or two payments are received from delayed payment loans annually, and

WHEREAS, the Health Department has received funding from the Washington State Department of Ecology for a similar program for delayed payment loans to low income single family home owners for on-site sewage system repairs; and

WHEREAS, Whatcom County needs a fund to account for the delayed payment loans that will result from this program,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance No. 81-6 is hereby amended as follows:

Section 1. The County Treasurer is hereby authorized to establish a fund to be known as the Whatcom County Community Development Fund. (Fund No. 151-0829-Department No. 0031).

Section 2. The purposes of establishing Fund No. 0829 151 (Whatcom County Community Development Fund) are:

(d) Receiving repayment of delayed payment loans made to property owners by Whatcom County under the Deferred Payment Sewage System Loan Program, Whatcom County Contract No. 201106007 between Whatcom County and Washington State Department of Ecology.

(e) Using proceeds received in (d) for additional loans under the Deferred Payment Sewage System Loan Program.
Section 3. The County Treasurer is hereby authorized and empowered to release and/or satisfy all liens placed upon these properties, upon fulfillment of the Promissory Note and Deed of Trust entered into by the property owner under the terms of the County Community Development Program and the Deferred Payment Sewage System Loan Program.

ADOPTED this ___ day of ____________________, 2013.

ATTEST:

Dana Brown-Davis, Council Clerk

Kathy Kershner, Chair of the Council

APPROVED AS TO FORM:

Daniel L. Edelson

Civil Deputy Prosecutor

( ) Approved   ( ) Denied

Jack Louws, County Executive

Date: ___________________________
Date: February 19, 1981

EXHIBIT A

INTRODUCED BY: Hansey

PROPOSED BY: Grants & Executive

ORDINANCE NO: 81-6

AN ORDINANCE AUTHORIZING THE COUNTY TREASURER
TO ESTABLISH A FUND TO BE KNOWN AS THE WHATCOM
COUNTY COMMUNITY DEVELOPMENT FUND.

WHEREAS, Whatcom County has received funds under 24 CFR 570 from
the Federal Department of Housing and Urban Development (HUD) Community
Development Block Grant/Small Cities Program; and

WHEREAS, the County has utilized such funds for delayed payment
loans to low and moderate income single family home owners in the Cities
of Sumas and Blaine to rehabilitate their homes; and

WHEREAS, the security instruments placing liens on such properties
name Whatcom County as beneficiary; and

WHEREAS, from time to time as such properties are sold or transferred,
monies will be received by the County; and

WHEREAS, it is necessary to establish a County fund to receive
such monies; NOW THEREFORE,

THE WHATCOM COUNTY COUNCIL DOES ORDAIN:

Section 1. The County Treasurer is hereby authorized to establish
a fund to be known as the Whatcom County Community Development Fund,
(Fund No. 0829 Department No. 0031).

Section 2. The purposes of establishing Fund No. 0829 (Whatcom
County Community Development Fund) are:

(a) Receiving and disbursement of funds from delayed payment loans
made to property owners by the Whatcom County Community Development Program;

(b) To use said funds as Program Income in accordance with 24 CFR
570.506(c) for activities approved in any current grant agreement under 24
CFR 570 between Whatcom County and HUD;

(c) To use said funds as miscellaneous revenue in accordance with 24
CFR 570.512(c) subsequent to closeout of grant agreements under 24 CFR 570
between the County and HUD.

ORDINANCE - 1
SECTION 3. The County Treasurer is hereby authorized and
empowered to release and/or satisfy all liens placed upon these
properties, upon fulfillment of the Promissory Note and Deed of
Trust entered into by the property owner under the terms of the
County Community Development Program.

PASSED this 5th day of March, 1981.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Shirley Van Zanten, Chairperson

Attest: Joan Ogden
Auditor & Ex-officio
Clerk of the Council
By: Carol Bergsten
Deputy

Approved as to form:

(☐) Approved ( ) Vetoed

County Executive

Date

3/6/81

Civil Deputy Prosecuting Attorney

Published February 26 and March 12, 1981

This ordinance becomes effective on March 5, 1981
**TITLE OF DOCUMENT:** An Ordinance Amending Ordinance No. 2011-030 Establishing a Project Based Budget to Fund Civic Center Exterior Repairs

**ATTACHMENTS:** Ordinance & Budget Modification Requests

<table>
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<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>Yes</th>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

Requests funding from the Civic Center Building Improvement Fund:

1. To appropriate $44,100 to fund a security gate for the underground parking facility as an additional cost of the Civic Center exterior repair project from a Public Utility Improvement Fund transfer.
ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO. 2011-030 ESTABLISHING A PROJECT BASED BUDGET TO FUND CIVIC CENTER EXTERIOR REPAIRS

WHEREAS, Whatcom County previously appropriated $1,608,698 in Public Utilities Improvement Fund funding in a project budget for the Civic Center exterior repairs project, and

WHEREAS, there is a need for a security gate for the Civic Center underground parking facility to alleviate concerns and issues related to the space being accessed and used for temporary housing/shelter, and

WHEREAS, additional funding is available from the Public Utilities Improvement Fund, and

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

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the following additional capital budget appropriation is hereby approved:

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<th>Revenues</th>
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<tr>
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<td>44,100</td>
<td>(44,100)</td>
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ADOPTED this ___ day of ____________________, 2013.

ATTEST:

Dana Brown-Davis, Council Clerk

Kathy Kershner, Chair of the Council

APPROVED AS TO FORM:

( ) Approved     ( ) Denied

Jack Louws, County Executive

Date:____________________________

I:\BUDGET\SUPPLS\2013_Suppl\Project Bgt-Civic Center Amendment.doc
Supplemental Budget Request

Name of Request: Civic Center Security Gate for Underground Parking

Date: 5-7-13

Department Head Signature (Required on Hard Copy Submission)

Costs:

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<th>Object</th>
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<td><strong>Request Total</strong></td>
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1a. Description of request:
An additional change order has been requested by Whatcom County leadership for the inclusion of a security gate for the underground parking facility. The gate should alleviate the concerns and issues related to the space being accessed and used for temporary housing/shelter.

1b. Primary customers:
Whatcom County employees and citizens that utilize the Garden Room meeting area.

2. Problem to be solved:
Despite efforts to mitigate access to the underground parking lot there have been a number of incidents where people have been found sleeping and "living" in the parking garage. This creates unsanitary and safety issues for employees and the public who use this garage for parking.

3a. Options / Advantages:
Other options are to continue running people out of the parking lot. Installing a gate will restrict access to the parking garage and help to keep the facility maintained.

3b. Cost savings:
Daily clean up and patrol will no longer needed. Staff will no longer need to ask people to vacate the space. Safety and security will be enhanced for employees.

4a. Outcomes:
A security gate will completed by the end of this construction project scheduled to conclude in June.

4b. Measures:
Access will be restricted to only those individuals given access to the space.

5a. Other Departments/Agencies:
Safety and security will be gained for all county employees as many departments utilize the garden conference room that includes an exit through the parking garage.

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

6. Funding Source:
Rural Sales Tax/EDI

Tuesday, May 07, 2013
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
<th>Initial</th>
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<td>5-1-13</td>
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**TITLE OF DOCUMENT:**

Construction Contract Award – Lower Canyon Creek Phase 2 Restoration Project
Project No. 710013; Bid No. 13-33

**ATTACHMENTS:**

1. Bid Award Memo
2. Bid Tabulation
3. Low Bid Proposal

**SEPA review required?**  ( ) Yes  ( X ) NO  
**SEPA review completed?**  ( X ) Yes  ( ) NO

**Should Clerk schedule a hearing?**  ( ) Yes  ( X ) NO

**Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

Award of a construction contract to Triamaxx Construction Inc. for the Lower Canyon Creek Phase 2, Restoration Project of $2,268,758.60 including all taxes.

**COMMITTEE ACTION:**

**BOARD OF SUPERVISORS ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
MEMORANDUM

TO: The Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Frank M. Abart, Public Works Director

FROM: Paula J. Cooper, P.E., River and Flood Manager
Chris Brueske, P.E., Assistant Director

RE: Lower Canyon Creek Phase 2 Restoration Project Bid #13-33

DATE: May 8th, 2013

Attached for your review and signature is a construction contract award package for the Lower Canyon Creek Phase 2 Restoration Project. The package includes the Bid Award, Bid Tabulation, and Low Bid Proposal.

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 award the bid and execute a contract for the Lower Canyon Creek Phase 2 Restoration Project to the low bidder, Trimaxx Construction Inc., in the amount of $2,268,758.60 including all taxes.

Five (5) bid proposals for the project were received at the bid opening on Tuesday April 30, 2013.

Background and Purpose
Debris floods in 1989 and 1990 destroyed four houses and damaged a portion of a County road, prompting construction of a levee. The existing levee constricts the area available for conveying flood waters and storing sediment; the creek has steadily incised, exposing the toe of the existing levee and riprap. This project will remove the existing levee and construct a new setback structure at the edge of the active fan margin along with eleven engineered log jams across the alluvial fan. This project will improve the reliability of the flood protection to the adjacent community and Mt Baker Highway and improve fish habitat.

Funding Amount and Source
The FCZD has awarded $1,463,300 in State and Federal funds for this project; the remainder of the contract will be funded using FCZD funds which are included in the 2013 budget.
BID AWARD

PROJECT: LOWER CANYON CREEK PHASE 2 RESTORATION PROJECT
PROJECT NO. 710013
BID NO. 13-33

TO: TRIMAXX CONSTRUCTION INC.

In the amount of their bid proposal of $2,268,758.60 including all taxes.

In accordance with W.C.C. 3.08.030, I concur with this bid award recommendation:

Brad Bennett, Purchasing Coordinator

Date

Approved as Recommended:

County Executive, acting for the Whatcom County Flood Control Zone District Board of Supervisors

Date of Council Action

Encl.
84


BID PROPOSAL FORM

LOWER CANYON CREEK
PHASE 2
RESTORATION PROJECT

PROJECT NO. 710013

BID NO. 13-33

DATE: April 30, 2013

TO: Whatcom County Flood Control Zone District Board of Supervisors
    Whatcom County Courthouse
    311 Grand Avenue
    Bellingham, Washington 98225

Gentlepersons:

This certifies that the Undersigned has examined the location of the project site and the conditions of work; and has carefully read and thoroughly understands the contract documents entitled: "Lower Canyon Creek - Phase 2, Restoration Project, Project No. 710013" Whatcom County, Washington, including the "Bid Procedures and Conditions," "Specifications and Conditions," "Contract Forms," "Construction Plans," and "Appendices," governing the work embraced in this project, and the method by which payment will be made for said work. The Undersigned hereby proposes to undertake and complete the work embraced in this project in accordance with said contract documents, and agrees to accept as payment for said work, the schedule of lump sum, force account and unit prices as set forth in the "Bid" below.

The Undersigned acknowledges that payment will be based on the actual work performed and material used as measured or provided for in accordance with the said contract documents, and that no additional compensation will be allowed for any taxes (except state sales tax) not included in each lump sum or unit price, and that the basis for payment will be the actual work performed and measured or provided for in accordance with the said contract documents.

The Undersigned certifies that it is not currently disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>UNIT MEASURE</th>
<th>ITEM DESCRIPTION</th>
<th>APPROX. QUANTITY</th>
<th>UNIT PRICE IN FIGURES</th>
<th>EXTENDED PRICE IN FIGURES</th>
</tr>
</thead>
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<tr>
<td>1</td>
<td>LUMP SUM</td>
<td>MOBILIZATION</td>
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<td>2</td>
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<td>6</td>
<td>ACRE</td>
<td>CLEARING AND GRUBBING</td>
<td>10</td>
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<tr>
<td>7</td>
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<td>LUMP SUM</td>
<td>SPILL PREVENTION, CONTROL AND COUNTERMEASURES PLAN</td>
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<td>L.S.</td>
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<td>SHORING OR EXTRA EXCAVATION CLASS B</td>
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<td>10</td>
<td>CUBIC YARD</td>
<td>ONSITE STOCKPILED RIPRAP REMOVAL AND PLACEMENT</td>
<td>1,200</td>
<td>$5.50 per CY</td>
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<tr>
<td>11</td>
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<td>ITEM NO.</td>
<td>UNIT MEASURE</td>
<td>ITEM DESCRIPTION</td>
<td>APPROX. QUANTITY</td>
<td>UNIT PRICE IN FIGURES</td>
<td>EXTENDED PRICE IN FIGURES</td>
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<td>19</td>
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<td>TYPE R5 KEY LOG 24&quot; DIAM. LOG WITH ROOTWAD - 30' LONG</td>
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<td>EACH</td>
<td>RACKING LOG 4&quot;-16&quot; DIAM. LOG WITH AND WITHOUT ROOTWAD 15' - 30' LONG</td>
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<td>32</td>
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<td>ITEM NO.</td>
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<tr>
<td>37</td>
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</tbody>
</table>

SUBTOTAL BID AMOUNT (Bid Items 1-42) $209,021.75

STATE SALES TAX@8.5% $17736.85

TOTAL BID AMOUNT (Bid Items 1-42 plus sales tax) $226758.60
NON-COLLUSION DECLARATION

LOWER CANYON CREEK
PHASE 2
RESTORATION PROJECT

PROJECT NO. 710013

BID NO. 13-33

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse, and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.
BIDDER IDENTIFICATION

The name of the Bidder submitting this proposal, the address and phone number to which all communications concerned with this proposal shall be made, and the number which has been assigned indicating the Bidder is licensed to do business in the State of Washington are as follows:

Firm Name: Trimaxx Construction Incorporated
Address: 12903 Wayward Way
Seattle, WA 98184
Telephone:

Contractor's WA Registration Number: Trimaci96362
Contractor's WA UBI Number: 602798526
Contractor's WA Employment Security Department Number: 2591555009
Contractor's WA Excise Tax Registration Number: 72-1565264

The Firm submitting this proposal is a: 

- Sole Proprietorship
- Partnership
- Corporation

The names and titles of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

Christopher Manson, president
Jon Nichols, vice president
Todd Snyder, secretary

NOTE: Signatures of this proposal must be identified above. Failure to identify the Signatories will be cause for considering the proposal irregular and for subsequent rejection of the bid.
BID PROPOSAL SIGNATURE AND ADDENDUM
ACKNOWLEDGMENT

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein. The undersigned hereby agrees to pay labor not less than the prevailing rates of wages or less than the hourly minimum rate of wages as specified in the Specifications and Conditions for this project.

Bid Proposal Deposit Options:

□ CASHIER’S CHECK DOLLARS ($_____________________)PAYABLE TO WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

□ CERTIFIED CHECK DOLLARS ($_____________________)PAYABLE TO WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

☑ PROPOSAL BOND IN THE AMOUNT OF 5% OF THE BID.

Receipt is hereby acknowledged by addendum(s) No.(s) 1, ____, & ____

SIGNATURE OF AUTHORIZED OFFICIAL(S)

(PROPOSAL MUST BE SIGNED)

(Seal)

FIRM NAME: Trimax Construction Incorporated

STATE OF WASHINGTON )
COUNTY OF Skagit ) ss.

On this 30th day of April __________, 2013, before me personally appeared __________ Todd Snyder __________ to me personally known to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof

NOTARY PUBLIC, in and for the State of Washington, residing at: Sedro-Woolley
My Commission Expires: 1-11-17

This proposal form is not transferable and any alteration of the name entered hereon without prior permission from Whatcom County will be cause for considering the proposal irregular and for subsequent rejection of the bid.
WHATCOM COUNTY  
FLOOD CONTROL ZONE DISTRICT  
SUBCONTRACTOR LIST  
Prepared in Compliance with RCW 39.30.060 as amended.

To be Submitted with the Bid Proposal

Project Name:

LOWER CANYON CREEK PHASE 2 RESTORATION PROJECT

PROJECT NO. 710013

BID NO. 13-33

Failure to list subcontractors who are proposed to perform work of heating, ventilation and air conditioning, plumbing as described in Chapter 18.106 RCW, and electrical work as described in Chapter 19.28 RCW, will result in your bid being nonresponsive and therefore void.

Subcontractor(s) that are proposed to perform work of heating, ventilation and air conditioning, plumbing as described in Chapter 18.106 RCW, and electrical work as described in Chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

If no subcontractor is listed below, the bidder acknowledges that it does not intend to use any subcontractor to perform those items of work.

Subcontractor Name

Work to be Performed

Subcontractor Name

Work to be Performed

Subcontractor Name

Work to be Performed
Amendment #9 to Contract between Whatcom County and Opportunity Council for Homeless Service Center Administration

**ATTACHMENTS:**
- Contract Info Sheet
- Memo to Executive
- 2 Originals of Contract Amendment

**SEPA review required?** ( ) Yes (X) NO
**SEPA review completed?** ( ) Yes (X) NO

Should Clerk schedule a hearing? ( ) Yes (X) NO
**Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

The purpose of this contract is to provide rental assistance and administrative services related to the operation of the Whatcom County Homeless Service Center (WHSC) which serves as a centralized point of entry for homelessness prevention and re-housing services for Whatcom County residents. Full implementation of a centralized and coordinating point of entry is the number one strategy of the Whatcom County Plan to End Homelessness In the first quarter of 2013, WHSC provided prevention and re-housing services to 161 new households.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
## WHATCOM COUNTY CONTRACT INFORMATION SHEET

### Originating Department: Whatcom County Health Department

### Contract Administrator: Gail de Hoog

### Contractor's / Agency Name: Opportunity Council

**Is this a New Contract?** Yes X No X

**If not, is this an Amendment or Renewal to an Existing Contract?** Yes X No ___ If yes, previous number(s): 201011042-8

**Is this a grant agreement?** Yes X No ___ If yes, grantor agency contract number(s) __________ CFDA number __________

**Is this contract grant funded?** Yes X No ___ If yes, associated Whatcom County grant contract number(s) NSMHA Grant Pending

**Is this contract the result of a RFP or Bid process?** Yes X No ___ If yes, RFP and Bid number(s) sole source Cost Center: 122200/122300/114

**Is this contract excluded from E-Verify?** No X Yes ___ If no, include Attachment D Contractor Declaration Form If yes, indicate qualified exclusion(s) below:

  - Contract less than $100,000.
  - Professional services agreement for certified/licensed professional
  - Work is for less than 120 days
  - Contract for Commercial off the shelf items (COTS)
  - Interlocal Agreement (between Govt.)
  - Public Works Dept. - Local Agency/Federally Funded FHWA

### Contract Amount:

<table>
<thead>
<tr>
<th>Sum of orig contract amount and any prior amendments</th>
<th>Total Amended Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,782,705.00</td>
<td>$1,958,096.00</td>
</tr>
</tbody>
</table>

If a Professional Services Agreement is more than $15,000 or a Bid is more than $35,000, please submit an Agenda Bill for Council approval and a supporting memo. Any amendment that provides either a 10% increase in amount or more than $10,000, whichever is greater, must also go to Council and will need an agenda bill and supporting memo. If less than these thresholds, just submit to Executive with supporting memo for approval.

### Scope of Services:

[Insert language from contract (Exhibit A) or summarize; expand space as necessary]

The purpose of this contract is to provide programmatic and administrative services related to the operation of the Whatcom County Homeless Service Center which serves as a centralized point of entry for homelessness prevention and re-housing services for Whatcom County residents. This amendment adds funds from Department of Commerce to provide rental assistance to families enrolled in the DSHS TANF program. It also adds funds from County document recording fees to provide emergency shelter for people waiting for an available permanent housing unit, and rental assistance in order to increase the capacity to re-house homeless households.

### Term of Contract: 1/1/2011 – 12/31/13

Expiration Date: 12/31/13 (this is final exp. Date per Section 10.2)

<table>
<thead>
<tr>
<th>Contract Routing Steps &amp; Signoff</th>
<th>[sign or initial]</th>
<th>[indicate date transmitted]</th>
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<tbody>
<tr>
<td>1. Prepared by:</td>
<td>PJ</td>
<td>Date 4/22/13 [electronic]</td>
</tr>
<tr>
<td>2. Attorney reviewed:</td>
<td>ELG</td>
<td>Date 5/9/13 [electronic]</td>
</tr>
<tr>
<td>3. AS Finance reviewed:</td>
<td>mdc</td>
<td>Date 5/9/13 [electronic]</td>
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<tr>
<td>4. IT reviewed if IT related:</td>
<td></td>
<td>Date [electronic] hard copy printed</td>
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<tr>
<td>5. Corrections made:</td>
<td></td>
<td>Date 05/14/13</td>
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<tr>
<td>6. Attorney signoff:</td>
<td></td>
<td>Date 5/1/11/3 [summary via electronic; hardcopies]</td>
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<tr>
<td>7. Contractor signed:</td>
<td></td>
<td>Date</td>
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<tr>
<td>8. Submitted to Exec Office:</td>
<td></td>
<td>Date</td>
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<tr>
<td>9. Council approved (if necessary):</td>
<td></td>
<td>Date</td>
</tr>
<tr>
<td>10. Executive signed:</td>
<td></td>
<td>Date</td>
</tr>
<tr>
<td>11. Contractor Original Returned to dept:</td>
<td></td>
<td>Date</td>
</tr>
<tr>
<td>12. County Original to Council</td>
<td></td>
<td>Date</td>
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</tbody>
</table>
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
RE: Opportunity Council, Whatcom Homeless Service Center Administration, Amendment #9
DATE: May 9, 2013

Enclosed are two (2) originals of a contract amendment between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**
  The purpose of this contract is to provide rental assistance and administrative services related to the operation of the Whatcom County Homeless Service Center (WHSC) which serves as a centralized point of entry for homelessness prevention and re-housing services for Whatcom County residents. Full implementation of a centralized and coordinating point of entry is the number one strategy of the Whatcom County Plan to End Homelessness. In the first quarter of 2013, WHSC provided prevention and re-housing services to 161 new households.

- **Funding Amount and Source**
  The source of funding for this contract amendment is County document recording fees, Veterans Assistance funds, Department of Commerce Consolidated Homeless Grant funds and the North Sound Mental Health Administration (NSMHA). This amendment increases the 2013 contract budget by $175,391 for a total of $805,592. Council action is required because the amended contract value exceeds a 10% increase in contract value since last approved by Council.

- **Differences from Previous Contract**
  This amendment adds funds recently awarded from a Department of Commerce pilot program targeting homeless families with children. We expect to house 25 families as a result of this addition. This amendment also adds funds from County document recording fees to provide emergency shelter for people waiting for an available permanent housing unit, and additional rental assistance in order to increase the capacity to re-house homeless households.

The contract history is:
- Original amount $381,915 (calendar year 2011)
- Amendment #1 $150,000 (add veteran’s housing funding)
- Amendment #2 $1,909 (add training funds)
- Amendment #3 $33,210 (add high-need, high-risk rental subsidies)
- Amendment #4 $279,926 (extend 6 months, Jan-June 2012)
- Amendment #5 $15,000 (add veteran’s housing funding)
- Amendment #6 $809,934 (extend 18 months, July 2012-Dec 2013)
- Amendment #7 $80,811 (add NSMHA funding)
- Amendment #8 $30,000 (adds Risk Mitigation Fund)
- Amendment #9 $175,391 (adds assistance for families and emergency shelter)

Please contact Gail de Hoog at extension 30693 if you have any questions regarding this amendment. Encl.
WHATCOM COUNTY HEALTH DEPARTMENT CONTRACT AMENDMENT

Whatcom County #201011042

PARTIES:
Whatcom County
Whatcom County Courthouse
311 Grand Avenue
Bellingham, WA 98225

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

AMENDMENT NUMBER: 9
CONTRACT PERIODS:
Original: 01/01/2011-12/31/2011
Amendment #1: 01/15/2011-12/31/2011
Amendment #2: 03/15/2011-12/31/2011
Amendment #3: 08/01/2011-12/31/2011
Amendment #4: 01/01/2012-06/30/2012
Amendment #5: 05/16/2012-06/30/2012
Amendment #6: 07/01/2012-12/31/2013
Amendment #7: 12/01/2012-12/31/2013
Amendment #8: 03/01/2013-12/31/2013
Amendment #9 06/01/2013-12/31/2013

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Amend Exhibit “A” Scope of Work by adding, Section IV Statement of Work, A Programmatic Services,

   “4i. At least 25 households who are pregnant or parenting who are DSHS TANF clients residing in emergency shelter or a place not meant for habitation will be assisted according to the Department of Commerce Consolidated Homeless Grant Ending Family Homelessness Program pursuant to the Guidelines attached as Exhibit H”

2. Amend Exhibit “A” Scope of Work, Section IV Statement of Work, C Anticipated Outcomes, with the following revisions and additions:

   “2a. At least 175 households receive risk assessments, housing plans, and shallow rent subsidies.

   6. Emergency Shelter Assistance
      a. 30 homeless households receive emergency shelter assistance
      b. 90% of homeless households that receive emergency shelter assistance are placed into permanent housing
      c. 85% of homeless households that exit the project retain permanent housing

   Replace Exhibit “A” Scope of Work, with the attached Exhibit “A” to reflect those changes.

3. Replace Exhibit “B”, Compensation with the attached Exhibit “B”.


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4. Amend Exhibit "G", Risk Mitigation Fund by revising Attachment 1 and 2 to clarify items to be submitted with each claim. The revised Attachments 1 and 2 are attached.

5. The effective date of the amendment is June 5, 2013.

6. Funding for the contract period January 1, 2013 thru December 31, 2013 is not to exceed $805,592.

7. The funding for the total contract period January 1, 2011 to December 31, 2013 is not to exceed $1,958,096.
ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT.

ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT.

Signature is required below.

APPROVAL AS TO PROGRAM: Anne Deacon, Human Services Program Manager Date 5/13/13

DEPARTMENT HEAD APPROVAL: Region A. Delahunt, WCHD Director Date 5/13/13

APPROVAL AS TO FORM: Elizabeth L. Gallery, Civil Deputy Prosecutor Date 05/14/13

FOR THE CONTRACTOR: Sheri Emerson ASSOCIATE DIRECTOR Date 5/9/13

Contractor Signature Print Name and Title Date

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this day of , 2013, before me personally appeared 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:

FOR WHATCOM COUNTY:

Jack Louws County Executive Date

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this day of , 2013, 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:
Revised EXHIBIT "A" (Amendment #9)  (SCOPE OF WORK)

I. Background

Through funding from Washington State ESSHB 2163 and HB 1359 (i.e. document recording fees), Whatcom County established the Whatcom Homeless Service Center (WHSC), a housing services project that serves as a centralized point of entry for homelessness prevention and re-housing services for Whatcom County residents. WHSC is vital to the transformation of the county’s continuum of care from managing homelessness to ending homelessness. The WHSC implements programs and services identified in the Ten-Year Plan to End Homelessness in Whatcom County and authorizes and coordinates service delivery among WHSC partner agencies. Since its inception, the WHSC has added a diverse mix of funding sources.

The WHSC is modeled upon evidence-based, housing first approaches to homelessness prevention and rapid re-housing. The intent of WHSC housing services is to shift the focus from reliance upon emergency shelters and costly institutional facilities in meeting the needs of the homeless to prevention and permanent housing. By serving as a centralized coordinating system of access to homeless services and by transitioning homeless individuals and families as quickly as possible into permanent housing, in partnership with supportive service providers, the WHSC will improve outcomes for homeless individuals and families and ensure the more efficient use of public resources.

The WHSC programs include both rental subsidy and housing case management components. WHSC staff determines client eligibility for services, authorizes and distributes rent subsidies to local landlords on behalf of participating clients, makes referrals to housing case management services provided by partner agencies, and coordinates required data collection efforts.

Services will be provided to low-income and/or homeless individuals and households residing in Whatcom County.

II. Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commerce</td>
<td>Washington State Department of Commerce</td>
</tr>
<tr>
<td>CHG</td>
<td>Consolidated Homeless Grant</td>
</tr>
<tr>
<td>HMIS</td>
<td>Washington State’s Homeless Management Information System</td>
</tr>
<tr>
<td>HPRP</td>
<td>HUD’s Homeless Prevention and Rapid Re-housing Program</td>
</tr>
<tr>
<td>Housing first</td>
<td>A best practice approach to homelessness reduction, emphasizing permanent</td>
</tr>
<tr>
<td></td>
<td>housing placement with supportive services and rapid re-housing if a</td>
</tr>
<tr>
<td></td>
<td>housing placement is unsuccessful</td>
</tr>
<tr>
<td>HUD SHP</td>
<td>U.S. Department of Housing and Urban Development Supportive Housing Program</td>
</tr>
<tr>
<td>HUD ESG</td>
<td>U.S. Department of Housing and Urban Development Emergency Solutions Grant</td>
</tr>
<tr>
<td>LIHEAP</td>
<td>Low Income Household Energy Assistance Program</td>
</tr>
<tr>
<td>Partner Agencies</td>
<td>Agencies that contract with Whatcom County for the delivery of housing</td>
</tr>
<tr>
<td></td>
<td>case management services, in connection with the WHSC</td>
</tr>
<tr>
<td>Permanent Supportive</td>
<td>Chronically homeless individuals/households with significant barriers to</td>
</tr>
<tr>
<td>Housing Population</td>
<td>permanent housing; will receive deep rent subsidies and intensive</td>
</tr>
<tr>
<td></td>
<td>housing case management services</td>
</tr>
</tbody>
</table>
Prevention Population: Individuals/households who are at immediate risk of eviction and homelessness; may receive financial assistance and are eligible for housing case management services as needed.

Program Exit: The date when, in the opinion of the client's case manager and as agreed to by the client, the client no longer needs housing case management or rent subsidy to ensure housing stability or two months after the date at which the client's income exceeds 50% of the area median income, whichever comes first.

Risk Mitigation Fund: A reserve account that will be available to reimburse the Opportunity Council for excess damage or unpaid rent associated with units rented to high risk clients in the Shelter Plus Care or Supportive Housing Program.

Re-Housing Population: Homeless individuals/households with a range of barriers to permanent housing; will receive rent subsidies and housing case management services.

SSVF: Supportive Services For Veteran Families

WHSC: Whatcom Homeless Service Center

III. Project Description and Design

The Contractor will serve as the administrative entity for the WHSC, overseeing day-to-day operations and administrative functions. The WHSC will be staffed by four positions: a Project Manager, a Housing Referral Specialist, a Rapid Entry Coordinator, and an HMIS Coordinator. WHSC staff who are employed by the Contractor are responsible for program implementation. Programmatic responsibilities of WHSC staff include:

1. Managing a coordinated, centralized homeless housing intake system.
2. Administering a client housing assessment and/or reviewing client housing assessment results submitted by partner agencies, based on a standardized housing assessment tool to be used by WHSC staff and all WHSC partner agencies to assess barriers to housing and/or risk for priority for services.
3. Determining and documenting client eligibility.
4. Making client referrals for housing and services.
5. Authorizing and issuing rental assistance subsidies.
6. Authorizing and/or coordinating case management services that will be delivered by partner agencies.
7. Cultivating and maintaining relationships with local landlords who agree to participate in the program, in order to increase the community's permanent housing stock.
8. Managing all aspects of community-wide HMIS including ensuring data quality and accurate reporting, and supporting agency users of HMIS.
9. Serving as liaison for homeless housing activity to the network of service providers and other stakeholders.

IV. Statement of Work

The Contractor will be responsible for programmatic and administrative services associated with the operation of the Whatcom Homeless Service Center. Programmatic and administrative services include all activities necessary to operate the WHSC in compliance with the requirements set forth in Section IV.

A. Programmatic Services

The Contractor will:

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1. Manage a coordinated, centralized homeless housing intake system, which includes prioritizing households for services and maintain a case managed interest pool.

2. Administer a client housing intake and/or review client housing intake results submitted by partner agencies, using the standardized housing intake tool, to determine housing and supportive service needs. The Contractor will retain a copy of all intakes performed or reviewed in accordance with the Records Retention requirement contained in the Implementation Guide for Whatcom Service Center Contractors and the Department of Commerce Administrative Requirements for the Consolidated Homeless Grant.

3. Determine and document client eligibility for WHSC rent subsidies and case management services.

4. Administer tenant-based rental assistance including:
   a. Authorize and disburse tenant-based rental assistance for clients, as appropriate based on housing risk assessment results and a determination of need.
   b. Work with the Bellingham Housing Authority to access available Shelter Plus Care vouchers.
   c. At least 225 targeted prevention population households
   d. 150 re-housing population households
   e. 28 households will include a household member who is living with mental illness
   f. 35 permanent supportive housing population households, five will be subsidized at City Gate and two will be subsidized at Opportunity House. These outcomes will be achieved by leveraging additional funding resources (including, but not limited to LIHEAP, HUD SHP, HUD ESG).
   g. At least 10 households with young children who are homeless or living in precarious living situations and at risk of homelessness where at least one head of household is mentally ill will receive long term rental subsidies up to one year and renewable up to one additional year. These households will be identified by Whatcom County Health Department Healthy Children and Families Program
   h. Authorize and disperse rental assistance to eligible veterans who are homeless or at-risk of homelessness following eligibility standards of the Whatcom County Veterans Assistance Fund, set forth in Whatcom County Codes 2.150 and 2.152, and RCW 73.08.005. Contractor shall determine eligibility based on Items A and B of WCC 2.150.025 and shall not have utilization of Item C for determining veteran eligibility. At least 110 veterans or veteran households or those at risk of becoming homeless and 18 homeless veterans will receive financial and supportive services. These outcomes will be achieved by leveraging additional funding resources.
   i. At least 25 households who are pregnant or parenting who are DSHS TANF clients residing in emergency shelter or a place not meant for habitation will be assisted according to the Department of Commerce Consolidated Homeless Grant Ending Family Homelessness Program pursuant to the Guidelines attached as Exhibit H.

5. Make referrals to and/or coordinate housing case management services, to be delivered by partner agencies.

6. Increase the local low-income permanent housing stock by cultivating and maintaining relationships with participating landlords.

7. Work with partner agencies or independently to identify and secure permanent housing placements for clients.

8. Refer WHSC clients to housing stability training programs offered in the community and/or develop and offer a Housing Stability training program to clients.

9. Conduct partner agency staff meetings to ensure effective operations of the WHSC system. Train staff and partner agencies in the use of housing intake tools, confidentiality laws (e.g., chemical dependency, domestic violence), HMIS and other corresponding programs.

10. Ensure compliance with state and federal confidentiality laws and regulations.

11. Serve as a source of information and referral to clients and partner agencies.

12. Serve as a liaison to community stakeholders regarding homeless housing activities.

13. Manage emergency shelter funds as part of the rental subsidy funds, including the assessment of client needs and the authorization and disbursement of emergency shelter funds. Emergency shelter funds are to be used only under the following conditions:
   a. Funding and/or capacity for emergency shelter are unavailable from any other source.
   b. Emergency shelter is being provided on a short-term basis and the shelter will serve as a necessary step before placement into permanent housing.
c. Other housing options (e.g., transitional or permanent housing placement) are unavailable or are not appropriate at the point in time, given the individual’s housing risk assessment and housing plan.

14. Manage community-wide HMIS data quality and reporting by providing training to all users and working with partner agencies to ensure appropriate data collection protocols are in place. Ensure data collection from partner agencies is occurring on schedule, and report HMIS data to Commerce on a quarterly basis or as needed, in compliance with the requirements set forth by Commerce.

15. Collect data in regards to the number of clients who are receiving services, the type of service provided, the amount of resource expended, clients’ housing stability/tenure via surveys, HMIS data analysis, and/or other methods at one year, two years, and three years’ post program exit; and report data as required to Whatcom County and Commerce.

16. Collect and/or coordinate the reporting of housing case management service data to the Bellingham Housing Authority, as required by the Shelter Plus Care program.

17. Conduct Housing Quality Standard (HQS) or Housing Safety Standard (HSS) inspections for occupied rental units, as described in Section IV.

18. Comply with the program requirements contained in the “Whatcom County Homeless Service Center Implementation Guide” (hereafter referred to as the “Guide”), and incorporated into this contract by reference. Whenever a revised edition of the Guide is published, the Contractor will be notified via e-mail correspondence that a new edition is available.

19. Comply with the Implementation Guide for Whatcom County Consolidated Homeless Grant Contractors, incorporated into this contract by reference and program requirements contained in the “Department of Commerce Guidelines for Consolidated Homeless Grant” and “Department of Commerce Administrative Requirements for the Consolidated Homeless Grant” and incorporated into this contract by reference. Changes to the CHG Guidelines and Administrative Requirements may be made without contract amendment. Whenever a revised edition of the CHG Guidelines and Administrative Requirements is available County will provide a notice to the Contractor via e-mail correspondence.

20. Comply with eligibility requirements for serving veteran as set forth in Whatcom County Codes 2.150 and 2.152, and RCW 73.08.005 and incorporated into this contract by reference. Contractor shall determine eligibility based on Items A and B of WCC 2.150.025 and shall not have utilization of Item C for determining veteran eligibility.

21. Perform all other activities identified by the administrative entity and Whatcom County as necessary to implement and manage the housing services project.

**B. Administrative Responsibilities**

The contractor will:

1. Provide all Human Resource and administrative services to WHSC employees (e.g., payroll, benefits, office supplies and equipment, space rental, IT technical support, etc.).

2. Perform all disbursement, accounting, financial management, and reporting functions necessary to manage the funds allocated to WHSC operations.

3. Support WHSC in the management of the HMIS, including maintaining the HMIS system, providing troubleshooting and technical assistance.

4. Maintain all financial and client eligibility documentation.

5. Provide ongoing documentation of all program expenses and client eligibility determinations, as described in Section IV.

6. Ensure that the processes and internal controls initially designed in the project are operating as planned and making policy adjustments, as needed.

7. Send WHSC staff to trainings, conferences, and technical assistance events related to efforts to reduce homelessness in Whatcom County or in Washington State, including but not limited to Washington State Homeless Coalition events and Balance of State Homeless Steering Committee meetings.

8. Participate in program evaluation efforts, including attending meetings with program evaluators, as requested.
9. Submit claims to the County for reimbursement for excessive property damage or rent loss resulting from clients housed through the Shelter Plus Care or Supportive Housing Programs according to the requirements set forth in Exhibit G.

C. Anticipated Outcomes

The County will assess the effectiveness of the housing services project through HMIS data collection and the reports submitted on a quarterly basis to the Health Department. The following are the anticipated outcomes of this project:

1. Prevention Population
   a. At least 225 at-risk households receive risk assessments, housing plans, and temporary financial assistance.
   b. At least 90% of at-risk renters overcome financial barriers to housing retention, thus remaining housed for one month.
   c. 85% of assisted at-risk households retain their existing housing for at least six months

2. Re-housing Population
   a. At least 175 households receive risk assessments, housing plans, and shallow rent subsidies.
   b. Up to 90% of re-housing population households are placed in permanent housing, up to 10% are placed in transitional or other types of interim housing.
   c. 75% of re-housing clients exiting the project retain permanent housing.

3. Permanent Supportive Housing Population
   a. At least 18 households receive risk assessments, housing plans, deep rent subsidies, and intensive case management.
   b. Up to 90% of permanent supportive housing households are placed in permanent housing, up to 10% are placed in transitional or other types of interim housing.
   c. 85% of permanent supportive housing clients exiting the project retain permanent housing.

3. Veteran Housing
   a. At least 21 at-risk veteran households receive risk assessments, housing plans, and temporary financial assistance.
   b. At least 90% of at-risk veteran renters overcome financial barriers to housing retention, thus remaining housed for one month.
   c. 85% of assisted at-risk veteran households retain their existing housing for at least six months
   d. Up to 90% of veteran re-housing population households are placed in permanent housing, up to 10% are placed in transitional or other types of interim housing.
   e. 75% of veteran re-housing clients exiting the project retain permanent housing.

4. Housing Development
   a. Additional landlords are recruited into the WCHSC program.
   b. Landlords reduce tenant criteria.
   c. Additional rental subsidy revenue is incorporated into the WHSC housing service system.

5. Healthy Children and Families
   a. At least 10 households with head of household living with mental illness receive risk assessments, housing plans, deep rent subsidies, and intensive case management.
   b. 100% households with head of household living with mental illness are placed in permanent housing.
   c. 85% of households with head of household living with mental illness who exit the program retain permanent housing

6. Emergency Shelter Assistance
   a. 30 homeless households receive emergency shelter assistance
   b. 90% of homeless households that receive emergency shelter assistance are placed into permanent housing
   c. 85% of homeless households that exit the project retain permanent housing
V. Special Conditions

The Contractor will also comply with all special terms and conditions of Exhibits D through H.

VI. Reporting Requirements

The contractor will submit quarterly reports that detail the number of households served in the categories of Prevention, Re-Housing, Permanent Supportive Housing, Emergency Shelter and Veterans Housing and Healthy Children and Families Housing. The reports are due by the 15th of the month following the end of each quarter (April 15, July 15, October 15, and January 15).
Revised EXHIBIT "B" (Amendment #9)
(COMPENSATION)

I. Budget and Funding
The source of funding for this contract, in an amount not to exceed $805,592, is County-held ESSHB 2163 and HB 1359 funds (i.e. document recording fees), Veterans Assistance funds and Consolidated Homeless Grant funds.

The budget for this project is as follows:

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Estimated Unit Cost</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager (.5 FTE)</td>
<td>$46.17/Hr 2163 &amp; CHG</td>
<td>$ 48,015.00</td>
</tr>
<tr>
<td>HMIS Coordinator (.43 FTE)</td>
<td>$29.08/Hr 2163</td>
<td>$ 30,697.00</td>
</tr>
<tr>
<td>Rapid Entry Coordinator (1.0 FTE)</td>
<td>$24.84/Hr 2163</td>
<td>$ 51,649.00</td>
</tr>
<tr>
<td>Housing Referral Specialist (1.0 FTE)</td>
<td>$21.64/Hr 2163</td>
<td>$ 45,013.00</td>
</tr>
<tr>
<td>Rental Assistance and/or Subsidies</td>
<td>2163 &amp; CHG</td>
<td>$102,350.00</td>
</tr>
<tr>
<td>Rental Assistance and/or Subsidies individual/families with mental illness</td>
<td>NSMHA Grant</td>
<td>$160,650.00</td>
</tr>
<tr>
<td>Rental Assistance for Veterans and their families</td>
<td>Veterans Assistance</td>
<td>$135,500.00</td>
</tr>
<tr>
<td>Ending Family Homelessness (TANF Families)</td>
<td>CHG</td>
<td>$ 93,751.00</td>
</tr>
<tr>
<td>Emergency Shelter Assistance</td>
<td>2163</td>
<td>$ 30,000.00</td>
</tr>
<tr>
<td>Training, travel, conference, and/or memberships</td>
<td>2163</td>
<td>$ 3,000.00</td>
</tr>
<tr>
<td><strong>Subtotal 1:</strong></td>
<td></td>
<td><strong>$ 700,625.00</strong></td>
</tr>
<tr>
<td>Administration 10.7%</td>
<td>2163 &amp; CHG &amp; Veterans &amp; NSMHA</td>
<td>$ 74,967.00</td>
</tr>
<tr>
<td><strong>Subtotal 2:</strong></td>
<td></td>
<td><strong>$ 775,592.00</strong></td>
</tr>
<tr>
<td>Risk Mitigation Fund</td>
<td>2163</td>
<td>$ 30,000.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$ 805,592.00</strong></td>
</tr>
</tbody>
</table>

The contractor may transfer funds between budget line items comprising Subtotal 1 in an amount up to 10% of the total budget. In no instance shall the indirect rate/program administration line item exceed 10.7% of direct costs. No budget transfers are allowed for the Risk Mitigation Fund line item.

II. Invoicing

1. The Contractor shall submit itemized invoices up to two times per month in a format approved by the County. Invoices submitted for payment must include:
   a. Documentation of all reimbursement costs related to training, travel, conferences and memberships (i.e. mileage records documenting the name of the staff member claiming mileage reimbursement, the date and purpose of the trip, and the number of miles traveled; receipts for: ground transportation, coach airfare, ferry fees, registration fees, lodging and meal costs).
   b. Reimbursement for staff costs must include a General Ledger detail documenting personnel costs charged to the contract.
c. Requests for reimbursement of rental assistance expenditures must include a list of unique identifier numbers for recipients of rental assistance, the landlord to whom the rental assistance payment was made, the amount of assistance in each instance, and documentation of payment. Reimbursement requests for emergency shelter expenditures must include a unique client identification number, the name of the emergency shelter provider, the cost being claimed for reimbursement with an accompanying receipt, the dates during which the emergency shelter was provided, and the reason for the emergency shelter stay.

d. Claims for reimbursement from the Risk Mitigation Fund must follow the guidelines established in Exhibit G.

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

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

CHG Guidelines for Ending Family Homelessness Program

Overview
The intent of the Ending Family Homelessness is to reduce homeless for households with children who are unsheltered or living in shelters and motels by 50 percent by 2015. The initiative draws on state and national research and results that have demonstrated reductions in homelessness through:

- Rapid rehousing targeted for TANF households with immediate needs.
- Progressive engagement - matching resources to need through ongoing needs assessment.
- Active coordination with DSHS and WorkSource.

Funding
Grantees will receive a base funding amount. Additionally, performance-based incentive funding will be available in the future.

Eligibility
- Pregnant or parenting households who are DSHS TANF clients residing in emergency shelter or a place not meant for habitation (HMIS Universal Data Element 3.9 responses 1 or 16).

Documentation of Eligibility
- Homelessness – as specified in the guidelines for emergency shelter, voucher-paid motel, or unsheltered.
- Income – print-out from DSHS Benefits Verification System (BVS).

Recertification of Household Eligibility
- Recertification must occur at 6 months
- Income
  ✓ Households still receiving TANF assistance - document with print-out from DSHS BVS. Household will be eligible for up to 6 additional months of Rapid Rehousing for TANF assistance as needed.
  ✓ Households no longer TANF-eligible - Reassess household’s need for continued rental assistance. If need still exists, Rapid Rehousing for TANF Households funding may be used for an additional 3 months of rental assistance.

Eligible Activities
- Rent Assistance – rapid rehousing only.
  ✓ The rent assistance model must be based on household income.
  ✓ Households cannot pay more than 30% of their income for rent and utilities during program participation.
  ✓ Includes all allowable expenses as specified in guidelines.
  ✓ Unsheltered clients engaged in housing search may receive hotel/motel vouchers for up to 30 days if no other shelter option is available.

- Program Operations
  ✓ Case managers must provide direct service connections. Based on a brief standardized assessment, programs must directly connect (not passively refer) families to the appropriate services and follow-up with services providers, helping clients to address barriers to access.
  ✓ Includes all allowable expenses as specified in guidelines.

- Data Collection, Evaluation and Planning
  ✓ Includes all allowable expenses as specified in guidelines.

- Administration
  ✓ Includes all allowable expenses as specified in guidelines.
Attachment 1

WHSC Damage Loss Claim Form

Client Name
Property Address
Property Owner
Program
OC Master Lease Y N
Was client receiving case management?
Frequency of home visits
Case management agency
Reason for client departure (asked to leave, illness, jail, etc)

Vacancy Loss Claim:
Proper notice given to vacate: Yes/No Date:
Last day occupied:
Date the unit was re-rented:
Lease Expiration date:

Total Vacancy Loss (1 mo. Rent maximum):

A. $_________

Damage Costs:
Cleaning $_________
Hauling $_________
Painting $_________
Repairs/Replacements $_________
Carpet Cleaning $_________
Other $_________

Total Damage Costs: B.$_________

Legal Expenses:
Court costs / Legal fees C.$_________

Total (Vacancy Loss + Damage Costs + Legal Costs):

D.$_________

Amount covered by Security Deposit

E.$_________

Amount covered by S+C or SHP Damage Claim

F. $_________

Total Damage/Loss Claim

D-E-F $_________

(See attached invoices)

$3,000 LIMIT

Opportunity Council Certification:
I certify that all information above is correct and all available funding sources have been accessed to cover the above costs.

Signature __________________________ Date ______________________

Whatcom County Health Department certification:
I certify that all the requirements of Exhibit G (Risk Mitigation Fund) have been met.

Signature: __________________________ Date: __________

Printed Name and Title: ______________________________

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Attachment 2

Risk Mitigation Damage Claim Checklist

Answer Yes=Y, No=N, or Not Applicable=N/A. Provide further explanations as needed in comment section with reference to item number.

_______ 1. Tenant is a Shelter Plus Care or a Supportive Housing program Participant

_______ 2. This claim was made in up to thirty days from when tenant moved out or is no longer a participant in the qualifying program.

_______ 3. WHSC Damage/Loss Claim Form completed and attached

_______ 4. Move In/Move Out form attached. Form documents move-in and move-out conditions. All parties (landlord, WHSC representative or housing case manager, tenant) are identified and have signed and date the report at move-in and move-out.

_______ 5. Client file contains evidence of:
   
a. landlord/property management promptly communicating with WHSC representative when problems arose ______
   b. written notices to tenant ________
   c. tenant contact with law enforcement authorities_______
   d. late rent, ________
   e. names of persons added to lease or otherwise authorized to occupy the unit ______
   f. other actions that may affect the continuation of tenancy ________

_______ 6. Proof of three quotes for cumulative repair/replacement work from one vendor over $2,000 attached.

_______ 7. Clear documentation that damages exceed normal cleaning, wear and tear attached.

_______ 8. Receipts for all repair/replacement work and legal costs attached.

_______ 9. Shelter Plus Care or Supportive Housing Program damage & expense claim/vacancy loss claim and determination made by Bellingham/Whatcom County Housing Authorities attached.

_______ 10. Dept. of Commerce or Housing Authority Inspection Report Attached.

_______ 11. Tenant Payment History attached.

COMMENTS: __________________________________________________________________________
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I certify that all the requirements of Exhibit G (Risk Mitigation Fund) to the WHSC contract between the Opportunity Council and Whatcom County have been met.

WHSC Signature________________________________________________________________ Date __________

Title: ______________________________________________________________________________

HL_060513_Opportunity_Council_WrHSC_Admin_Amend_#9 109 14
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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EXECUTIVE:

Received
MAY 14 2013
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:

Ordinance amending WCC Title 20, zoning maps, CP & maps, related to rural zoning

ATTACHMENTS:

1. Proposed Ordinance, including draft amendments and Findings of Fact and Reasons for Action
2. Staff Memorandum

SEPA review required? (X) Yes ( ) NO
SEPA review completed? (X) Yes ( ) NO

Should Clerk schedule a hearing? (X) Yes ( ) NO
Requested Date

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (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.)

A proposed ordinance to amend the Whatcom County Comprehensive Plan Chapter Two (Land Use); Whatcom County Code Title 20 (Zoning) Chapters 20.32 Residential Rural (RR) District, 20.34 Rural Residential-Island (EI) District, 20.36 Rural (R) District, 20.37 Point Roberts Transitional Zone (TZ) District, 20.71 Water Resources Protection Overlay, 20.80 Supplementary Requirements, 20.82 Public Utilities, and 20.97 Definitions; Whatcom County Code Title 24 (Health) Chapter 24.11 Drinking Water; and to amend the Whatcom County Comprehensive Plan Map 8 (Land Use Designations) and the official zoning map in the areas generally described as Birch Bay-Lynden & Valley View, Fort Bellingham/Marietta, North Bellingham, Smith & Guide Meridian, and Welcome.

COMMITTEE ACTION:

COUNCIL ACTION:

5/07/2013: Introduced

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
PLN2012-00012

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
ORDINANCE AMENDING WHATCOM COUNTY ZONING CODE TITLE 20, THE OFFICIAL WHATCOM COUNTY ZONING MAP, AND THE WHATCOM COUNTY COMPREHENSIVE PLAN AND MAPS, TO IMPLEMENT CHANGES RELATING TO RURAL LAND USE PLANNING

WHEREAS, the Washington State Growth Management Act (GMA) requires Whatcom County to include a rural element in its Comprehensive Plan that governs rural development; and

WHEREAS, time is of the essence to complete the revisions of Whatcom County’s rural element due to an order of the Western Washington Growth Management Hearings Board in Futurewise v. Whatcom County, Case No. 11-2-0010c; and

WHEREAS, the recommended amendments have been considered by the Whatcom County Planning Commission, the Whatcom County Council Planning and Development Committee and the Whatcom County Council; and

WHEREAS, legal notice requirements have been met; and

WHEREAS, the County Council finds the Comprehensive Plan and zoning amendments in the interest of the public health, safety, and welfare, based on the following findings and conclusions:

FINDINGS OF FACT:

2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 12, 2013.

3) The proposed amendments were posted on the County website on March 11, 2013.

4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County’s e-mail list on March 11, 2013.

5) Notice of the subject amendment was submitted to the Washington State
Department of Commerce on March 11, 2013.

6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on March 16, 2013.

7) Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on March 8, 2013.


GMA Requirements

9) The Washington Growth Management Act (GMA) requires county comprehensive plans to include a rural element that protects the county’s established rural character by containing or otherwise controlling rural development.

10) GMA (RCW 36.70A.070(5)(a)) allows counties to consider local circumstances in its rural element but requires counties to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of RCW 36.70A. (See Conclusions 2 and 3 below).

11) GMA allows, but does not require, counties to designate "limited areas of more intensive rural development" (LAMIRDs) (RCW 36.70A.070(5)(d)) and describes three types of development patterns that may be considered LAMIRDs:

   a) Type I: “Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development villages, hamlets, rural activity centers, or crossroads developments...Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas.” (RCW 36.70A.070(5)(d)(i)) In RCW 36.70A.070(5)(d)(iv), GMA states, “Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands as provided in this subsection.” GMA requires counties to establish logical outer boundaries for areas of more intensive rural development and describes considerations that must be addressed in establishing those boundaries Per RCW 36.70A.070(5)(d)(v), existing areas are those that existed on July 1, 1990.

   b) Type II: “The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting but that do not include new residential development...” (RCW 36.70A.070(5)(d)(ii)

   c) Type III: “The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and
isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents." (RCW 36.70A.070(5)(d)(iii)

12) GMA requires that the rural element of a county comprehensive plan provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses, and allows counties to use innovative zoning techniques that will accommodate appropriate rural densities and uses that are consistent with rural character.

13) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by:
   a) Containing or otherwise controlling rural development;
   b) Assuring visual compatibility of rural development with the surrounding rural area;
   c) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
   d) Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and
   e) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

14) GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor’s office informed the Planning Commission and County Council of this requirement and, in accordance with Attorney General’s Advisory Memorandum, advised them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

15) The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. (RCW 36.70A.011)

Growth Management Hearings Board Decisions: Futurewise vs. Whatcom County

16) In Futurewise v. Whatcom County and Gold Star Resorts, Inc. (#05-2-0013 Sept. 20, 2005 Final Decision and Order), the Western Washington Growth Management Hearings Board (WWGMHB) found Whatcom County out of compliance on three issues: The policies pertaining to Small Town, Crossroads Commercial, Resort and Recreational Subdivision, Suburban Enclave, and Transportation Corridor land use designations allow the creation of more intensive areas of rural development that do not comply with RCW
36.70A.070(5)(d); The Rural Residential zones (RR-1, RR-2, RR-3), Eliza Island (EI) zone, Rural two-acre (R-2A), and Rural Residential Island (RRI) zones allow residential densities that are not rural in the rural areas and are not in limited areas of more intensive rural development per RCW 36.70A.070(5)(d); and Urban Residential three-per-acre (UR-3) zoning in urban growth areas (except the UR-3 in Lake Whatcom watershed and the airport hazard area) failed to achieve appropriate urban densities.

17) In June, 2007 Whatcom County rezoned approximately 1,700 acres in the Ferndale and Everson UGAs to UR-4 in 2007 (Ord. 2007-030 and 2007-045) to address the urban density noncompliance issue in the September 20, 2005 Futurewise v. Whatcom County and Gold Star Resorts, Inc. decision.

18) The WWGMBH issued a finding of compliance on the urban density issue on August 30, 2007.

19) The September 20, 2005 Futurewise v. Whatcom County and Gold Star Resorts, Inc. decision relating to the land use designations and rural density issues was reversed in Whatcom County Superior Court in 2006. The Superior Court decision was, in turn, reversed by the Division I Court of Appeals in 2007, which reinstated the 2005 WWGMHB decision and ordered Whatcom County to comply with that decision (140 Wn. App. 378). In December, 2009 the Supreme Court of the State of Washington reversed the Court of Appeals’ holding that the hearings board did not improperly apply a bright line in addressing the challenge to Whatcom County’s rural densities, but affirmed the Court of Appeals’ decision that Whatcom County’s comprehensive plan did not comply with the Growth Management Act’s LAMIRD provisions. The Supreme Court remanded the rural density challenge to the Hearings Board for reconsideration without applying a bright line rule, and ordered Whatcom County to “revise its comprehensive plan to conform to the LAMIRD provision of the Growth Management Act and then apply the statutory criteria to establish appropriate areas of more intensive rural development.” (167 Wn.2d 723, 735, 222 P.3d 791)

20) In August, 2009 Whatcom County amended Whatcom County Code (WCC) Chapter 20.34 Rural Residential – Island District (one of the zones found to be out of GMA compliance in the 2005 Futurewise vs. Whatcom County decision) to change the required minimum lot size from three acres to five acres (Ord. 2009-062).


22) In 2011 the Washington Supreme Court issued a ruling in Kittitas County (172 Wash.2d 144) regarding the GMA requirement that county comprehensive plans must contain measures that protect the rural character.

23) On September 9, 2011, the GMHB Order Following Remand from the Supreme Court regarding the remaining rural density from case #05-2-0013 (remanded by the 2009 Supreme Court decision) found Ordinance 2011-013’s
retention of rural zoning with density of one dwelling per two acres was compliant with the GMA because it was limited to areas in which similar densities had already been established.


25) The January 9, 2012 GMHB Final Decision and Order (FDO) in Futurewise et al v. Whatcom County (#11-2-0010c) found the amendments adopted under Ordinance 2011-013 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

26) The January 4, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom County (#11-2-0010c) found some amendments adopted under Ordinance 2012-032 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

27) The January 4, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom County (#11-2-0010c) found the population monitoring requirements of Policy 2DD-1 adopted by Ordinance 2012-032 does not create an internal inconsistency which violates GMA and is a “measure to contain and control rural development” that complies with GMA.

Other Relevant Growth Management Hearings Board Decisions

28) Regarding the term “built environment,” the built environment includes those facilities which are manmade, whether they are above or below ground, and the built environment must predominate within a LAMIRD, though it may include limited undeveloped lands. (Anacortes vs. Skagit County, Case No. 00-2-0049c, Final Decision and Order, February 6, 2001)

29) The WWGMHB found that RCW 36.70A.115 does not impose an obligation on counties to conduct a needs and capacity analysis for areas outside the UGAs and that provision does not require a rural lands analysis but instead merely requires the County to ensure sufficient capacity of land for development to accommodate the growth allocated in the County’s countywide planning policies. (Friends of Skagit County vs. Skagit County, Case No. 07-2-0025c, Final Decision and Order, pp-43-43, May 12, 2008)

30) The WWGMHB found the uses a county allows within LAMIRDs designated per RCW 36.70A.070(5)(d)(i) must be consistent with (though not necessarily the same as) the uses as of July 1, 1990, and allowance of a broader range of uses as conditional uses is not compliant with GMA. (Dry Creek Coalition and Futurewise vs. Clallam County, Case No. 07-2-0018c, Final Decision and Order, April 23, 2008)

31) The WWGMHB found Clallam County’s Rural Neighborhood Conservation (NC) Overlay (Clallam County Code 33-10-015), which permits rural densities outside
LAMIRDs greater than one dwelling per five acres based on a calculation of the density of developed lots within 500 feet of a property, to be compliant with the Growth Management Act. The Board stated, "Because infill allowed by the NC overlay is limited to neighborhoods that have already been substantially developed, this will not lead to the ‘inappropriate conversion of undeveloped lands into sprawling, low-density development...'”, a reference to Goal 2 of the GMA. (Dry Creek Coalition and Futurewise v. Clallam County, WWGMHB No. 07-2-0018c, Compliance Order, November 3, 2009, p.10)

32) The Washington State Supreme Court has held that a growth management hearings board cannot base its evaluation of a county’s permitted rural densities on a “bright line” rural density of one dwelling per five acres. (Thurston County vs. Western Washington Growth Management Hearings Board, 164 Wn.2d 329, 190 P.3d 38, 2008; and Gold Star Resorts vs. Futurewise and Whatcom County, 167 Wn.2d 723, 735, 222 P.3d 791, December 17, 2009)

33) The WWGMHB found Whatcom County used appropriate Type I LAMIRD criteria to revise its comprehensive plan designation boundary in the Lake Samish area. (Leenstra vs. Whatcom County, WWGMHB Case No. 03-2-0011, Final Decision and Order, September 26, 2003)

34) The WWGMHB found Jefferson County was not clearly erroneous when it designated a LAMIRD adjacent to an urban growth area where the City of Port Townsend had decided it was inappropriate to expand its urban growth area. (People for a Liveable Community, Jim Lindsay, et al. vs. Jefferson County, WWGMHB Case No. 03-2-0009c, Final Decision and Order, August 22, 2003)

35) The WWGMHB found that the use of the term “or” rather than “and” in RCW 36.70A.070(d)(i)(C) “appears to indicate a Legislative determination that the factors of building size, scale, use, or intensity are ones that may be considered in determining the character of the existing area, but that development is not required to meet every one of those parameters. If the Legislature had intended to use the word ‘and’ in the statute, they would have done so.” (Dry Creek Coalition vs. Clallam County, WWGMHB Case No. 08-2-0033, Final Decision and Order, June 12, 2009, p.8)

Whatcom County Policy and Requirements

36) WCC 2.160.080 requires that, in order to approve the proposed comprehensive plan amendments the Planning Commission and County Council must find all of the following:

a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

b) Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.

d) The amendment does not include or facilitate spot zoning.

e) Urban growth area amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a designated TDR sending area, with certain exceptions.

37) Whatcom County’s County-wide Planning Policies include policies related to rural lands:

a) County-wide Planning Policy B.1 states, “The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas.”

b) County-wide Planning Policy B.2 states, “The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density.”

c) County-wide Planning Policy B.3 states, “Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.”

d) County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened.
Public Participation

38) Whatcom County’s County-wide Planning Policies include policies related to citizen involvement:

a) County-wide Planning Policy A.2 states, “The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees.”

b) County-wide Planning Policy A.4 states, “Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process.”

39) The Whatcom County Planning Commission held open work sessions on the proposed amendments on March 14, 2013 and held public hearings on March 28, 2013. Since publication of the first draft amendments on March 11, 2013, the most current draft amendments have been continuously posted on the County’s web site, as have all documents presented to the Planning Commission and all written public comments.

CONCLUSIONS:

1) The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.

2) The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020.

   a. Urban growth. Comprehensive Plan Policy 2DD-1 encourages development in urban areas by concentrating growth in urban areas per the adopted population projections and monitoring rural growth and taking actions as necessary to keep rural growth consistent with adopted projections. The proposed amendments do not affect this policy.

   b. Reduce sprawl. Proposed Comprehensive Plan Policy 2DD-8 and policies guiding growth within rural land use designations (under Goals 2GG, 2JJ, 2KK, 2LL) reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area through use of LAMIRDs with clearly defined boundaries and criteria for creating or changing those boundaries consistent with RCW 36.70A.070(5)(d). Policies 2MM-1 and 2 control and contain areas of higher rural densities. The proposed amendments do not affect these policies.

   c. Transportation. Comprehensive Plan Policy 2DD-1, which encourages growth in urban areas and keeps rural growth consistent with adopted projections, is consistent with effective planning of efficient countywide multimodal transportation systems. Policies 2FF-1, 2FF-2, 2FF-4 and the text describing rural character and lifestyle support rural employment
opportunities, which can reduce vehicle trips from rural to urban areas. The proposed amendments do not affect these policies.

d. Housing. Comprehensive Plan Policies 2GG-2 and 2GG-3, in conjunction with the development regulations in WCC 20.32 Residential Rural District and 20.36 Rural District, allows for residential development at a variety of densities appropriate to established rural character and development patterns. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.

e. Economic development. Comprehensive Plan Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-3, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas within the capacity of natural resources and appropriate levels of rural services. The proposed amendments do not affect these policies.

f. Property rights. Neither the rural element nor the process leading to its adoption has taken private property for public use without just compensation or involved arbitrary and discriminatory actions. On March 28, 2013 the Planning Commission was briefed on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

g. Permits. Nothing in the rural element prevents permit applications from being processed in a timely and fair manner.

h. Natural resource industries. Comprehensive Plan Policy 2FF-2 and development regulations in WCC 20.69 Rural Industrial/Manufacturing District support resource-based industries. Policies 2DD-2.D, 2FF-3, 2GG-4 support minimizing conflicts with resource uses. The proposed amendments do not affect these policies.

i. Open space and recreation. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-2.B, 2DD-2.C, which adopt by reference various development regulations, provide measures to assure visual compatibility with surrounding rural areas, reserve open space through lot clustering, and to protect wildlife habitat and water resources. The proposed amendments do not affect these policies.

j. Environment. Policy 2DD-2.C, which adopts by reference various development regulations, provides measures to protect critical areas and surface and ground water resources. The proposed amendments do not affect this policy.

k. Citizen participation and coordination. Throughout the process to develop and adopt amendments to the rural element, citizens and local jurisdictions have been kept informed and invited to participate through use of e-mail and internet.

l. Public facilities and services. Policy 2DD-2.A.4, which adopts by reference WCC 20.80.212 Concurrency, ensures that no subdivision, commercial development or conditional uses be approved without a written finding that service providers have adequate capacity to serve the development.
and that no County facilities will be reduced below applicable levels of service as a result of the development. The proposed amendments do not affect this policy.

m. Historic preservation. Policy 2DD-7 supports maintaining the historic character and cultural roles of each rural area and community. The proposed amendments do not affect this policy.

3) The rural element of the Comprehensive Plan and the county development regulations, as amended, meet the requirements of the Growth Management Act, RCW 36.70A.

   a. The rural element includes measures that protect the rural character per RCW 36.70A.070(5)(c) in Policies 2DD-1, 2DD-2, 2GG-2, 2GG-3, and 2MM-1-4.

   b. The rural element provides for limited areas of more intensive rural development, limited per the requirements of RCW 36.70A.070(5)(d), in policies 2HH-1 through 3, 2JJ-1 through 8, 2KK-1 and 2, and 2LL-1-4. The proposed amendments do not affect these policies.

   c. The rural element contains a description of rural character and lifestyle that considers local circumstances as permitted in RCW 36.70A.070(5)(a), and contains the GMA definition of rural character per RCW 36.70A.030(15). The proposed amendments do not affect that description.

   d. Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas, as supported by RCW 36.70A.011. The proposed amendments do not affect these policies.

   e. Comprehensive Plan policies describing rural land use designations and rural services (under Goals 2EE, 2GG, 2JJ, 2KK, 2LL, and 2MM), and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(b), which requires the rural element to provide for a variety of rural densities, uses, essential public facilities and rural governmental services. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.

   f. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-5, 2DD-6, 2GG-6, and 2MM-2 support innovative techniques, consistent with RCW 36.70A.070(5)(b). The proposed amendments do not affect these policies.

   g. The County has evaluated the Comprehensive Plan and development regulation amendments to ensure that they do not result in an unconstitutional taking of private property, per RCW 36.70A.370.

4) The amendments to the rural element of the Comprehensive Plan and the county development regulation resolve the noncompliance and invalidity findings of the January 4, 2013 GMHE Compliance Order in Futurewise et al v. Whatcom County (#11-2-0010c):

   a. Variety of Rural Densities: Comprehensive Plan Policy 2GG-3 restricts
rezonings from R10A to districts allowing higher densities, thus ensuring a variety of rural densities similar to that which already exists.

b. Lot Clustering: Amendments to WCC Title 20 revise rural lot clustering provisions to provide enforceable criteria and to prohibit residential development within reserve areas.

c. Rural Neighborhoods: Amended boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels in order to be more consistent with the small-lot 2011 development pattern.

d. Water Lines: The amendments to WCC 20.82.030 and 20.97.452 clarify that urban-scale water service cannot be extended into rural areas by adding a definition of “transmission line” based on the definition in WAC 246-290-010(267), and by amending wording in the Health Code, WCC 20.11.050(C) which implied that service connections could be made to transmission lines.

5) Additional conclusions regarding LAMIRD boundaries:

a. With regard to Parcel No. 400123 029037 0000, situated in the I-5/Birch Bay Lynden Road/Valley View Road LAMIRD, the Board originally held in its FDO of January 9, 2012 that the subject parcel should not be included in the LAMIRD because there was an insufficient built environment on that parcel.

In response, based on new evidence of a built environment, including a structure and site preparation work existing in July 1990, we declined to remove that parcel from the LAMIRD. We believe the new evidence refuted the conclusion of the Board.

In response, in its FDO dated January 4, 2013, the Board stated that allowing a LAMIRD at this location was probably a mistake in the first place and again required that the parcel be removed. The owner of the parcel appealed both of the Board decisions which are pending.

The owner of the subject parcel has supplied additional information relating to the loss of value of the parcel as a result of the downzone which the Board has mandated. That information, consisting of letters from a Certified General Real Estate Appraiser and a real estate broker with decades of experience in this area of Whatcom County demonstrates that the uses remaining for this property after the downzone from RGC to R5A are not financially viable.

We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6) which provides that we should not take property without compensation. We conclude that the benefit to the community by downzoning this property is not roughly proportional to the damage to the
property owner. This exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitutions.

In addition, the exclusion of this 2.5 acre parcel does not comport with RCW 36.70A.070(5)(d)(iv) which requires a logical outer boundary for all LAMIRDs. The Board failed to comply with this section of the Growth Management Act.

For the reasons stated above, and based on the new evidence and on the belief that the Board previously erred, we respectfully decline to remove this parcel from the LAMIRD.

b. With regard to Parcel No. 390225 470286 0000 situated in the Smith & Guide Meridian LAMIRD, in its FDO dated January 9, 2013, the Board determined that this parcel should not be included in the LAMIRD because its inclusion does not create a logical outer boundary. New evidence was submitted to the County regarding this parcel. We find the new evidence refutes the conclusion of the Board.

The owner of the parcel appealed the Board decision, which is pending. The Board's FDO dated January 9, 2013, is the first time that the zoning of this parcel has been questioned. It has been zoned for commercial uses since 1990 when it was zoned General Commercial. Moreover, the new evidence indicates that commercial use has been ongoing on the parcel for decades.

In addition, the one-acre parcel (Parcel No. 390225 510322 0000) situated directly north of the parcel has also contained continuous commercial use for decades. Over the years, this smaller parcel has contained a Culligan Water retailer, a veterinarian office, and a paintball business. Presently, a church is located there.

Finally, the Board believes that the distance between the portion of the Smith & Guide Meridian LAMIRD the Board retained and Parcel No. 390225510322 0000 is too far. We disagree and note that 472 linear feet of Guide Meridian frontage, which is the east boundary of Parcel No. 390225470286 0000, is minimal considering that the Smith & Guide Meridian LAMIRD contains over one mile of Guide Meridian frontage. The Guide is a five-lane state highway.

Due to the prior uses, existing uses and the decades of commercial zoning, retaining Parcel No. 390225 510322 0000 and Parcel No. 390225 4702860000 in the Smith & Guide Meridian LAMIRD is consistent with the location and outer boundary criteria of Policy 2HH-I.A- C and complies with RCW 36.70A.070(5)(d)(iv).

We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6), which provides that we should not take property
without compensation. We conclude that the benefit to the community by downzoning these properties is not roughly proportional to the damage to the property owner. As such, this exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitutions.

For the reasons stated above and based on the new evidence, we respectfully decline to remove Parcel No. 390225 510322 0000 and Parcel No. 390225 470286 0000 from the LAMIRD.

6) The subject comprehensive plan amendment complies with the approval criteria of WCC 2.160.080, which requires that the County must find the following criteria, are satisfied in order to approve the proposed comprehensive plan amendment.

a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.

i. Growth Management Act

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, above.

ii. County-Wide Planning Policies

County-wide Planning Policy B.1 states, “The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas.” Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County’s web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

County-wide Planning Policy B.2 states, “The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density.” The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6)), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for

iii) Whatcom County Comprehensive Plan

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goal 2MM.

iv) Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections without City-County coordination.

b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board’s January 4, 2013 Compliance Order.

c. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The proposed amendments either retain existing zoning intensities and densities or reduce them in rural Whatcom County.

ii. The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide
adequate services and public facilities including transportation facilities.

No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.

No amendments are proposed that increase adverse impacts on designated resource lands.

d. The amendment does not include or facilitate spot zoning.

WCC 20.97.186 defines “illegal spot zoning” as “a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole.” Rezonings proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

e. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.

No urban growth area amendments are proposed.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit A.

Section 2. The Whatcom County Official Zoning Code is hereby amended as shown on Exhibit B.

Section 3. The Whatcom County Official Zoning Map and Comprehensive Plan Map 8 are hereby amended as shown in Exhibit C.

Section 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this ___ day of ____________________ 2013.

ATTEST: WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

______________________________
Dana Brown-Davis, Council Clerk

______________________________
Kathy Kershner, Council Chair

APPROVED as to form:

( ) Approved ( ) Denied

______________________________
Civil Deputy Prosecutor

______________________________
Jack Louws, Executive

Date:
Chapter Two
LAND USE

RURAL LANDS – INTRODUCTION

Rural Character and Lifestyle

Rural Whatcom County is the portion of the County not planned for either urban or resource use and its character differs from that of the County’s urban and resource areas. While agriculture and forestry are practiced in the rural areas, it is generally on a smaller scale than in the resource areas that are set aside specifically for those purposes. The rural areas provide an important buffer between urban areas and resource lands, and the character of the rural areas is differentiated from the urban areas by less intensive uses and densities, and greater predominance of vegetation, wildlife habitat, and open space.

Small unincorporated communities have existed in the rural areas for many decades but have not become urban centers. Land uses in these communities are more intensive than those in the surrounding rural areas, and provide rural residents places to shop, eat, play, etc, and access public services such as schools, libraries, and post offices without having to travel to cities. The businesses in these communities are important contributors to the economy of Whatcom County. Even outside these settlements, residents of the rural areas have established home occupations, cottage industries, and small-scale businesses that are an important part of the County’s traditional rural economy.

Historically, rural Whatcom County has been a place of great variety. Residential densities vary greatly from homes on 10 or 20 acre lots to lots smaller than one acre in the rural communities and neighborhoods that have been established over the years. The scale and intensity of rural businesses varies from the home occupations, cottage industries, and resource-based industries to the more intensive commercial and manufacturing uses, though the County’s largest commercial and industrial uses have been established in the urban areas.

Whatcom County's rural lifestyle is one where residents enjoy views of a green landscape dotted by homes and barns, and have an appreciation for clean water and air. Residents can work and shop in small rural communities, or earn a living on their own rural lands, but these enterprises do not detract from the overall sense of openness and predominance of the landscape in the rural area. Rural Whatcom County has long been a place to raise children with the values of hard work and responsible stewardship of the land, and where residents can grow food and livestock for themselves or for market. While rural property owners do not expect to be provided with urban-level
services, they enjoy a quality of life and sense of self-sufficiency not ordinarily found in the urban areas.

In the rural element of this chapter, Whatcom County establishes policy consistent with the findings of the legislature and with the above vision of rural character and lifestyle that will:

- Help preserve rural-based economies and tradition lifestyles,
- Encourage the economic prosperity of rural residents
- Foster opportunities for small-scale, rural-based employment and self employment,
- Permit the operation of rural-based agriculture, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns,
- Be compatible with the use of the land by wildlife and for fish and wildlife habitat,
- Foster the private stewardship of the land and preservation of open space, and
- Enhance the rural sense of community and quality of life.

GOAL 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-1: Concentrate growth in urban areas per the population projections in Chapter 1 of this plan, and recognize rural lands as an important transition area between urban areas and resource areas. By February 1 of each year the department will publish a report that monitors residential development activity outside the urban growth areas during the previous year and compares that data with the adopted population growth projection for those areas. If it is apparent that growth occurring outside the urban growth areas is inconsistent with adopted projections, the County shall take action to address the discrepancy. Actions may include changing the allocation of the projected population growth during the comprehensive plan update required per RCW 36.70A.130(1), or changing development regulations to limit growth outside the urban growth areas. In addition, as the County and cities review the capacity for growth in the urban growth areas, the county should coordinate with the cities to ensure that policies are in place that are consistent with encouraging growth in the urban areas and reducing demand for development in rural areas.

Policy 2DD-2: Protect the character of the rural area through the County’s development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County’s key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:
A. Measures to contain or otherwise control rural development and reduce the inappropriate conversion of undeveloped land into sprawling, low-density development:

1. Limit the expansion of areas of more intensive development and higher rural densities through Policies 2A-8, 2A-9, 2DD-1, 2DD-8, 2GG-2, 2GG-3, 2JJ-1 through 8, 2KK 1 and 2, 2LL-1 through 4, and 2MM-1 through 4 of this plan.

2. Provide options to reserve areas of land suitable for agriculture, forestry, or open space through lots clustering in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.32.305, .310, and .320, Lot clustering, Residential Rural District;
   b. WCC 20.34.305, .310, and .320, Lot clustering, Rural Residential Island District;
   c. WCC 20.36.305, .310, and .320, Lot clustering, Rural District;

3. Prohibit short subdivisions outside of urban growth areas and limited areas of more intensive rural development that would require extension of public sewer except for health or safety reasons through the following Whatcom County Land Division regulations adopted herein by reference:
   a. WCC 21.04.090, Sewage Disposal, Short Subdivisions
   b. WCC 21.05.090 Sewage Disposal, Preliminary Long Subdivisions

B. Measures to assure visual compatibility of rural development with the surrounding rural area:

1. Ensure that the visual landscapes traditionally found in rural areas and communities are preserved through limitations on structural coverage of lots in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.32.450 Lot coverage, Residential Rural District;
   b. WCC 20.36.450 Lot coverage, Rural District.

2. Require that lots developed under the lot clustering option be designed and located to be compatible with valuable or
unique natural features as well as physical constraints of the site through standards provided in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.32.310 Lot clustering design standards, Residential Rural District;

b. WCC 20.34.310 Lot clustering design standards, Rural Residential-Island District;

c. WCC 20.36.310 Lot clustering design standards, Rural District;


3. Protect the aesthetic assets of the rural areas and soften the impact of structures through landscape buffers and setback requirements provided in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.80.200 Setback requirements;

b. WCC 20.80.300 Landscaping.

4. In the Point Roberts Rural Community, regulate visual aspects of development through the standards in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.72.350 Building setbacks/buffer areas, Point Roberts Special District;

b. WCC 20.72.651 Facility design, Point Roberts Special District;

c. WCC 20.72.653 Tree canopy retention, Point Roberts Special District;

d. WCC 20.72.654 Site design/view corridors, Point Roberts Special District.

C. Measures to protect critical areas and surface and groundwater resources:

1. Protect the functions and values of critical areas (geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas) and the ecological processes that sustain them, through WCC 16.16 Critical Areas provisions, adopted herein by reference.
2. Minimize the adverse effects of discharges from on-site sewage systems on ground and surface waters through WCC 24.05, adopted herein by reference.

3. Preserve and protect unique and important water resources through development standards in WCC 20.71 Water Resource Protection Overlay District, adopted herein by reference:

4. Protect surface and ground water resources through stormwater management standards established in the County's Development Standards per WCC 20.80.630 and 12.08.035 and referenced in the following Zoning Code provisions, adopted herein by reference:
   a. 20.32.656 Drainage, Residential Rural District;
   b. 20.34.659 Drainage, Rural Residential-Island District;
   c. 20.36.656 Drainage, Rural District;
   d. 20.37.655 Drainage, Point Roberts Transitional District;
   e. 20.44.652 Drainage, Recreation and Open Space District;
   f. 20.59.704 Drainage, Rural General Commercial District;
   g. 20.60.655 Drainage, Neighborhood Commercial District;
   h. 20.61.704 Drainage, Small Town Commercial District;
   i. 20.63.654 Drainage, Tourist Commercial District;
   j. 20.64.655 Drainage, Resort Commercial District;
   k. 20.67.653 Drainage, General Manufacturing District;
   l. 20.69.655 Drainage, Rural Industrial and Manufacturing District.

5. Assure that subdivisions meet requirements for critical areas, shoreline management, and stormwater management through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.034 Application Procedures, Short Subdivisions
   b. WCC 21.05.037 Hearing Examiner Notice Hearing and Decision, Preliminary Long Subdivisions
6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.090 Water supply, Short Subdivisions
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions

7. Regulate groundwater withdrawals by requiring surveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology ground water requirements per WCC 24.11.050, adopted herein by reference.

8. Limit phosphorus entering Lake Whatcom and Lake Samish due to the application of commercial fertilizers to residential lawns and public properties through WCC 16.32, adopted herein by reference.

9. Protect vital drinking water, sensitive habitats, and recreational resources within the Department of Ecology’s designated Western Washington Phase II Municipal Stormwater Permit area and the Lake Whatcom watershed by prohibiting illicit discharges to the county’s stormwater collection system through WCC 16.36 Illicit Discharge Detection and Elimination Program, adopted herein by reference.

D. Measures to protect against conflicts with the use of agricultural, forest, and mineral resource lands:

1. Ensure separation of new residences from agricultural and forestry uses through setback requirements in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.80.255 Agricultural District, Supplementary Requirements;
   b. WCC 20.80.256 Forestry districts, Supplementary Requirements;
   c. WCC 20.80.258 All districts, Supplementary Requirements.

2. Ensure separation of businesses from agricultural uses through setback requirements in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.59.600 Buffer area, Rural General Commercial District;
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b. WCC 20.60.550 Buffer area, Neighborhood Commercial District;

c. WCC 20.61.600 Buffer area, Small Town Commercial District;

d. WCC 20.63.600 Buffer area, Tourist Commercial District;

e. WCC 20.64.550 Buffer area, Resort Commercial District;

f. WCC 20.67.550 Buffer area, General Manufacturing District;

g. WCC 20.69.550 Buffer area, Rural Industrial and Manufacturing District.

3. Require that all discretionary project permits within one half mile of areas designated in this plan as Rural, Agriculture, Commercial Forestry, or Rural Forestry, or within 300 feet of areas designated as Mineral Resource Lands, be subject to disclosure practices in the in the following Whatcom County Code provisions, adopted herein by reference:

a. WCC 20.40.662 Use of Natural Resources, Agriculture District;

b. WCC 20.42.652 Use of Natural Resources, Rural Forestry District;

c. WCC 20.43.662 Use of Natural Resources, Commercial Forestry District;

d. WCC 20.14.02 Right to Farm;

e. WCC 20.14.04 Right to Practice Forestry;


......

RURAL LANDS – LAND USE

Rural Designation

Lands outside the County's urban and resource areas include a variety of uses and densities. Traditionally, Whatcom County’s rural areas have been characterized by a spectrum of uses ranging from farms and large-lot residential areas to recreational communities and small towns. The more intensive uses in that spectrum...
(commercial/industrial areas and residential areas with densities greater than one unit per five acres) are contained within the boundaries of Rural Community, Rural Tourism, or Rural Business designations (LAMIRDs) and Rural Residential Overlays Neighborhood designations.

The remainder of the rural areas are designated Rural and contain traditional rural residential and farm uses as well as small home-based and conditionally-permitted businesses. The rural character of the lands designated as Rural should not be compromised by the encroachment of more intensive development. Commercial and industrial uses in the rural areas not contained within a Rural Community designation must meet GMA criteria for small-scale tourism or isolated business uses (RCW 36.70A.070(5)(d)(ii) and (iii).

Portions of the rural area that historically contain larger lots have been zoned for densities of one dwelling per ten acres. These areas provide for a variety of densities important to the rural character and must be retained. Rezones from R10A to allow higher densities are limited to those R10A areas that are adjacent to established higher densities.

Goal 2GG: Designate Rural areas to contain a variety of uses and densities while retaining their traditional rural character.

Policy 2GG-1: Provide a variety of residential choices at rural densities which are compatible with the character of each of the rural areas.

Policy 2GG-2: The Rural designation includes areas of traditional rural uses and gross residential densities at or below one unit per five acres. To reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area, more intensive development shall be contained within Rural Community, Rural Tourism, or Rural Business designations, which are limited areas of more intensive rural development (LAMIRDs), and predominantly residential areas with established densities greater than one unit per five acres shall be contained in Rural Neighborhood designations.

Policy 2GG-3: Uses and densities within the Rural designation should reflect established rural character. Rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone. Land in the R10A district may be rezoned to a rural zone that allows a higher density only if:

A. Rezoning area abuts zoning of higher density or intensity (parcels are abutting even if there is a public or private road between them), or

B. All the following items are satisfied:
1. Residential density (the average size of parcels that contained a residence as of January 1, 2013) within 500 feet of the area to be rezoned is less than 7.5 acres.

2. The proposed rezoning area is not in a designated urban growth area reserve.

Policy 2GG-4: Minimize potential conflicts of rural residential development near designated natural resource lands to prevent adverse impacts on resource land uses.

Policy 2GG-5: Provide landowners with incentives and options to develop their property at densities that may be less than the underlying zone, when necessary to protect critical areas and high-value resource lands.

Policy 2GG-6: Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services.

Policy 2GG-7: Development within Rural designations shall be consistent with rural character as described in this chapter.
File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes (PC Recommendation)

- Proposed Rural Neighborhood Boundary
- Existing Comprehensive Plan Boundary

Proposed CP Designation - RURAL (not in parentheses)
Existing CP Designation - (RURAL NEIGHBORHOOD)
File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes (PC Recommendation)

- Proposed Rural Neighborhood Boundary
- Existing Comprehensive Plan Boundary

Proposed CP Designation - RURAL BUSINESS (not in parentheses)
Existing CP Designation - (TRANS CORRIDOR)
File #: PLN2012-00012
Proposed Comprehensive Plan Change

Proposed Comprehensive Plan designation - Rural Neighborhood (not in parentheses)
Existing Comprehensive Plan designation - (Rural)

March 6, 2012 by gld
WCC TITLE 20 ZONING.

20.32 Residential Rural (RR) District

20.32.253 Maximum density and minimum lot size.
The following districts with their associated lot sizes as indicated below, are only allowed within Rural Neighborhoods and Rural Communities, as outlined in the Comprehensive Plan: RR-2A, RR-1, RR-2, RR-3. The RR-5A and RR-10A districts are allowed throughout in the rural areas; the Comprehensive Plan contains policies regarding application of these districts within the Residential Rural Designation. For boundary line adjustments on lots not conforming to minimum lot sizes in this zoning district, lot size averaging may be used by calculating the average lot size of legal lots of record within 500 feet of the outside perimeter of the lots proposed for boundary line adjustment.

<table>
<thead>
<tr>
<th>District</th>
<th>Gross Density</th>
<th>Minimum Lot Size</th>
<th>Min. Reserve Area (Cluster Subdivisions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RR-1, RR-2, RR-3, RR-5A: without public water</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>N/A</td>
</tr>
<tr>
<td>RR-10A without public water</td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>N/A</td>
</tr>
<tr>
<td>With public water, and stormwater detention and collection facilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RR-1</td>
<td>1 dwelling unit/1 acre</td>
<td>36,000 sq. ft.</td>
<td>15,000 sq.ft.</td>
</tr>
<tr>
<td>RR-2</td>
<td>2 dwelling units/1 acre</td>
<td>18,000 sq. ft.</td>
<td>15,000 sq.ft.</td>
</tr>
<tr>
<td>RR-3</td>
<td>3 dwelling units/1 acre</td>
<td>12,000 sq. ft.</td>
<td>8,000 sq.ft.</td>
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<tr>
<td>----------</td>
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</tr>
<tr>
<td>RR-2A</td>
<td>1 dwelling unit/2 acres</td>
<td>2 acres</td>
<td>15,000 sq.ft.</td>
</tr>
<tr>
<td>RR-5A</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>15,000 sq.ft.</td>
</tr>
<tr>
<td>RR-10A</td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>15,000 sq.ft.</td>
</tr>
<tr>
<td>RR-5A and RR-2A subject to Rural Residential Density Overlay</td>
<td>Maximum: 1 dwelling unit/ 1 acre per 20.32.252(2)</td>
<td>see 20.32.252</td>
<td>15,000 sq.ft.</td>
</tr>
</tbody>
</table>

... ... ... ... ... ...

20.32.300 Lot clustering, reserve area and reserve tract.

20.32.305 Lot clustering.

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space or possible future development.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

20.32.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

(1) Clustered building lots may be only created through the subdivision or short subdivision process.
(2) Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.

(3) Where practical, the majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the “reserve tract” to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, urban growth areas and urban growth area reserves, interior streets shall be designed to allow access to the “reserve tract” for the purpose of future approved development in urban growth areas and urban growth area reserves.

20.32.315 Reserve area.

(1) A note on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for agricultural purposes. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.32.253.

20.32.320 Reserve tract.

For the purposes of this section, “reserve tract” is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space or future development purposes. All “reserve tracts” created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this chapter, the “reserve tract” may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The “reserve tract” may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a “reserve area” easement is consistent with the uses permitted in reserve areas in this chapter.
(3) The "reserve tract" may be further subdivided only through the long subdivision process and only under the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.32.305(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat. The number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "reserve tracts." Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.32.253.

(5) The above requirements in subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

20.34 Rural Residential-Island (RR-I) District
20.34.300 Lot clustering, reserve area, reserve tract and density transfer.

20.34.305 Lot clustering.

(1) The purpose of lot clustering is to preserve the rural character of Lummi Island and to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space in accordance with the adopted zoning density requirements, as applied to the entire subdivision or short subdivision.

(2) The clustering option is also intended to help preserve open space and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

20.34.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

(1) Clustered building lots may be only created through the subdivision or short subdivision process.

(2) Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.

(3) The majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the "conservation reserve tract."

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20.34.315 Reserve area.

(1) A note on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for agricultural purposes. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.34.252.

20.34.320 Conservation-Reserve tract.

For the purposes of this section, “conservation-reserve tract” is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space purposes which does not exceed adopted zoning density requirements, as applied to the entire subdivision or short subdivision. All “conservation-reserve tracts” created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this section, the “conservation-reserve tract” may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The “conservation tract” may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a “reserve area” easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The conservation-reserve tract is created and is unbuildable beyond any building density remaining at the time of land division. This is intended to ensure that the conservation-reserve tract open space will remain in the same location adjacent to the clustered lot it serves.

(4) The purpose of the conservation-reserve tract as stated in subsections (1), (2), and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or “conservation-reserve tracts.” Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not
reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.34.252.

(5) That the above stated requirements in subsections (2), (3), and (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

.....

20.36 Rural (R) District

.....

20.36.253 Maximum density and minimum lot size.

The R-2A district is allowed only within areas designated as Rural Neighborhoods, as described in the Comprehensive Plan. R-5A and R-10A districts are allowed in the Rural areas; the Comprehensive Plan contains policies regarding application of these districts within the Rural designation. The R-10A district is allowed in Urban Growth Area Reserve designations.

For boundary line adjustments on lots not conforming to minimum lot sizes in this zoning district, lot size averaging may be used by calculating the average lot size of legal lots of record within 500 feet of the outside perimeter of the lots proposed for boundary line adjustment.

<table>
<thead>
<tr>
<th>District</th>
<th>Gross Density</th>
<th>Minimum Lot Size</th>
<th>Min. Reserve Area (Cluster Subdivisions Outside of Urban Growth Areas)</th>
<th>Min. Reserve Area (Cluster Subdivisions in Urban Growth Areas)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-2A without public water</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>1 acre</td>
<td>20%</td>
</tr>
<tr>
<td>R-2A with public water</td>
<td>1 dwelling unit/2 acres</td>
<td>2 acres 12,500 sq. ft.</td>
<td>6555%</td>
<td>80%</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Zoning Category</th>
<th>Building Type</th>
<th>Lot Size</th>
<th>Density</th>
<th>Area Limit</th>
<th>Percentage Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-5A without public water</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>1 acre</td>
<td>5550%</td>
<td>80%</td>
</tr>
<tr>
<td>R-5A subject to Agricultural Protection Overlay (Chapter 20.38 WCC)</td>
<td>1 dwelling unit/5 acres</td>
<td>Not applicable</td>
<td>15,000 sq. ft.</td>
<td>75%</td>
<td>Not applicable</td>
</tr>
<tr>
<td>R-5A with public water</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>12,500 sq. ft.</td>
<td>7565%</td>
<td>80%</td>
</tr>
<tr>
<td>R-5A with public water subject to Rural Residential Overlay</td>
<td>Maximum: 1 dwelling unit/2 acres per 20.36.252(2)</td>
<td>see 20.36.252(2)</td>
<td>15,000 sq. ft.</td>
<td>7565%</td>
<td>Not applicable</td>
</tr>
<tr>
<td>R-10A without public water</td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>1 acre</td>
<td>7060%</td>
<td>80%</td>
</tr>
<tr>
<td>R-10A subject to Agricultural Protection Overlay (Chapter 20.38 WCC)</td>
<td>1 dwelling unit/10 acres</td>
<td>Not applicable</td>
<td>15,000 sq. ft.</td>
<td>75%</td>
<td>Not applicable</td>
</tr>
<tr>
<td>R-10A with public water</td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>12,500 sq. ft.</td>
<td>8070%</td>
<td>80%</td>
</tr>
<tr>
<td>Public facilities approved under WCC 20.36.151</td>
<td>Not applicable</td>
<td>No minimum</td>
<td>No minimum</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
20.36.300 Lot clustering, reserve area and reserve tract.

20.36.305 Lot clustering.

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space or possible future development.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

(3) Lot clustering is required for residential developments on parcels 10 acres or greater when:

(a) The property is located within a short-term planning area and public water and sewer are not available; or

(b) The property is located within an urban growth area reserve-long term planning area.

20.36.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

(1) Clustered building lots may be only created through the subdivision or short subdivision process.

(2) Building lots shall be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.

(3) Where practical, the majority of building sites shall be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the “reserve tract” to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(4) Common access to clustered building lots shall be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow
access to the “reserve tract” for the purpose of future approved development in urban growth areas and urban growth area reserves.

(5) Where the boundaries of a proposed cluster subdivision includes land in more than one rural zone designation (R2-A, R-5A and R-10A) the following shall apply:
   (a) The total number of units permitted shall be computed by separately calculating the number of lots allowed in each zone district based on the amount of land area within the district. The number of lots allowed in each district shall be totaled at the total number of lots.
   (b) Lot clusters may be distributed or arranged on property(s) covered by the subdivision such that density from an R-5A or R-10A portion of a subdivision may be transferred to an adjacent portion of the subdivision with a different rural zoning designation (R-2A, R-5A or R-10A); provided, the total number of lots for the entire subdivision does not exceed the number calculated in subsection (5)(a) of this section; and provided further, that the lot design is consistent with subsections (1) through (4) of this section. Density from R-2A portions of the subdivision may not be transferred to R-5A or R-10A portions of the subdivision.

(6) In order to preserve rural character, no more than 16 residential lots shall be permitted in one cluster and there shall be at least 500 feet of separation between any new clusters, except when the cluster subdivision is located on a parcel or contiguous parcels in the same ownership, greater than 20 acres.

20.36.315 Reserve area.

(1) A note on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.36.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for agricultural purposes. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.36.253.

20.36.320 Reserve tract.

For the purposes of this section, “reserve tract” is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space or future development purposes. All “reserve tracts” created through the subdivision process shall be subject to the following provisions:
(1) After a site is initially subdivided pursuant to this section, the “reserve tract” may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The “reserve tract” may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a “reserve area” easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The “reserve tract” may be further subdivided only through the long subdivision process and only under one of the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.36.305(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(c) The site is within a short-term planning area and public water and sewer serve the proposed development or the reserve tract;

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or “reserve tracts.” Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.36.253.

(5) The requirements of subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after
review for consistency and compliance with the Official Whatcom County Zoning
Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County
Comprehensive Plan.

20.82 Public Utilities

20.82.030 Conditional uses.
The following uses shall require a conditional use permit or major project permit
and shall be subject to a threshold determination in accordance with the Whatcom
County SEPA Ordinance:

(3) New water lines with a nominal pipe size greater than eight inches except for
the following, which are permitted outright:

(a) New water lines located and installed by a public utility or municipality within
urban growth areas, or limited areas of more intensive rural development
(LAMIRDs), or Rural Neighborhoods, or:

(b) New water lines outside urban growth areas or limited areas of more intensive
rural development (LAMIRDs) in conformance with a state approved water
comprehensive plan pursuant to RCW 43.20.260 and consistent with the Whatcom
County Comprehensive Plan, which shall be permitted outright so long as they are
water transmission lines per WCC 20.97.452, or provide service at an intensity
historically and typically found in rural areas, per RCW 36.70A.030(17), including
but not limited to agricultural uses. Water service for uses or densities not
permitted in rural or resource areas shall not be extended or expanded outside
urban growth areas or limited areas of more intensive rural development
(LAMIRDs), except where necessary to protect basic public health and safety and
the environment and when such services are financially supportable at rural
densities and do not permit urban development, per RCW 36.70A.110(4).

20.97 Definitions

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20.97.344 Reserve area.

When the lot clustering method of land division or subdivision is used, the "reserve area" is an easement on a proposed division, subdivision or short subdivision which is reserved for agricultural, forestry, or open space purposes in perpetuity, or for other future-approved development purposes as specified in Whatcom County Code.

20.97.345 Reserve tract.

When the lot clustering method of land division or subdivision is used, the "reserve tract" is that portion of a proposed cluster division, subdivision or short subdivision which is not one of the cluster lots. A reserve area easement may cover all or part of a reserve tract. A portion of a reserve tract may be developed but above-ground development shall not occur within a reserve area easement.

20.97.452 Water Transmission Lines

"Water transmission lines" means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined on the plans and no service connections are allowed along the transmission main.

WCC TITLE 24 HEALTH CODE

24.11 Drinking Water.

24.11.050 General requirements.

A. Applicants must submit all required forms, letters and documents to the director.

B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water
Exhibit B: WCC Title 20 Amendments
April 25, 2013 Planning Commission Recommendations

system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or

2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or

3. The existing public water system has transmission-water lines adjacent to the property line of the applicant and connection is consistent with RCW.36.70A.110(4); or

4. The existing public water system has defined a "service area boundary" in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.
File #: PLN2012-00012
Proposed Rezoning (PC Recommendation)
- Existing Zoning Boundary
- Proposed Zoning Boundary
- Proposed Rezone Area
  * Rural Residential Density Overlay

Proposed Zoning: RR5A (not in parentheses)
Existing Zoning: (RR2)
MEMORANDUM

TO: Whatcom County Council

THROUGH: Mark Personius, AICP, Long Range Planning Manager

FROM: Gary Davis, AICP, Senior Planner

DATE: May 6, 2013

SUBJECT: Rural Element

On April 25, 2013 the Planning Commission made its recommendations on Rural Element amendments. The Commission’s findings and recommendations are attached. This memorandum summarizes the Planning Commission’s recommended changes to the Comprehensive Plan, County Code, and zoning maps, and presents additional changes proposed by staff as clarifications, or as alternatives designed to respond to the Growth Management Hearings Board’s January 4, 2013 compliance order. The issues are discussed in order of the attached Summary of Issues sheet (no action is proposed on Issues 3 and 5, which the County has appealed to Superior Court). For more detailed discussion of the Board’s orders on each of the issues, see the attached March 11 staff report.

A Committee of the Whole meeting is scheduled for May 21 to discuss the recommendations, and a public hearing is scheduled for the regular County Council meeting that same night. Time will be allotted to the Rural Element amendments at the June 4 and June 18 County Council meetings. The compliance date set by the Hearings Board is July 3.

Issue 1: Variety of Rural Densities

The Board noted that only 21% of the rural area is zoned R10A, and was concerned that this number could be reduced further because the County did not restrict rezones from R10A to R5A (and therefore could not assure the “variety of rural densities” required by GMA). In response, the Planning Commission has recommended Comprehensive Plan amendments that establish criteria for R10A parcels that may be considered for zoning with higher densities (Policy 2GG-3).

Uses and densities within the Rural designation should reflect established rural character. Rezones within the Rural designation should be consistent with the
established rural character and densities. Land in the R10A district may be rezoned to a rural zone that allows a higher density only if:
A. Rezoning area abuts zoning of higher density or intensity (parcels are abutting even if there is a public or private road between them), or
B. All the following items are satisfied:
   1. Residential density (the average size of parcels that contained a residence as of January 1, 2013) within 500 feet of the area to be rezoned is less than 7.5 acres,
   2. The proposed rezoning area is not in a designated urban growth area reserve.

The recommended amendments also include changes to the explanatory text above Goal 2GG. The proposed text reads:

Portions of the rural area that historically contain larger lots have been zoned for densities of one dwelling per ten acres. These areas provide for a variety of densities important to the rural character and must be retained. Rezones from R10A to allow higher densities are limited to those R10A areas that are adjacent to established higher densities.

The Planning Commission added criterion (A.) to allow for parcels abutting zoning of higher density, but that does not necessarily equate to “established higher densities” specified in the supporting text to Goal 2GG. Staff has estimated that there are 275 R10A parcels 10 acres or larger adjacent to zones other than Agriculture, Rural Forestry, or Commercial Forestry. There are 840 parcels 10 acres or larger in the R10A zone, so about one third of those parcels would be eligible for rezoning under criterion A.\(^1\) PDS recommends that the criterion for adjacency to higher-density zoning be removed. If the zoning adjacency criterion is retained, staff would recommend specifying that the parcel be adjacent to higher-density zoning as of January 1, 2013 to avoid a cumulative “creep” of the boundary over time, and modifying the explanatory text to reflect the zoning-adjacency criterion.

The two criteria under B. – residential density within 500 feet, and not being in a UGA reserve – were proposed by staff and retained in the Planning Commission recommendation. Staff had also proposed a third criterion which the Planning Commission omitted: “The proposed rezoning area is not within an area designated as a rural study area in the 2007 Rural Land Study accepted by the County in Resolution 2009-040.” The reason for proposing this criterion was to hold zoning density constant in the areas that may be considered for Agriculture zoning in the future as part of the implementation measures of the County’s Agricultural Strategic Plan. If the County Council wishes to add this criterion, it would be added as one of the items under B.

Staff presented to the Planning Commission a study of parcels that would meet proposed criteria under B. Staff estimated that about 50 R10A parcels larger

\(^1\) GIS query of Whatcom County’s “m:\egis\data\cadastral\Parcel\MasterPLN.mdb\tax parcels” data for R10A zoned parcels greater than or equal to 10 acres within 100 feet of all other zones except AG, RF, and CF.
than 10 acres countywide would fall within the one dwelling per 7.5 acre density threshold overall; 12 of those are in rural study areas, and 7 are in UGA reserves.

In addition, recommended changes to the Zoning Code (WCC 20.32.253 and WCC 20.36.253) refer the reader to the Comprehensive Plan for policies on the application of densities in the rural area.

**Issue 2: Lot Clustering**

The Board found that the County was not justified in citing its rural clustering provisions as measures to protect rural character because they allow development in reserve areas, and the cluster design standards are “aspirational” rather than enforceable standards. The recommended changes to the clustering provisions in the Residential Rural (RR), Rural Residential Island (RRI), and Rural (R) zones revise standards to remove aspirational language (e.g. changing “should” to “shall”), and to prohibit development of reserve areas (except for agricultural structures in agricultural reserves).

Under the Planning Commission’s recommendation, the zoning code would make a distinction between a “reserve area” and a “reserve tract.” The “reserve area” percentage required for cluster subdivisions in the RR, RRI, and R zones would apply to a “reserve area” easement that is shown on a cluster plat. The “reserve tract,” the largest lot in a cluster plat may contain land outside the “reserve area” easement that can be developed with a dwelling unit, as long as the development does not occur on the “reserve area” easement. This approach is consistent with the reserve provisions that already exist in the Point Roberts Transitional Zone.

In its decision, the Board cited WAC 365-196-425(5)(b), the State’s standards for rural cluster subdivisions. Section (5)(b)(iii) states, “The open space portion of the original parcel should be held by an easement for opens space or resource use. This should be held in perpetuity without an expiration date.” (emphasis added) Staff believes the proposed amendment is consistent with the WAC standard and the Board’s order, because the “reserve area” required percentage is the portion of the parent parcel established as an easement on the plat that runs in perpetuity as long as it is in the rural area. If it is later included in an Urban Growth Area, the reserve area can be developed.

**Uses in “reserve area.”** The recommended amendments also and add a new definition of “reserve area” (WCC 20.97.344) and modify the definition of “reserve tract” (WCC 20.97.345) Part of the “reserve tract” definition states:

A portion of a reserve tract may be developed but above-ground development shall not occur within a reserve area easement.

In the standards for “reserve areas” in the RR, RRI, and R chapters, various improvements are allowed in reserve tracts both below and above ground.
(Section .315). Staff recommends revising the above wording to correspond with the uses listed in the individual zoning chapters:

A portion of a reserve tract may be developed but development within a reserve area easement shall be limited to that permitted per the reserve area standards for the zoning district in which the tract is located. Above-ground development shall not occur within a reserve area easement.

**Agricultural structures.** The Planning Commission added an exception that allows development of “structures used for agricultural purposes” in reserve areas designated for agriculture. The intent is to allow for viable agricultural use of the reserve area. Because “agricultural purposes” is a broad term, PDS recommends revising that language to “structures used for on-site agriculture uses permitted in WCC 20.32.054 [or 20.34.052, or 20.36.052]” which would more clearly restrict agricultural uses to those already permitted outright in the RR, RRI, or R zones. The agricultural uses permitted in these zones are described in WCC 20.32.054, 20.34.052, and 20.36.052 as:

- Agriculture including animal husbandry, horticulture, viticulture, floriculture and beekeeping; and the cultivation of crops.

**Definition of reserve tract.** The “reserve tract” definition was also revised to describe the tract as “that portion of a proposed cluster division, subdivision or short subdivision which is not one of the cluster lots” in order to differentiate it from the “reserve area.” Staff believes it is appropriate to restore the previous wording “which is intended for agricultural, forestry, open space or other future-approved development purposes.” The wording that follows that passage should adequately explain the distinction between a reserve tract and a reserve area.

**Easement or plat note.** The proposed description of “reserve area” in the zone chapters (section .315(1)) states:

A note on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area.

Staff recommends substituting language that clarifies that a reserve area is “An easement a note on the subdivision plat...” This is consistent with the proposed definition in WCC 20.97.344, which states:

When the lot clustering method of land division or subdivision is used, the “reserve area” is an easement on a proposed division, subdivision or short subdivision which is reserved for agricultural, forestry, or open space purposes in perpetuity, or for other future-approved development purposes as specified in Whatcom County Code.

**Reserve area percentages.** The Planning Commission revised the density and lot size table in the Rural zone (WCC 20.80.253) to reduce the required minimum percentage of a parent parcel that must be placed in a reserve area in a cluster subdivision. Under current cluster provisions, residences can be built within the
reserve area (which the Hearings Board cited). Under the proposed cluster provisions, a residence cannot be built within a reserve area easement, meaning the area available for development would be decreased and flexibility in designing a cluster subdivision would be reduced if the current percentages remain in place. The revised reserve area percentages account for this. Most percentages in the table were reduced by 10 percentage points (e.g. 75% to 65% for R5A), though the percentages were not reduced for parcels subject to the Agriculture Protection Overlay (WCC 20.38).

**Issue 4: Rural Neighborhood Boundaries**

The Board found that:

> Fort Bellingham/Marietta and, to a lesser extent, North Bellingham contain a number of large undivided parcels. Whether these are golf courses, commercial greenhouses, or agricultural lands, the Board questions the application of the small-lot “2011 development pattern” standard to these parcels... Including large undivided parcels in the RN designation violates the internal consistency requirement of RCW 36.70A.070 (preamble) because the RN designation is defined by a 2011 small-lot development pattern. (1/4/13 order, p. 60)

In response, the Planning Commission has recommended changes to the boundaries of the Fort Bellingham/Marietta and North Bellingham Rural Neighborhoods, and removal of the Welcome Rural Neighborhood designation (see maps in the Comprehensive Plan amendments).

Staff’s original proposed boundary for Fort Bellingham/Marietta removed 22 large parcels (those larger than 5 acres, as shown in red on the attached analysis maps), leaving 4 large parcels within the boundary. The Planning Commission’s recommended boundary removes 12 large parcels, leaving 14 within the boundary. In North Bellingham, staff’s proposed boundary removed 11 large parcels, leaving 10 within the boundary. The Planning Commission’s recommended North Bellingham boundary removes 6 large parcels, leaving 20 within the boundary.

**Staff recommends reviewing the Planning Commission’s recommended boundaries to consider removing more of the larger parcels in light of the Board’s order.**

The Council may wish to further address the internal inconsistency issue by amending the Comprehensive Plan’s description of Rural Neighborhoods to consistently refer to “higher rural density,” rather than “smaller-lot areas,” and to provide criteria for including some larger lots. This would involve replacing “smaller-lot” with “higher rural density” in the last sentence of the first paragraph under Rural Neighborhoods heading. Making the language consistent places the emphasis on overall density in the areas and reduces the possibility that County policy may be misinterpreted as requiring that all lots in the rural neighborhoods be “small lots.”
Elimination of the Welcome Rural Neighborhood means the Rural Residential Density Overlay option is removed from the R5A zoning. Staff has calculated that none of the parcels would have been able to use the overlay to gain density, given the size of surrounding parcels.

**Issue 6 and 7: LAMIRD boundaries**

The Board found that one parcel in the Birch Bay-Lynden & Valley View LAMIRD and two in the Smith & Guide Meridian LAMIRD did not meet the GMA’s criteria for inclusion in a LAMIRD, making the boundaries of those LAMIRDS noncompliant with GMA. Staff had proposed removing those parcels from the LAMIRDs but the Planning Commission has recommended that the LAMIRD boundaries remain. Staff recommends revision of the LAMIRD boundaries in light of the Board’s order.

**Issue 8: Water Lines**

The Board found the County’s provisions for extension of water lines do not comply with the GMA’s prohibition on extension of urban services into rural areas. At issue was the apparent ability to extend urban level water service into rural areas, particularly the County’s allowance of large-diameter “transmission lines” to be extended into rural areas with no clear definition of “transmission line.”

The GMA lists domestic water service under the definitions of both urban and rural governmental services (RCW 36.70A.030(17) and (20)). The GMA’s definition of rural governmental services refers to those that are “historically and typically delivered at an intensity usually found in rural areas.” RCW 36.70A.110(4) prohibits extension or expansion of urban services in rural areas except where necessary to protect health and safety. WAC 246-290-010(267) provides a definition for water transmission lines.

The proposed amendments to the Zoning Code, 20.82.030(3)(b) points to the rural/urban distinction made in GMA, permitting outright:

New water lines outside urban growth areas or limited areas of more intensive rural development (LAMIRDS) in conformance with a state approved water comprehensive plan pursuant to RCW 43.20.260 and consistent with the Whatcom County Comprehensive Plan, so long as they are water transmission lines per WCC 20.97.452, or provide service at an intensity historically and typically found in rural areas, per RCW 36.70A.030(17), including but not limited to agricultural uses. Water service for uses or densities not permitted in rural or resource areas shall not be extended or expanded outside urban growth areas or limited areas of more intensive rural development (LAMIRDS), except where necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development, per RCW 36.70A.110(4).
Memorandum

May 6, 2013

The recommended definition of “water transmission lines” (proposed WCC 20.97.452) is identical to the WAC definition. Staff and the Planning Commission believe these amendments appropriately respond to the Board’s order.

Attachment:

Summary of Issues

Findings and Recommendations of the Planning Commission

Exhibit A: Comprehensive Plan amendments
Exhibit B: Whatcom County Code amendments
Exhibit C: Whatcom County zoning map amendments

Additional maps

Rural Neighborhood analysis maps
PDS alternative CP and zoning maps
March 11, 2013 PDS staff report
WHATCOM COUNTY
PLANNING COMMISSION

Rural Element Amendments to Comprehensive Plan, Whatcom County Code, and Official Zoning Map

FINDINGS OF FACT AND REASONS FOR ACTION


2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 12, 2013.

3) The proposed amendments were posted on the County website on March 11, 2013.

4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County’s e-mail list on March 11, 2013.

5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 11, 2013.

6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on March 16, 2013.

7) Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on March 8, 2013.


GMA Requirements

9) The Washington Growth Management Act (GMA) requires county comprehensive plans to include a rural element that protects the county’s established rural character by containing or otherwise controlling rural development.

10) GMA (RCW 36.70A.070(5)(a)) allows counties to consider local circumstances in its rural element but requires counties to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and
meets the requirements of RCW 36.70A. (See Conclusions 2 and 3 below).

11) GMA allows, but does not require, counties to designate "limited areas of more intensive rural development" (LAMIRDs) (RCW 36.70A.070(5)(d)) and describes three types of development patterns that may be considered LAMIRDs:

a) Type I: "Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development villages, hamlets, rural activity centers, or crossroads developments... Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas." (RCW 36.70A.070(5)(d)(i)) In RCW 36.70A.070(5)(d)(iv), GMA states, "Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands as provided in this subsection." GMA requires counties to establish logical outer boundaries for areas of more intensive rural development and describes considerations that must be addressed in establishing those boundaries Per RCW 36.70A.070(5)(d)(v), existing areas are those that existed on July 1, 1990.

b) Type II: "The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting but that do not include new residential development..." (RCW 36.70A.070(5)(d)(ii)]

c) Type III: "The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents..." (RCW 36.70A.070(5)(d)(iii)

12) GMA requires that the rural element of a county comprehensive plan provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses, and allows counties to use innovative zoning techniques that will accommodate appropriate rural densities and uses that are consistent with rural character.

13) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by:

a) Containing or otherwise controlling rural development;

b) Assuring visual compatibility of rural development with the surrounding rural area;

c) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

d) Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and
e) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

14) GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor’s office informed the Planning Commission and County Council of this requirement and, in accordance with Attorney General’s Advisory Memorandum, advised them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

15) The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. (RCW 36.70A.011)

Growth Management Hearings Board Decisions: *Futurewise vs. Whatcom County*

16) In *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* (#05-2-0013 Sept. 20, 2005 Final Decision and Order), the Western Washington Growth Management Hearings Board (WWGMHB) found Whatcom County out of compliance on three issues: The policies pertaining to Small Town, Crossroads Commercial, Resort and Recreational Subdivision, Suburban Enclave, and Transportation Corridor land use designations allow the creation of more intensive areas of rural development that do not comply with RCW 36.70A.070(5)(d); The Rural Residential zones (RR-1, RR-2, RR-3), Eliza Island (EI) zone, Rural two-acre (R-2A), and Rural Residential Island (RRI) zones allow residential densities that are not rural in the rural areas and are not in limited areas of more intensive rural development per RCW 36.70A.070(5)(d); and Urban Residential three-per-acre (UR-3) zoning in urban growth areas (except the UR-3 in Lake Whatcom watershed and the airport hazard area) failed to achieve appropriate urban densities.

17) In June, 2007 Whatcom County rezoned approximately 1,700 acres in the Ferndale and Everson UGAs to UR-4 in 2007 (Ord. 2007-030 and 2007-045) to address the urban density noncompliance issue in the September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision.

18) The WWGMHB issued a finding of compliance on the urban density issue on August 30, 2007.

19) The September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision relating to the land use designations and rural density issues was reversed in Whatcom County Superior Court in 2006. The Superior Court decision was, in turn, reversed by the Division I Court of Appeals in 2007, which reinstated the 2005 WWGMHB decision and ordered Whatcom County to comply with that decision (140 Wn. App. 378). In December, 2009 the
Supreme Court of the State of Washington reversed the Court of Appeals' holding that the hearings board did not improperly apply a bright line in addressing the challenge to Whatcom County's rural densities, but affirmed the Court of Appeals' decision that Whatcom County's comprehensive plan did not comply with the Growth Management Act's LAMIRD provisions. The Supreme Court remanded the rural density challenge to the Hearings Board for reconsideration without applying a bright line rule, and ordered Whatcom County to "revise its comprehensive plan to conform to the LAMIRD provision of the Growth Management Act and then apply the statutory criteria to establish appropriate areas of more intensive rural development." (167 Wn.2d 723, 735, 222 P.3d 791)

20) In August, 2009 Whatcom County amended Whatcom County Code (WCC) Chapter 20.34 Rural Residential – Island District (one of the zones found to be out of GMA compliance in the 2005 Futurewise vs. Whatcom County decision) to change the required minimum lot size from three acres to five acres (Ord. 2009-062).


22) In 2011 the Washington Supreme Court issued a ruling in Kittitas County (172 Wash.2d 144) regarding the GMA requirement that county comprehensive plans must contain measures that protect the rural character.

23) On September 9, 2011, the GMHB Order Following Remand from the Supreme Court regarding the remaining rural density from case #05-2-0013 (remanded by the 2009 Supreme Court decision) found Ordinance 2011-013's retention of rural zoning with density of one dwelling per two acres was compliant with the GMA because it was limited to areas in which similar densities had already been established.


25) The January 9, 2012 GMHB Final Decision and Order (FDO) in Futurewise et al v. Whatcom County (#11-2-0010c) found the amendments adopted under Ordinance 2011-013 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

26) The January 4, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom County (#11-2-0010c) found some amendments adopted under Ordinance 2012-032 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

27) The January 4, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom
County (#11-2-0010c) found the population monitoring requirements of Policy 2DD-1 adopted by Ordinance 2012-032 does not create an internal inconsistency which violates GMA and is a "measure to contain and control rural development" that complies with GMA.

Other Relevant Growth Management Hearings Board Decisions

28) Regarding the term "built environment," the built environment includes those facilities which are manmade, whether they are above or below ground, and the built environment must predominate within a LAMIRD, though it may include limited undeveloped lands. (Anacortes vs. Skagit County, Case No. 00-2-0049c, Final Decision and Order, February 6, 2001)

29) The WWGMHB found that RCW 36.70A.115 does not impose an obligation on counties to conduct a needs and capacity analysis for areas outside the UGAs and that provision does not require a rural lands analysis but instead merely requires the County to ensure sufficient capacity of land for development to accommodate the growth allocated in the County's countywide planning policies. (Friends of Skagit County vs. Skagit County, Case No. 07-2-0025c, Final Decision and Order, pp.43-43, May 12, 2008)

30) The WWGMHB found the uses a county allows within LAMIRDs designated per RCW 36.70A.070(5)(d)(i) must be consistent with (though not necessarily the same as) the uses as of July 1, 1990, and allowance of a broader range of uses as conditional uses is not compliant with GMA. (Dry Creek Coalition and Futurewise vs. Clallam County, Case No. 07-2-0018c, Final Decision and Order, April 23, 2008)

31) The WWGMHB found Clallam County's Rural Neighborhood Conservation (NC) Overlay (Clallam County Code 33-10-015), which permits rural densities outside LAMIRDs greater than one dwelling per five acres based on a calculation of the density of developed lots within 500 feet of a property, to be compliant with the Growth Management Act. The Board stated, "Because infill allowed by the NC overlay is limited to neighborhoods that have already been substantially developed, this will not lead to the 'inappropriate conversion of undeveloped lands into sprawling, low-density development...'', a reference to Goal 2 of the GMA. (Dry Creek Coalition and Futurewise vs. Clallam County, WWGMHB No. 07-2-0018c, Compliance Order, November 3, 2009, p.10)

32) The Washington State Supreme Court has held that a growth management hearings board cannot base its evaluation of a county's permitted rural densities on a "bright line" rural density of one dwelling per five acres. (Thurston County vs. Western Washington Growth Management Hearings Board, 164 Wn.2d 329, 190 P.3d 38, 2008; and Gold Star Resorts vs. Futurewise and Whatcom County, 167 Wn.2d 723, 735, 222 P.3d 791, December 17, 2009)

33) The WWGMHB found Whatcom County used appropriate Type I LAMIRD criteria to revise its comprehensive plan designation boundary in the Lake Samish area. (Leenstra vs. Whatcom County, WWGMHB Case No. 03-2-0011, Final Decision and Order, September 26, 2003)

34) The WWGMHB found Jefferson County was not clearly erroneous when it
designated a LAMIRD adjacent to an urban growth area where the City of Port Townsend had decided it was inappropriate to expand its urban growth area.
(People for a Liveable Community, Jim Lindsay, et al. vs. Jefferson County, WWGMHB Case No. 03-2-0009c, Final Decision and Order, August 22, 2003)

35) The WWGMHB found that the use of the term “or” rather than “and” in RCW 36.70A.070(d)(1)(C) “appears to indicate a Legislative determination that the factors of building size, scale, use, or intensity are ones that may be considered in determining the character of the existing area, but that development is not required to meet every one of those parameters. If the Legislature had intended to use the word ‘and’ in the statute, they would have done so.” (Dry Creek Coalition vs. Clallam County, WWGMHB Case No. 08-2-0033, Final Decision and Order, June 12, 2009, p.8)

Whatcom County Policy and Requirements

36) WCC 2.160.080 requires that, in order to approve the proposed comprehensive plan amendments the Planning Commission and County Council must find all of the following:

a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

b) Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.

c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

   i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

   ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

   iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.

d) The amendment does not include or facilitate spot zoning.

e) Urban growth area amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a
designated TDR sending area, with certain exceptions.

37) Whatcom County's County-wide Planning Policies include policies related to rural lands:
   a) County-wide Planning Policy B.1 states, "The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas."

   b) County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density."

   c) County-wide Planning Policy B.3 states, "Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas."

   d) County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6)), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened.

Public Participation

38) Whatcom County's County-wide Planning Policies include policies related to citizen involvement:
   a) County-wide Planning Policy A.2 states, "The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees."

   b) County-wide Planning Policy A.4 states, "Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process."

39) The Whatcom County Planning Commission held open work sessions on the proposed amendments on March 14, 2013 and held public hearings on March 28, 2013. Since publication of the first draft amendments on March 11, 2013, the most current draft amendments have been continuously posted on the County's web site, as have all documents presented to the Planning Commission and all written public comments.
CONCLUSIONS

1) The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.

2) The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020.
   a. Urban growth. Comprehensive Plan Policy 2DD-1 encourages development in urban areas by concentrating growth in urban areas per the adopted population projections and monitoring rural growth and taking actions as necessary to keep rural growth consistent with adopted projections. The proposed amendments do not affect this policy.
   b. Reduce sprawl. Proposed Comprehensive Plan Policy 2DD-8 and policies guiding growth within rural land use designations (under Goals 2GG, 2JJ, 2KK, 2LL) reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area through use of LAMIRDs with clearly defined boundaries and criteria for creating or changing those boundaries consistent with RCW 36.70A.070(5)(d). Policies 2MM-1 and 2 control and contain areas of higher rural densities. The proposed amendments do not affect these policies.
   c. Transportation. Comprehensive Plan Policy 2DD-1, which encourages growth in urban areas and keeps rural growth consistent with adopted projections, is consistent with effective planning of efficient countywide multimodal transportation systems. Policies 2FF-1, 2FF-2, 2FF-4 and the text describing rural character and lifestyle support rural employment opportunities, which can reduce vehicle trips from rural to urban areas. The proposed amendments do not affect these policies.
   d. Housing. Comprehensive Plan Policies 2GG-2 and 2GG-3, in conjunction with the development regulations in WCC 20.32 Residential Rural District and 20.36 Rural District, allows for residential development at a variety of densities appropriate to established rural character and development patterns. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.
   e. Economic development. Comprehensive Plan Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-3, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas within the capacity of natural resources and appropriate levels of rural services. The proposed amendments do not affect these policies.
   f. Property rights. Neither the rural element nor the process leading to its adoption has taken private property for public use without just compensation or involved arbitrary and discriminatory actions. On March 28, 2013 the Planning Commission was briefed on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private
Property, per RCW 36.70A.370.

g. Permits. Nothing in the rural element prevents permit applications from being processed in a timely and fair manner.

h. Natural resource industries. Comprehensive Plan Policy 2FF-2 and development regulations in WCC 20.69 Rural Industrial/Manufacturing District support resource-based industries. Policies 2DD-2.D, 2FF-3, 2GG-4 support minimizing conflicts with resource uses. The proposed amendments do not affect these policies.

i. Open space and recreation. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-2.B, 2DD-2.C, which adopt by reference various development regulations, provide measures to assure visual compatibility with surrounding rural areas, reserve open space through lot clustering, and to protect wildlife habitat and water resources. The proposed amendments do not affect these policies.

j. Environment. Policy 2DD-2.C, which adopts by reference various development regulations, provides measures to protect critical areas and surface and ground water resources. The proposed amendments do not affect this policy.

k. Citizen participation and coordination. Throughout the process to develop and adopt amendments to the rural element, citizens and local jurisdictions have been kept informed and invited to participate through use of e-mail and internet.

l. Public facilities and services. Policy 2DD-2.A.4, which adopts by reference WCC 20.80.212 Concurrency, ensures that no subdivision, commercial development or conditional uses be approved without a written finding that service providers have adequate capacity to serve the development and that no County facilities will be reduced below applicable levels of service as a result of the development. The proposed amendments do not affect this policy.

m. Historic preservation. Policy 2DD-7 supports maintaining the historic character and cultural roles of each rural area and community. The proposed amendments do not affect this policy.

3) The rural element of the Comprehensive Plan and the county development regulations, as amended, meet the requirements of the Growth Management Act, RCW 36.70A.

a. The rural element includes measures that protect the rural character per RCW 36.70A.070(5)(c) in Policies 2DD-1, 2DD-2, 2GG-2, 2GG-3, and 2MM-1-4.

b. The rural element provides for limited areas of more intensive rural development, limited per the requirements of RCW 36.70A.070(5)(d), in policies 2HH-1 through 3, 2JJ-1 through 8, 2KK-1 and 2, and 2LL-1-4. The proposed amendments do not affect these policies.

c. The rural element contains a description of rural character and lifestyle
that considers local circumstances as permitted in RCW 36.70A.070(5)(a), and contains the GMA definition of rural character per RCW 36.70A.030(15). The proposed amendments do not affect that description.

d. Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas, as supported by RCW 36.70A.011. The proposed amendments do not affect these policies.

e. Comprehensive Plan policies describing rural land use designations and rural services (under Goals 2EE, 2GG, 2JJ, 2KK, 2LL, and 2MM), and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(b), which requires the rural element to provide for a variety of rural densities, uses, essential public facilities and rural governmental services. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.

f. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-5, 2DD-6, 2GG-6, and 2MM-2 support innovative techniques, consistent with RCW 36.70A.070(5)(b). The proposed amendments do not affect these policies.

g. The County has evaluated the Comprehensive Plan and development regulation amendments to ensure that they do not result in an unconstitutional taking of private property, per RCW 36.70A.370.

4) The amendments to the rural element of the Comprehensive Plan and the county development regulation resolve the noncompliance and invalidity findings of the January 4, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom County (#11-2-0010c):

a. Variety of Rural Densities: Comprehensive Plan Policy 2GG-3 restricts rezonings from R10A to districts allowing higher densities, thus ensuring a variety of rural densities similar to that which already exists.

b. Lot Clustering: Amendments to WCC Title 20 revise rural lot clustering provisions to provide enforceable criteria and to prohibit residential development within reserve areas.

c. Rural Neighborhoods: Amended boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels in order to be more consistent with the small-lot 2011 development pattern.

d. Water Lines: The amendments to WCC 20.82.030 and 20.97.452 clarify that urban-scale water service cannot be extended into rural areas by adding a definition of “transmission line” based on the definition in WAC 246-290-010(267), and by amending wording in the Health Code, WCC 20.11.050(C) which implied that service connections could be made to transmission lines.
5) Additional conclusions regarding LAMIRD boundaries:
   a. With regard to Parcel No. 400123 029037 0000, situated in the I-5/Birch Bay Lynden Road/Valley View Road LAMIRD, the Board originally held in its FDO of January 9, 2012 that the subject parcel should not be included in the LAMIRD because there was an insufficient built environment on that parcel.

   In response, based on new evidence of a built environment, including a structure and site preparation work existing in July 1990, we declined to remove that parcel from the LAMIRD. We believe the new evidence refuted the conclusion of the Board.

   In response, in its FDO dated January 4, 2013, the Board stated that allowing a LAMIRD at this location was probably a mistake in the first place and again required that the parcel be removed. The owner of the parcel appealed both of the Board decisions which are pending.

   The owner of the subject parcel has supplied additional information relating to the loss of value of the parcel as a result of the downzone which the Board has mandated. That information, consisting of letters from a Certified General Real Estate Appraiser and a real estate broker with decades of experience in this area of Whatcom County demonstrates that the uses remaining for this property after the downzone from RGC to RSA are not financially viable.

   We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6) which provides that we should not take property without compensation. We conclude that the benefit to the community by downzoning this property is not roughly proportional to the damage to the property owner. This exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitutions.

   In addition, the exclusion of this 2.5 acre parcel does not comport with RCW 36.70A.070(5)(d)(iv) which requires a logical outer boundary for all LAMIRDS. The Board failed to comply with this section of the Growth Management Act.

   For the reasons stated above, and based on the new evidence and on the belief that the Board previously erred, we respectfully decline to remove this parcel from the LAMIRD.

   b. With regard to Parcel No. 390225 470286 0000 situated in the Smith & Guide Meridian LAMIRD, in its FDO dated January 9, 2013, the Board determined that this parcel should not be included in the LAMIRD because its inclusion does not create a logical outer boundary. New evidence was submitted to the County regarding this parcel. We find the new evidence refutes the conclusion of the Board.
The owner of the parcel appealed the Board decision, which is pending. The Board’s FDO dated January 9, 2013, is the first time that the zoning of this parcel has been questioned. It has been zoned for commercial uses since 1990 when it was zoned General Commercial. Moreover, the new evidence indicates that commercial use has been ongoing on the parcel for decades.

In addition, the one-acre parcel (Parcel No. 390225510322 0000) situated directly north of the parcel has also contained continuous commercial use for decades. Over the years, this smaller parcel has contained a Culligan Water retailer, a veterinarian office, and a paintball business. Presently, a church is located there.

Finally, the Board believes that the distance between the portion of the Smith & Guide Meridian LAMIRD the Board retained and Parcel No. 390225510322 0000 is too far. We disagree and note that 472 lineal feet of Guide Meridian frontage, which is the east boundary of Parcel No. 390225470286 0000, is minimal considering that the Smith & Guide Meridian LAMIRD contains over one mile of Guide Meridian frontage. The Guide is a five-lane state highway.

Due to the prior uses, existing uses and the decades of commercial zoning, retaining Parcel No. 390225510322 0000 and Parcel No. 3902254702860000 in the Smith & Guide Meridian LAMIRD is consistent with the location and outer boundary criteria of Policy 2HH-I.A- C and complies with RCW 36.70A.070(5)(d)(iv).

We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6), which provides that we should not take property without compensation. We conclude that the benefit to the community by downzoning these properties is not roughly proportional to the damage to the property owner. As such, this exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitutions.

For the reasons stated above and based on the new evidence, we respectfully decline to remove Parcel No. 390225510322 0000 and Parcel No. 390225470286 0000 from the LAMIRD.

6) The subject comprehensive plan amendment complies with the approval criteria of WCC 2.160.080, which requires that the County must find the following criteria, are satisfied in order to approve the proposed comprehensive plan amendment.

   a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.
I. Growth Management Act

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, above.

II. County-Wide Planning Policies

County-wide Planning Policy B.1 states, "The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas." Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County’s web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density." The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. On March 28, 2013 the Whatcom County Prosecuting Attorney’s office advised the Planning Commission on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

iii) Whatcom County Comprehensive Plan

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goal 2MM.

iv) Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections
without City-County coordination.

b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board’s January 4, 2013 Compliance Order.

c. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The proposed amendments either retain existing zoning intensities and densities or reduce them in rural Whatcom County.

ii. The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.

No amendments are proposed that increase adverse impacts on designated resource lands.

d. The amendment does not include or facilitate spot zoning.

WCC 20.97.186 defines "illegal spot zoning" as "a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole." Rezonings proposed under these amendments apply to areas, or to lots identified
by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

e. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.

No urban growth area amendments are proposed.
RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends approval of:

    Exhibit A, Whatcom County Comprehensive Plan amendments,
    Exhibit B, Whatcom County Code amendments,
    Exhibit C, Official Whatcom County Zoning Map amendments.

The Planning Commission further recommends that the County Council docket a review of the Whatcom County Code’s lot clustering provisions, including but not limited to a review of required reserve area percentages and ways to ensure agricultural viability for agricultural reserve areas.

WHATCOM COUNTY PLANNING COMMISSION

Michelle Luke, Chair

Sam Ryan, Secretary

May 5, 2013

May 3, 2013

Commissioners present at the April 25, 2013 meeting when the vote was taken: Ben Elenbaas, Rod Erickson, Gary Honcoop, Michelle Luke, David Onkels, Mary Beth Teigrob, and Gerald Vekved.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 2. Motion carried to adopt the above amendments.
March 28, 2013

Whatcom County Planning Commission
5280 Northwest Dr.
Bellingham, WA 98226

Re: Smith & Guide Meridian Type I LAMIRD
Whatcom County Assessor’s Parcel No. 390225 470286 0000

Dear Planning Commission:

This letter is intended to shed light on the Growth Management Hearings Board’s (“Board”) Compliance Order (“Order”) issued on January 4, 2013 and Whatcom County’s anticipated compliance action. By way of background, the Order addressed Whatcom County Ordinance 2012-032 (“Ordinance”) that was enacted in the summer of 2012.

We represent Doug Pullar, who is the owner of the above-referenced property (herein the “Property”). The Property is a 13.5 acre parcel located at 5541 Guide Meridian – at the north end of the Smith & Guide LAMIRD. Since the early 1990s, the easterly 6.5 acres of the Property has been zoned General Commercial. As a result of the 2011 and 2012 Ordinance, this section of the Property was included in the Smith & Guide Meridian LAMIRD. The Property has previously been used to sell gravel beginning in the late 1980s. For the last several summers, fruit is sold at a fruit stand on the Property. Please find attached a letter from Mr. Pullar explaining the Property and its historic uses.

In the Order, the Board determined that the logical outer boundary of the Smith & Guide Meridian LAMIRD violated the GMA. The Board specifically took issue with the north end of the Smith & Guide Meridian LAMIRD. In adopting the Smith & Guide Meridian LAMIRD boundary in 2011 and 2012, the County recognized the commercial uses on the one acre parcel at the far north end of the Smith & Guide Meridian LAMIRD and this Property. Unfortunately, the Board disagreed with the County. It reasoned that this “dog-leg” extending the LAMIRD boundary north to include the one acre parcel does not create a logical outer boundary that is “clearly identified and contained.” The Board also found a violation of GMA Goal 2 which is to reduce the “inappropriate conversion of undeveloped land into sprawling, low-density sprawl.”
Now, the County proposes to redraw the boundaries to exclude the Property as well as the one acre parcel to the north. This would change the designation of those parcels from “Rural Community” to “Rural” with R5A zoning.

Unfortunately, the Board did not recognize or understand the definition of a “Rural Community” as articulated by Goal 2HH-1. This goal deals directly with the criteria for Type I LAMIRD designations and requires the “existing (1990) residential built environment was more intensively developed than surrounding areas.” Here, the one acre parcel\(^1\) has been continuously used for commercial purposes for decades. It had been a Culligan Water retailer, a veterinarian office, and a paintball business. Presently, a church is located on it. Similarly, the Property has been used to sell gravel beginning in the late 1980s.

Additionally, if for some reason this is not enough of a “built environment,” the Rural Community designation under “additional location criteria” requires consideration of existing zoning prior to designation as a Rural Community.” Areas that were not intensively developed can be included if inclusion would help “preserve the character of an existing (built) natural neighborhood….and including the area does not create a new pattern of low-density sprawl.” See Whatcom County Comprehensive Plan Policy 2HH-1.C.2.e. dated July 24, 2012. The Property was originally zoned as “General Protection” then was changed in 1990 to “General Commercial.” As mentioned above, the zoning then was changed to “Rural General Commercial” in 2011.

Finally, the Board seems very concerned about the “seven undeveloped acres” between the one acre parcel and the rest of the Smith & Guide Meridian LAMIRD. For perspective, these seven acres are the east half of the Property and are a mere 472 lineal feet of Guide Meridian frontage.\(^2\)

The logical outer boundary as proposed by the County in 2012 is “clearly identified and contained.” The one acre parcel and the Property contain meet the criteria contained in Goal 2HH-1 such that each warrant inclusion in the Smith & Guide Meridian LAMIRD. Moreover, the uses on both the Property and the one acre parcel do not constitute an “inappropriate conversion of undeveloped land into sprawling, low-density sprawl” because of the decades of commercial type use. Changing the zoning from some type of commercial zoning to some type of rural zoning flies in the face of logic and the entire purpose of the GMA.

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\(^1\) The Board attempts to minimize it by calling it the “property with the small building”.
\(^2\) The Smith & Guide Meridian LAMIRD has almost one mile of frontage on both sides of the Guide Meridian.
We respectfully request that the Planning Commission ignore the staff's recommendation and retain the Rural Community Comprehensive Plan designation and associated RGC zoning currently in place on the Property.

If the Planning Commission agrees with this assessment, the staff's Proposed Conclusions would need to be modified. Specifically, Conclusion I. d. found on page 21 of the March 11, 2013 Rural Element Update Staff report would need to be deleted.

Thank you for your consideration.

Very truly yours,

Belcher Swanson Law Firm, PLLC

BRADLEY D. SWANSON
Attorney at Law

Cc: client
To: Whatcom County Planning Commission and the
Whatcom County Council

The fundamental goal of land management is to designate uses for land that best meets the needs of
the citizens and the land.

Residential lands tend to be found in low traffic esthetic areas or low traffic easy access areas. Family
residences in high traffic areas create stress in the traffic flow. Residential ingress and egress create
added safety issues. Now add school buses into this flux with their often stopping to pick up or drop off
children, it really defeats the ease in moving traffic. When the multiple red lights of a school bus go on
all traffic both north and south stops, knowing the penalty is brutal driving through a stopped school
bus.

The very fact that residences are diminishing in number testifies the fact that the Guide Meridian is not
a desirable residential location and rightfully so.

So what is the best use for these properties along the Guide Meridian with its high volume noisy traffic?
Businesses; businesses thrive in high volume corridors due to the high visibility they gain. Even when the
Guide Meridian was a traffic nightmare prior to its upgrade, businesses with foresight knew success was
in exposure and access. Now that the Guide Meridian has been thoughtfully upgraded the higher
volume of traffic provides even better exposure and access.

Any entrepreneur contemplating a location to start a business would have to consider the Guide
Meridian as a top location. Current businesses that provide services and goods the public needs do very
well along the Guide Meridian. The land is desirable for business.

(See attachment A) The zoned properties along the Guide Meridian set forth in the zoning from 1990
Smith Road north have multiple businesses with vacant parcels interspersed. These vacant parcels in the
1990’s zoned area will provide future business sites for entrepreneurs in this corridor. County officials
gave good thought and consideration as to what this land was best suited. They got it right.

(See attachment B) Now we have some new considerations for what the land is best suited. The myriad
of rules, regulations, management acts, etc. have proposed zoning be altered to provide more
residential or whatever. If compliance with the Growth Management Act or whatever rule or regulation
requires change, then the current county officials must again evaluate the properties and decide what’s
best for the needs of the people and property.

I don’t believe residences, parks, walking paths, schools, bicycle paths, nature trails, or other activities
are best suited along the Guide Meridian with its’ high volume noisy traffic. High volume traffic is most
compatible with business, and as our county population grows, more businesses can develop providing
jobs, services and a healthy tax base. Now is not the time to strangle useful development of those
properties.
Many county citizens find it less stressful doing business close to home than fighting the streets of Bellingham; that's why businesses have left the core of Bellingham to the outskirts or into the county. For consumers doing business along the Guide, it saves time, saves fuel, and saves stress.

As a property owner at 5541 Guide Meridian in this 1990 commercial zone corridor, I realized the needs of future businesses and therefore provided fire hydrants and waste water drainage. When the Guide Meridian was recently upgraded, the water mains were increased to 12" north of Smith Road on the west side of the highway. Having a veterinary clinic to the north, a full car service to the south, and the above mentioned property improvements, my property was ideal for a future business. I have been patient in hoping a business compatible with my liking would eventually be established and eventually will.

The county assessor assessed all parcels whether occupied by business or not at a commercial rate, and rightfully so. I've paid those assessments from 1992 to current the full time I have owned the property. I felt the transfer of property to a business would be much easier if the taxes were correct.

(See attachment C) In conclusion the synopsis suggests the county has violated RCW 36.70A.070(5)(d) by failing to include adequate measures to protect the rural character. Some areas along the Guide Meridian will always have rural character due to their topography or location. The Nooksack flood plain, gullies, streams, lakes, and low volume traffic north of the Badger Road have changed little and will have rural character for a very long time.

If a policy or regulation is set forth to stop business growth and create a more rural atmosphere, then we will have businesses interspersed with residences, and that would be poor planning.

Secondly, most families choosing to live along the Guide Meridian would be tempted to have front yard sales of old cars, trucks, tractors, or whatever as many do at present. They would not plant Gingko trees or ornamentals to create a more rural oasis interspersed between businesses. That would be silly. Healthy tax generating businesses makes more sense.

The county must decide if it is better off having well-planned businesses providing jobs, services, and a tax base, or will it be better off having many residences maximizing their investment in land by selling their or their friends old motor homes, trucks, etc. One way or another, the land dictates the use and the Guide Meridian with its' high traffic flow is ideal for business.

Thank you for your time and consideration.

Sincerely,

[Signature]

Doug Pullar
April 8, 2013

Whatcom County Planning Commission
5280 Northwest Dr.
Bellingham, WA  98226

Re:  Birch Bay-Lynden and Valley View Type I LAMIRD
      Whatcom County Assessor’s Parcel No. 400123 029037 0000
      Proposed Findings of Fact and Conclusions

Dear Planning Commission:

This letter is a follow-up to our letter dated March 28, 2013 regarding the same.

In support of retaining Parcel No. 400123 029037 0000 in the Birch Bay-Lynden and Valley View LAMIRD, we prepared changes to County Staff’s “Proposed Findings of Fact and Reasons for Action.” Our changes are contained in the attached Exhibit A.\(^1\)

As a result of these proposed changes to County Staff’s “Proposed Findings of Fact and Reasons for Action,” County Staff’s “Proposed Conclusions” must be changed. Our changes are contained in the attached Exhibit B.\(^2\)

Additional information for your consideration is attached as Exhibits C and D.

Again, we respectfully request that the Planning Commission ignore the staff’s recommendation and retain the Rural Community Comprehensive Plan designation and associated RGC zoning currently in place on Parcel No. 400123 029037 0000.

Thank you for your consideration.

Very truly yours,

\[\text{[Signature]}\]

JACK O. SWANSON

Cc: client

\(^1\) Note that all additions are underlined and all deletions are struck-through.

\(^2\) See Note 1.
Exhibit A

Add the following Findings of Fact and Reasons for Action:

With regard to Parcel No. 400123 029037 0000, situated in the I-5/Birch Bay Lynden Road/Valley View Road LAMIRD, the Board originally held in its FDO of January 4, 2012 that Parcel No. 400123 029037 0000 should not be included in the LAMIRD because there was an insufficient built environment on that parcel. In response, based on new evidence of a built environment, including a structure and site preparation work existing in July 1990, we declined to remove Parcel No. 400123 029037 0000 from the LAMIRD. We believe the new evidence refuted the conclusion of the Board.

In response, in its FDO dated January 9, 2013, the Board stated that allowing a LAMIRD at this location was probably a mistake in the first place and again required that Parcel No. 400123 029037 0000 be removed. The owner of Parcel No. 400123 029037 0000 appealed both of the Board decisions which are pending. We support those appeals.

The owner of Parcel No. 400123 029037 0000 has supplied additional information relating to the loss of value of the parcel as a result of the downzone which the Board has mandated. That information consists of letters from an appraiser and a real estate broker showing that the uses remaining for this property after the downzone from RGC to R5A are not financially viable. We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6) which provides that we should not take property without compensation. We conclude that the benefit to the community by downzoning this property is not roughly proportional to the damage to the property owner. As such, this exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitution.

Additionally, the exclusion of this 2.5 acre parcel does not comport with RCW 36.70A.070(5)(d)(iv) which requires a logical outer boundary for all LAMIRDS. Attached is a map that clearly shows that the Board failed to comply with this section of the Growth Management Act.

For the reasons stated above, and based on the new evidence and on the belief that the Board previously erred, we respectfully decline to remove Parcel No. 400123 029037 0000 from the LAMIRD.
Delete Proposed Conclusion I. e.:

Birch-Bay-Lynden & Valley View LAMIRD: The amendments to the LAMIRD boundary and zoning map excludes one parcel to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).

Revise the second and third paragraphs of Proposed Conclusion I. a. ii.:

County-wide Planning Policy B.2 states, “The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density.” The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch-Bay-Lynden & Valley View Rural Communities (Type I LAMIRDs), and the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policy B.3 states, “Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.” The proposed amendments retain Comprehensive Plan policies under Goals 2HH, 2JH, 2KK, and 2LL that provide criteria and policies for limited areas of more intensive rural development. Proposed amendments to the Smith & Guide Meridian and Birch Bay Lynden & Valley View Rural Community boundaries creates a Type I LAMIRDs that are compliant with RCW 36.70A.070(5)(d)(iv).
April 8, 2013

Whatcom County Planning Commission
66 Becki Boxx
5280 Northwest Dr.
Bellingham, WA 98226

Re: Rural Element
Whatcom County Assessor’s Parcel No. 400123 029037 0000
(the “Property”)

Dear Planning Commission,

We are writing this letter in connection with the Planning Commission’s deliberations on the rural element, particularly the Birch Bay/Valley View LAMIRD. Based on the Growth Management Hearings Board (“Board”) order dated January 4, 2013, we understand the Planning staff is recommending to the Planning Commission that property be removed from the Birch Bay/Valley View LAMIRD.

We have been asked by the property owner to provide evidence in connection with that proceeding.

First, a little bit about us. I am currently a designated real estate broker licensed under the laws of the State of Washington. I have my own office, Tom Filion’s Land Office, which I have operated since 1977. Prior to getting my broker’s license, I was licensed as a salesperson from 1971.

In my capacity as a broker/salesperson of real estate, I have had extensive dealings in Whatcom County and particularly in the area of Whatcom County north of Bellingham, and in the larger area surrounding the Property.

I have worked with Sam Boulos, one of the owners of the Property, for over 30 years and have frequently assisted him in acquiring other lands as well. I am quite familiar with the Property, and with its location at the intersection of Valley View Road, Birch Bay Lynden Road, and immediately adjacent to the northbound entrance to Interstate 5. In addition to providing real estate services for Mr. Boulos, my other
companies have provided maintenance and assistance in managing his various properties around the County.

When Sam and his partners acquired the Property in 1989, I am aware that his intention was to develop the site to commercial uses. The Property was zoned Gateway Industrial at the time which provided for a wide variety of commercial uses which would be appropriate on a property immediately adjacent to a freeway. I know Sam is in the gasoline sales business, and am aware that his original intention was to establish a gas station at the Property’s location.

It is my understanding that the Board has declined to include Sam’s Property in the LAMIRD with the adjoining property currently owned by Gold Star Resorts, Inc. It is hard to understand why the Board would make such a ruling. Omitting the Property from the LAMIRD at this corner of the intersection seems to take a strange bite out of the overall land which really makes little sense in my view.

Apparently, the Planning staff, in response to the Board’s order, has decided that the Property should be downzoned from Rural General Commercial (RGC) to Rural 5 Acres (R5A). When I look at the configuration of the lands, this seems quite unusual to me. I have been asked to review the R5A zoning and determine what kinds of activities might be appropriate on this site at this location.

As part of my analysis to determine what uses in the rural district might be appropriate on the Property, I evaluated the surrounding area by considering the active uses and the zoning. I also reviewed the zone text for the Rural (R) District and the permitted, accessory, administrative approval uses, and conditional uses allowed in that district. I also reviewed of July 24, 2012 amendments and the proposed language in the March 13, 2013 draft submitted to the Planning Commission by the staff.

The prevented uses are found at WCC 20.36.050. I believe none of those uses are worthwhile in terms of a development project for the Property.

Let’s take single family detached dwelling as an example. The Property has commercial zoning on two sides of it and highly traveled roads on the two other sides. While Valley View Road may not be as travelled as some, Birch Bay Lynden Road certainly makes up for it as does the freeway.

Agriculture is not worthwhile here either. The site has been graveled in preparation for more intense uses. As such, the soils are virtually unusable for agriculture.

Sod farming, fish farms, small woodlot management, tree farming, etc., are not feasible.

The provision which allows private, non-commercial, recreation occupancy of a recreational vehicle is so restrictive as to be unlikely to be used by anyone.
Non-commercial extracting of sand, gravel, and other materials must be used on the Property.

None of the remaining uses mentioned under the list of permitted uses in the district seem useful at all.

Likewise, none of the accessory uses seem significant enough to warrant making improvements to utilize the Property.

With regard to administrative approval uses, many of them are residential in nature. In my opinion, this site is not suitable for residential development as stated above. The remainder of the allowed uses seem to require the existence of a home on site in which the family operating the use must reside in order to operate. There are plenty of places in Whatcom County where these kinds of activities can occur without having to buy a site like this one and develop all of the infrastructure needed to pursue the proposed activities. Furthermore, even the processing of agricultural uses cannot occur here, because of the requirement that the products be grown on the site, which, again, is unsuitable for agriculture.

Finally, let’s look at the conditional uses.

Many of the conditional uses are not allowed outside rural communities and short term planning areas unless criteria can be demonstrated. This provides little incentive for someone to develop a site so small with those types of uses. The same is true of the schools, churches, retirement homes.

An animal hospital is unlikely due to the number of veterinary hospitals located in north Whatcom County. By our count, there are 3 in Lynden, 2 in Blaine, and 2 in Ferndale, all within a few minutes drive of the Property. In my experience, profit margins in the animal hospital business are low and would not likely justify the capital investment in order to provide such a service at this location.

Regarding .156 Commercial Kennels and Stables, the same is true as animal hospitals. Further, the Property is not large enough for a stable.

Housing or camping facility are unlikely in this marketplace. While the use of the site in the late 80’s and early 90’s included RV camping, that operation was never wildly successful and this site is really too small.

Things like landing strips and surface mining activities are obviously inappropriate. Cottage industries might work on this site, but without an existing home and other infrastructure to support the cottage industry, there is little reason to develop the site for that purpose. Most cottage industries locate where buildings already exist that are functional for the purposes of the business. Once the business takes off, it moves to a business park. There are several such opportunities nearby. Moreover, people who start
Cottage industries are not normally flush with capital to provide all that new infrastructure upfront.

Small scale commercial processing, forestry, agricultural products, makes no sense. The demand for firewood in this area is met by a firewood processor in the neighborhood who works from his home.

Bed and breakfast lodgings do not typically locate next to freeways. Rather, they prefer more remote locations which have some kind of natural amenities for the lodgers.

Sections .171, .172, .173 and .174 relate to processing of minerals or agricultural products, nurseries, and the like.

Section .175 is only allowed in the R10.

Regarding .176 through .187, the site does not seem well suited to any of those activities. Some require a significant investment in infrastructure.

The items listed from .189 to .195 will require a location inside a rural community or a short term planning area. Section .196 is wetland mitigation banks which obviously do not fit here.

In conclusion, based upon my years of experience and analysis of the various uses and the site and surrounding areas, it is my conclusion that the Property has little value with rural district zoning assigned to it. This is not the case with the RGC, which has numerous commercial type uses which are allowed and when utilized by the property owner could prosper.

Thank you for the opportunity to comment on this matter. Hopefully it will assist the Planning Commission in its deliberations.

Sincerely,

TOM FILON
April 8, 2013

RE: 13-243

Whatcom County Planning Commission
Whatcom County Courthouse
Bellingham, WA 98225

Dear Sirs,

I have been requested by attorney Jack Swanson to address several issues regarding the "re-zone" of the Mahmoud and Yanolla Boulos property located near Custer, WA at the north easterly quadrant of the Birch Bay-Lynden Rd/Interstate-5 interchange.

This letter shall serve to address several issues with regard to the potential highest and best use of the property and the impact upon values that a zone change would have on the subject property.

1. **Neighborhood Analysis:** The subject property is located in the Custer area of northwestern Whatcom County. The Custer area is generally defined as lying southerly of Loomis Trail Rd, northerly of Grandview Rd, easterly of Kickerville Rd, and westerly of Sunrise Rd. Access throughout the area is good via a system of hard surfaced state and county maintained roadways. The neighborhood features a mixture of land uses throughout the area including commercial, light industrial, agricultural, and suburban residential. Typically, residential parcels in the neighborhood are located on small acreage tracts ranging in size from small  platted lots in established residential subdivisions, up to sites of more than 20 acres in size. In addition to the suburban residential uses, there are numerous operating farms in the general vicinity including operating dairy, berry, and dry crop farm operations. Commercial and industrial uses are primarily centered in the I-5 corridor and are concentrated at various interchange locations including the Grandview interchange, the Birch Bay Rd interchange, and the South Blaine interchange with Interstate-5. Residents in the area rely upon the communities of Blaine, Lynden, and Ferndale for sources of goods,
services, and employment. The major factors to preclude more rapid land use change in the vicinity includes the absence of utilities infrastructure, most notably sewer and water. The subject property is located near the northwest portion of the Custer neighborhood in the Birch Bay-Lynden Rd/I-5 interchange area which is one of the busier interchanges on Interstate-5 outside of the corporate limits of Bellingham and/or Ferndale.

2. **Property Description**: The subject site consists of 2.37 acres of land that is essentially rectangular in configuration. It occupies a key corner at the Birch Bay-Lynden Rd/I-5 interchange being at the northeasterly corner of Valley View Rd and the Birch Bay-Lynden Rd intersection with Interstate-5. The site is generally level and at street grade and is mostly cleared except for small trees and deciduous varieties of vegetation. It is unknown if any significant wetlands are in existence on the subject site. The existence of wetlands may impact potential development of the subject property for any type of use, whether it be commercial or residential. A wetlands study would have to be examined in order to determine to what extent, if any, wetlands may impact the potential development and/or use of the subject site. The site commands frontage along the northerly side of Birch Bay-Lynden Rd at the Interstate-5 interchange with Birch Bay-Lynden Rd and also commands frontage along the easterly side of Valley View Rd just north of Birch Bay-Lynden Rd intersection. The site has good visibility and frontage.

3. **Current Zoning**: Currently, the site is zoned Rural General Commercial, which is a land use classification in Whatcom County that allows for a multitude of low impact commercial uses commensurate with the neighborhood in which it is located. In a general sense, the Rural General Commercial classification is intended to accommodate and supply commercial needs within specific areas for a broad range of commercial uses serving the surrounding rural trade area. The intent is to allow for smaller scale commercial development and redevelopment commensurate with available public services and is intended to not compete directly with Highway Commercial, or Gateway Industrial land uses which generally involve commercial and non-residential uses of a much more dense and higher impact nature. To a certain extent, the Rural General Commercial classification is similar to Small Town Commercial where there is not the intent to attract businesses and customers from great distances, however, it does reflect the need to provide for traditional commercial uses in unincorporated Whatcom County. Generally, this type of land use would include the repair of vehicles and equipment, mini-storage facilities, certain eating and drinking establishments, (with limited structural sizes), professional office buildings including veterinary practices, small grocery stores, tool and equipment rental, public markets, and certain wholesale and retail warehousing and distribution facilities. The Rural General Commercial classification is not intended to compete directly with Gateway Industrial, or Highway Commercial Enterprises where a much more dense concentration of commercial uses are generally encouraged. In this regard, it is noted that a significant amount of Gateway Industrial and Highway Commercial zoning is located along the I-5 corridor from Blaine south to the City of Bellingham. In these areas, warehousing, distribution facilities, motels and hotels,

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W. Thomas Follis, Appraiser

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and trans-shipping uses are generally located. The Birch Bay Square shopping center is located less than 200 yards from the subject property on the opposite side of Interstate-5 at the northwest quadrant of I-5 and Birch Bay-Lynden Rd.

4. **Proposed Zone Change:** The proposed zone change from Rural General Commercial to a R-5A classification in a rural district is a significant change in the potential uses that would be allowed on the subject property. The Rural District has been designed to maintain low density rural residential development in areas designated as rural on the comprehensive plan. The intent of the Rural District is to allow for a variety of low intensity uses that are compatible and complimentary with the conservation of agricultural, forestry, and other related uses. In the Rural District, permitted uses outright include: single family residential, agriculture, sod farming, fish farms, small wood lot management, and recreational sites of a non-permanent nature. The Rural Residential District has been primarily associated with much of unincorporated Whatcom County and includes significant areas throughout the western belt of Whatcom County including the R-5A, R-10A, and somewhat more dense R-2A zone classifications. Those areas of the county with the R-5A and R-10A zone classifications are generally improved with single family residential structures and are used for suburban residential purposes.

5. **Definition of Highest and Best Use:** The term “highest and best use” as it normally relates to real estate is generally defined as that use or those uses to which a given property may be put that would yield the greatest net return to the land in terms of dollars over a specified period of time.

When specifically applied to the highest and best use of land, it is generally that use from among reasonable, probable, and legal alternative uses found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.

Implied within the definitions is the recognition of the contribution of that specific use to community environment or to community development goals in addition to maximizing the value of the individual property owners. The use must be legal, there must be a profitable demand for such use, and it must return to the land net return for the longest period of time. The highest and best use of the subject site as vacant generally takes into consideration four factors. Those factors are:

- a) Physical possibility
- b) Legal permissibility
- c) Economic viability
- d) Maximum productivity

All four of those factors are taken into consideration in the analysis of real estate as it relates to the potential highest and best use of a parcel of land, and hence, its potential market value.
6. **Definition of Market Value:** The term "market value" as it will be referred to in this report as defined by Title XI of FIRREA as adopted by the OCC Regulation 12 CFR 34 is:

The most probable price which a given property should bring in a competitive and open market under all conditions requisite to a fair sale, with the seller and buyer each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

a. Buyer and seller are typically motivated;

b. Both parties are well informed or well advised and each acting in what they consider their own best interest;

c. A reasonable time is allowed for exposure in the open market;

d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the transaction.

(12 C.F.R. Part 34.42(g); 55 Federal Register 34696, August 24 1990, as amended at 57 Federal Register 12202, April 9, 1992; 59 Federal Register 29499, June 7, 1994)

The foregoing definitions of highest and best use and market value are critical to the analysis of the subject property. As indicated previously in this letter, the subject property originally had a zone classification of Rural General Commercial, and there is a proposal to change the zone classification to Rural District Classification, in this case, to R-5A.

In this appraiser's opinion, that will have a significant disadvantageous impact upon the potential use and value of the subject property.

First of all, the subject property constitutes 2.37 acres of land, which is smaller than the minimum site size specified in the R-5A zone classification. While it is recognized that any existing lot of record can be considered a legal building site provided that it does not abut a larger parcel owned by the same party, nevertheless, the minimum site size of the subject property does not meet the minimum size requirements mandated by the Rural District classification.

As described here before in this letter, the subject property is located at a major interchange on the I-5 freeway system in northwestern Whatcom County.

There is no demonstrated demand anywhere within the Whatcom County marketplace for suburban residential parcels on or near major Interstate freeway interchanges.
Again, it is emphasized that the subject property is located within the Custer neighborhood, and from a sub-neighborhood standpoint, the subject property is located within the Interstate-5 corridor. One of the inherent principals in the analysis of vacant land is that value is retained when the land use pattern is ideally balanced, and value is reduced when uses are imbalanced.

This is important to note since properties located on or near the various interchanges throughout Whatcom County reveal a significant pattern in consistent land use.

There are currently 18 interchanges in Whatcom County ranging from the South Lake Samish-Nulle Rd interchange in southern Whatcom County, to the downtown Blaine interchange near the United States/Canadian Border. Generally, there is a consistency in land use patterns throughout all of the interchange locales in Whatcom County specifically, and certainly in other counties in Western Washington as well.

The only interchange in Whatcom County that is not impacted by commercial and/or industrial growth is the South Lake Samish interchange at Nulle Rd near the Whatcom County/Skagit County border. There are no commercial influences in the interchange area; however, the next interchange to the south, the Alger interchange has a fast food facility and automobile service facility at the southeasterly quadrant of the Alger interchange.

The North Lake Samish interchange with Interstate-5 has a convenience store and gas station located at the southwesterly interchange quadrant, and there is a park and ride lot located at the northeasterly quadrant, and there is a shooting facility directly east of the off and on ramps to the North Lake Samish interchange with Interstate-5.

At the Fairhaven Parkway interchange, a major retail outlet is located at the northwesterly quadrant and an automobile service facility and an AM-PM minimart is located at the southwesterly quadrant. A parking lot is located at the southeasterly quadrant, and two derelict homes are located at the northeasterly quadrant.

The Fielding Street interchange also features non-single family residential influences. The Sehome mall dominates the westerly side of Interstate-5, and the northeasterly side features multi-family and commercial uses, and the southeasterly quadrant is improved with older modest quality single family residential housing stock and that area is zoned for multi-family residential purposes.
The Lakeway Drive interchange in Bellingham is dominated by commercial uses at all quadrants with the exception of the northeasterly quadrant which is improved with an old modest quality single family residential dwelling.

The Iowa Street interchange with Interstate-5 features commercial uses at all four quadrants.

The Sunset Drive interchange has intense commercial uses at three of the four quadrants, and the only reason the northwesterly quadrant has not been developed commercially is that the State of Washington and the City of Bellingham have denied access for commercial purposes to a large under improved homesite with a Class B access for single family residential purposes only.

The Meridian Street interchange is all commercial with the exception of the Bellingham Golf and Country Club location.

The Northwest Avenue interchange features two places of worship on the southerly side of Interstate-5, and a major automobile dealership located at the northerly side and a planned multi-family, single family residential development also on the northerly side.

The Bakerview interchange is also intensely developed with commercial uses including the existing Fred Meyer complex, several automobile service facilities, and this interchange is also the location of the planned new “Costco” relocation.

The Slater Rd interchange has commercial uses along the northwesterly and southeasterly quadrants, and the Lummi Indian Tribe is proposing a major commercial facility located at the southwesterly quadrant of the interchange. The northeasterly quadrant features an older single family residential dwelling.

Both interchanges serving the City of Ferndale are serviced by intense commercial uses, including automobile service facilities, banks, food service establishments, and warehousing.

The Grandview Rd interchange features intense warehousing and distribution facilities in the Grandview industrial park located at the northwesterly quadrant of the interchange, and the northeasterly, southeasterly, and southwesterly quadrants have been recently annexed into the City of Ferndale and are planned for Highway Commercial and Light Industrial uses. There are no residential uses planned or allowed at that interchange.

The Birch Bay Rd interchange, where the subject property is located, is intensely improved with the Birch Bay Square shopping center at the northwesterly quadrant, and there is commercial development located at the southwesterly quadrant including a gas station, storage facilities, and a drive-thru coffee stand. There is no development on either the northeasterly or south easterly sides of the Birch Bay-Lynden Rd interchange. This is due primarily to the lack of utilities infrastructure.
The interchanges in the Blaine vicinity, including the Blaine truck route, the Sweet Rd on and off ramp, and downtown Blaine are also intensely improved with non-single family residential uses, including tourist oriented businesses, retail facilities, and multi-family residential uses.

It is clear, that interchange activity does not result in single family residential development. Quite the contrary, with the concentration of vehicular traffic and the collection systems that interstate systems draw upon reduces the desirability of properties from a residential standpoint, but certainly encourage uses or properties for commercial or industrial purposes.

The law of balance holds that value is created and maintained in proportion to the equilibrium obtained in the amount and location of the central uses of real estate.

If the subject property were to be classified as rural with a R-5 zone classification, it would be essentially an “island” in a sea of commercial and non-residential activity. It is emphasized that it is located in one of the major interchanges in unincorporated Whatcom County.

While the Birch Bay-Lynden Rd interchange does not carry the same volume of traffic that interchange activity attracts in and around the Bellingham and Ferndale areas, certainly, the amount of interchange activity at the Birch Bay-Lynden Rd interchange is among the heaviest in unincorporated Whatcom County. It is noteworthy to point out, that traffic is now regulated by stop signs both exiting from Interstate-5 and entering into the Interstate system, whereas, several years ago, there were no stop signs in place.

To further underscore the impact that traffic and incompatibly of land uses have upon value, one only has to look at the experience in Whatcom County in the West Bakerview Rd corridor. Up until 15 years ago, the West Bakerview Rd corridor was a relatively quiet and less traveled street, and the majority of the land uses along both the north and south sides of West Bakerview Rd from Guide Meridian west to Interstate-5 consisted of small acreage sites ranging from one to two acres in size improved with older, as well as newer, single family residential structures. However, with the construction of the Bellis Fair Shopping Center, the Fred Meyer shopping center, the construction of Whatcom Community College, and all of the growth and economic dynamics that have affected Guide Meridian, land use patterns changed significantly to the point where there are no owner occupied homes in the West Bakerview Corridor currently. There are several older existing properties currently in existence, but they are occupied on an interim only basis by tenants. The majority of these older single family residential dwellings have been razed or removed to make way for new multi-family and/or commercial growth. This helps further underscore the fact that high traffic areas, or areas near interchanges and major arterials are not conducive to single family residential usage.

In this appraiser’s opinion, from a land use standpoint, it would be highly unlikely, that the subject property would ever be purchased for single family residential uses. That being said, there may be conditional uses that could be adaptable to
the site if zoned for Rural Residential purposes. Those uses may include some minimal wholesale marketing activities associated with the agricultural, aquacultural, forestry and minimal resource uses permitted within Whatcom County. However, those wholesale marketing activities are limited in nature restricting size to no more than 500 square feet of floor area. In addition, family daycare homes may be permitted, however, without adequate utilities, this use would more than likely be denied.

In analyzing the subject property from a highest and best use standpoint, the following determination is summarized:

I. **Physical adaptability** – the size of the subject site is a 2.37 acre parcel of land and would be a sufficient size to accommodate single family residential purposes.

II. **Legal permissibility** – If zoned for suburban residential purposes, the subject property as a 2.37 acre parcel would be legal.

III. **Economic viability** – In this category, the test of highest and best use fails. The subject property would not be considered economically viable as a single family residential homesite based upon its location and undesirability from a suburban residential standpoint.

IV. **Maximal productivity** – As with its economic viability, the site, from the determination of maximum productivity, the value of the subject property as a suburban residential standpoint also fails the test. The subject site would not yield the greatest net return to the land since, it would be an undesirable small acreage parcel for suburban residential purposes.

7. **Summary**: In summary, the rezone of the subject property from Rural General Commercial to Rural Residential 5A is not considered to be justified based upon its location and the subsequent demand for small acreage parcels in that location for suburban residential purposes.

The highest and best use of the subject property would more than likely be as combined with other larger parcels in the area to maximize use and productivity in an assemblage standpoint for a larger more well planned Rural General Commercial use. Assigning a Rural Residential land use classification to a small acreage parcel in the interchange area of the Birch Bay-Lynden Rd interchange is not considered wise land use planning.

Sincerely,

W. Thomas Follis, Appraiser
Wm. T. Follis, LLC, Realtors®
WTF:ms
Birch Bay Square (Across Freeway)

Gas Station (Across Freeway)
W. THOMAS FOILIS, GAA/MSA – Qualifications of Appraiser

EDUCATION:
Bachelor of Arts Degree from University of Washington in Political Science, 1966
Real Estate Appraiser Course I – American Institute of Real Estate Appraisers at Seattle Pacific College, 1970
Real Estate Appraiser Course II – American Institute of Real Estate Appraisers at Seattle Pacific College, 1971
Real Estate Fundamentals offered by Skagit Valley College, 1971
Graduate Realtors Institute 100 offered by the Washington Association of Realtors at Issaquah, 1974
Graduate Realtor Institute 200 offered by the Washington Association of Realtors at Sea-Tac, 1974
Graduate Realtor Institute 200 offered by the Washington Association of Realtors at Sea-Tac, 1975
Numerous SBC Appraisal Seminars
The Valuation of Manufactured Housing, 1988
National Association of Master Appraisers (Principles – Procedures – Narrative), 1988
Uniform Standards of Professional Appraisal Practice, North Seattle Community College, 1991
Appraisal Review – National Association of Master Appraisers, 1992
Uniform Residential Appraisal Report Update – Lee and Grant, 1993
2-4 Family Update – Lee and Grant, 1993
Manufactured Housing Appraisal, 1993
Residential Appraisal – Environmental Issues, 1994
NIRREA Revisited – Nelson Hummel, 1994
Discrimination in Appraising – Nelson Hummel, 1994
Future of Appraising and EDI – Lee and Grant, 1996
Legal Liabilities and Responsibilities – Appraiser’s Coalition of Washington, 1995
Agency Reform Act – Washington Association of Realtors, 1996
Principles and Techniques of Review Appraising, 1997
Legal Aspects New Construction, 1997
Custom Construction, 1997
Land Use Law, 1998
FHA Appraisal update, 1999
It’s All About Price, 2002
Environmental Issues, 2003
Red Flags Property Inspections, 2003
Uniform Standards of Professional Appraisal Practice Update, 2003

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W. Thomas Follis, GAA/MSA - Qualifications of Appraiser

Pricing Residential Property, 2004
Residential Forms, 2005
Uniform Standards of Professional Appraisal Practice Up-dates, 2005
Marshall/Swift Cost, 2005
Agent-Appraiser: Mortgage Fraud, 2005
Real Estate Fraud, 2005
Disclosure Requirements, 2006
Residential Appraisal Review, 2007
Uniform Standards of Professional Appraisal Practice, 2007
The Examination and Inspection of Sites and Buildings for Appraisers, 2007
Site Valuation and Cost Approach, 2007
"The Short Sale Transaction", 2008
Residential Appraisal - Appraisal Institute, 2009
Residential Market Conditions Form, 2009
Uniform Standards of Professional Appraisal Practice - McKissick, 2009
REO & Foreclosure Appraisals - McKissick, 2009
Fair Housing - McKissick, 2009
REO and Foreclosures, 2009
The Art of Residential Appraisal Review, 2009
Uniform Standards of Professional Appraisal Practice Update, 2009
Fair Housing, 2009
Property Conditions Disclosure, 2010
Defining Market Value and How to Adjust for Concessions, 2011

EXPERIENCE:

Forty years actively engaged in real estate sales and appraisal business in the State of Washington

Currently certified by the State of Washington as General Real Estate Appraiser, License No. 279011808210

Formerly associated with Fenner, Conger and Associates Appraisers and Consultants, 1970

Presently self-employed at Wm. T. Follis, LLC, Real Estate Appraiser and Real Property Consultant, 1979 to present

Former member of faculty of Whatcom Community College as an instructor in Real Estate
Currently hold designations of:
- G.R.I., 1976
- General Accredited Appraiser - N.A.R. #405
- Master Residential Appraiser - M.R.A. #5909
- Accredited Appraiser 1979

BUSINESS:

Vice-President of Whatcom County Board of Realtors, 1978

President of Whatcom County Board of Realtors, 1979

Member of Bellingham/Whatcom County Board of Realtors and the Bellingham/Whatcom County Multiple Listing Bureau


Board of Trustees, Bellingham, Whatcom County Multiple Listing Bureau

President of Whatcom Multiple Listing Bureau, 1999

Board of Trustees, Bellingham Golf and Country Club

Vice-President Bellingham Golf and Country Club, 1999

President Bellingham G&CC, 2000
File #: PLN2012-00012

Proposed Rezoning

Existing Zoning Boundary

Proposed Zoning Boundary

Proposed Rezone Area

Proposed Zoning - RR10A (not in parentheses)

Existing Zoning - RR2
WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

I. BACKGROUND INFORMATION

File # PLN2012-00012

File Name: Rural Element Update

Applicant: Whatcom County

Summary of Request:

Amendments to the Whatcom County Comprehensive Plan, Zoning Code, and Zoning Map in response to the Growth Management Hearings Board’s January 4, 2013 Compliance Order (Case No. 11-2-0010c).

Location:

Rural Whatcom County

Staff Recommendation:

Staff recommends the Planning Commission forward to the County Council a recommendation of approval of the attached draft Comprehensive Plan, Zoning Code, and Zoning Map amendments, as described below.

Growth Management Act Background

Text of the Growth Management Act (GMA) sections related to these proposed amendments is attached in Exhibit 1. RCW 36.70A.070(5) requires county comprehensive plans to include a "rural element" for areas not designated for urban growth or resources. Per RCW 36.70A.070(5)(c), a rural element must include “measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas...and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands..."
RCW 36.70A.070(5)(d) allows counties to designate certain rural areas as “limited areas of more intensive rural development” (LAMIRDs).

Whatcom County updated its Comprehensive Plan in 2005. That update was challenged and found out of compliance with the GMA because, in part, it had not designated LAMIRDs in accordance with the above GMA requirements. In May 2011, the Whatcom County Council adopted Ordinance 2011-013, amending the County’s Comprehensive Plan, Zoning Code, and Zoning Maps in response to the Growth Management Hearings Board and Supreme Court orders on that appeal (GMHB Case No. 05-2-0013, Whatcom County Case PLN2009-00011). Ordinance 2011-013 replaced noncompliant Comprehensive Plan land uses designations with new designations consistent with GMA’s LAMIRD provisions. That ordinance was the subject of four petitions to the Board challenging its compliance with the Growth Management Act (GMA) and its validity.

The Growth Management Hearings Board held a hearing in November 2011 and issued its Final Decision and Order (FDO) on January 9, 2012. The FDO found the ordinance out of compliance with respect to 24 issues and found it invalid on 8 of those issues. On August 7, 2012, Whatcom County adopted Ordinance No. 2012-0322 in response to the FDO. The Growth Management Hearings Board (GMHB) held a hearing on October 1, 2012 and in its January 4, 2013 Compliance Order found the County had brought many issues into compliance while some were still out of compliance and invalid.

In the areas where invalidity remains in effect, the County cannot issue new permits under regulations that have been found to substantially interfere with the goals of the GMA, per RCW 36.70A.302. The determination of invalidity also means the burden of proof shifts to the County to prove that the revised development regulations no longer substantially interfere with the goals of the GMA (RCW 36.70A.320(4)).

Planning and Development Services staff (PDS) has numbered the issues for ease of reference. A summary chart with references to FDO pages, GMA sections, and Planning Commission direction on each issue is attached.

The Board set a compliance deadline of July 3, 2013 for Whatcom County to resolve the identified areas of noncompliance. The Board has scheduled a compliance hearing for August, 2013.

1 Futurewise et al vs. Whatcom County, Growth Management Hearings Board Case No. 11-2-001c, Final Decision and Order, January 9, 2012
3 Futurewise et al vs. Whatcom County, Growth Management Hearings Board Case No. 11-2-001c, Compliance Order, January 4, 2013
II. PROPOSED AMENDMENTS

In this section, proposed amendments are discussed issue by issue in terms of their compliance with GMA and the January 4, 2013 Compliance Order. The proposed amendments are contained in the attached draft Comprehensive Plan, Zoning Code, and Zoning Map amendments dated March 11, 2013. These drafts were posted on the County’s website on March 11, 2013.

Issue 1 – Variety of Rural Densities

RCW 36.70A.070(5)(b) requires that the rural element of a comprehensive plan “shall provide for a variety of rural densities.” Comprehensive Plan Goal 2GG and the policies under that goal discuss densities in the Rural land use designation. Ordinance 2012-032 amended Comprehensive Plan Policy 2GG-3 to contain a general provision that “rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone.” Policy 2GG-2 discusses densities greater than one dwelling per five acres, but no policy specifically addresses the rezoning that would increase densities from one dwelling per 10 acres to one per 5 acres. In its January 4, 2013 Compliance Order, the Board focused on that omission:

The rural element...fails to provide a variety of rural densities in that it lacks measures to protect rural character or contain rural development at any lesser densities than 1du/Sac. (p. 32)

Ordinance 2012-013 still contains no criteria differentiating R5 and R10 that would assure long-term continuance of any rural lots larger than R5. None of the measures in 2DD-2 indicate which areas should be designated Residential Rural-5 or Rural-5A or Residential Rural-10 or Rural-10A; in fact, WCC 20.32.253 states that “the RR-5A and RR-10A Districts are allowed throughout the rural areas.” There are no measures to prevent the subdivision of all larger lots into five acre lots. (p. 31)

There are two main options for Comprehensive Plan policies that address the Board’s concerns about R10A-to-R5A rezoning. The first is to prohibit such rezonings entirely, and the second is to permit them only in limited circumstances, for example, in areas where developed densities are already higher than one dwelling per ten acres. The draft policy 2GG-3 proposed by PDS takes the first approach, prohibiting the rezoning of R10A property to permit higher densities. If the second option is desired, the policy could be worded to allow such rezonings only when developed density within a certain distance from the rezoning area is already above a certain level – probably between one dwelling per five acres and one per ten acres.

PDS sees at least three potential problems with the second option. First is the complexity of calculating the developed density, which is similar to the calculation

required for the Rural Residential Development Overlay (WCC 20.32.252 and 20.36.252; as in these provisions, density should be calculated as of a certain date to prohibit cumulative increase in density over time). The second is that such a rezone could create an isolated spot of R5A that, while not technically an "illegal spot zone" as defined in WCC, would enjoy the right to higher density than similar parcels in the surrounding area. The third is that if the criteria allow more than a very few parcels to be rezoned countywide, it may not resolve the Board's concerns about the potential reduction of R10A acreage (the Board expressed concern over the large proportion of rural land that is already zoned R5A on pages 31-32).

In addition to the changes to Policy 2GG-3, PDS proposes amending Policy 2DD-2.A.1 to add Policy 2GG-3 to the list of "measures to contain or otherwise control rural development and reduce the inappropriate conversion of undeveloped land into sprawling, low density development." In addition, the draft zoning code amendments include changes to WCC 20.32.253 and 20.36.253 that reference the Comprehensive Plan policies on location of zoning densities, and remove language that says both 10A and 5A densities are allowed throughout the rural areas.

**Issue 2 – Lot Clustering**

RCW 36.70A.070(5)(c)(i) and (iii) require the rural element to have measures "containing or otherwise controlling rural development," and "reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area." Comprehensive Plan Policy 2DD-2.A contains measures addressing these requirements. Policy 2DD-2.A.2 references lot clustering provisions in the zoning code, specifically in the Residential Rural (RR), Rural Residential-Island (RR-I), Rural (R) districts, and the Water Resource Protection Overlay. RCW 36.70A.070(5)(b) and 36.70A.090 allow and encourage the uses of "innovative" techniques including lot clustering.

The Board concluded "the County's reliance on clustering as a measure to protect rural character is misplaced because (a) the clustering provisions lack enforceable criteria and (b) the resulting reserve tracts are not permanently protected." (p. 39) The Board cited the existence of "aspirational" language such as "should be" and "where practical" in the cluster design standards for the Rural district and stated the County's clustering provisions "fail to protect rural character by vesting too much discretion in the building officials without enforceable criteria." (p. 37)

The Board noted the County's lot clustering provisions allow future development of reserve tracts and pointed out that WAC 365-196-425(5)(b)(ii) states "The open space portion of the original parcel should be held by an easement for open space or resource use. This should be held in perpetuity, without an expiration date." (p. 34) The Board stated, "Counties must...ensure that this open space protection within rural cluster development areas is permanent, continues without expiration, and cannot be revoked so long as the area is governed by the Rural Element." (p. 38)
Currently in the Zoning Code, the rural zoning districts Rural, Residential Rural, Rural Residential-Island, and Point Roberts Transitional (TZ) each contain regulations on lot clustering, as does the Water Resource Protection Overlay. These cluster provisions are largely similar, but contain some differences. The TZ and WRPO development standards do not contain the "aspirational" language that exists in R, RR, and RR-I, and reserve tracts are not developable in TZ and in the WRPO as they are in R, RR, and RR-I.

The draft Zoning Code amendments replace the individual cluster provisions in these chapters with references to a single clustering provision in WCC 20.80.150, which is largely based on the existing clustering requirements in the TZ zone. This makes clustering provisions consistent between zones (with some variations specific to individual zones) and provides clear, enforceable guidelines rather than "aspirational" language.

The new clustering wording would prohibit residential development in reserve tracts in all zones. This does not reduce the density or number of residences currently permitted in the rural zones. For example, the owner of a 10-acre lot in an R-5A zone can currently create one small cluster lot and a reserve tract and construct a home on each lot. Under the amendments, the same owner could create two small cluster lots and construct a home on each, while setting aside the remainder as a reserve tract, which could be set aside for open space or resource use.

Under the proposed amendments, clustering would still be mandatory within the Agriculture Protection Overlay (APO) and the WRPO, and would be mandatory in designated Urban Growth Areas and Urban Growth Area Reserves. Clustering would remain optional in the R, RR, and RR-I zones to avoid a one-size-fits-all regulation that may not be beneficial in every case. Though the Board pointed out that the rural zones do not make clustering mandatory (p. 33), it did not conclude this is an error or reason for noncompliance.

**Issue 3 – Lake Whatcom Watershed Protection**

RCW 36.70A.070(5)(c)(iv) require the rural element to have measures “protecting critical areas...and surface water and ground water resources.” Ordinance 2012-023 added to the rural element references (in Policy 2DD-2.C) to County code sections protecting critical areas and water quality. The ordinance also rezoned areas within the Lake Whatcom watershed, which had the effect of reducing potential development densities in some areas, and changing the impervious surface standards. However, the County did not complete its efforts in a separate action (PLN2012-00015) to enact more stringent stormwater regulations in the Lake Whatcom watershed.

In the Compliance Order the Board said:

In the County’s most recent compliance action it has taken steps to control discharges from new development, but not that of existing development or
previously platted parcels. The stricter stormwater recommendations advocated by Ecology and promised by the former County Executive, as the FDO on Remand pointed out, have not been adopted. If the County chooses to cross-reference its existing regulations as “measures” to protect water resources, it cannot claim to be protecting Lake Whatcom when it has not yet adopted the regulations Ecology states are necessary. (p. 53)

The Board concluded that “the County does not have measures in place to protect rural character by protecting water resources of Lake Whatcom as instructed by Ecology, and thus fails to comply with RCW 36.70A.070(5)(c)(iv).” (p. 54) The County has filed an appeal of this Board ruling on the question of whether the Board has authority to order the County to take any particular actions to bring itself into compliance, and whether it is the Department of Ecology’s role to determine what actions the County must take in order to be compliant with the GMA. Nevertheless, the County continues to work toward adoption of new stormwater regulations in the Lake Whatcom watershed under PLN2012-00015.

**Issue 4 – Rural Neighborhood Boundaries**

In Ordinance 2012-032, Whatcom County created the Rural Neighborhood designation designed to contain areas of existing higher-density rural development. Per Policy 2MM-1, “Rural Neighborhood boundaries shall not be expanded beyond those established in 2012, which were drawn to include areas that were developed at higher rural densities in 2011.” The compliance order found the designation to be in compliance with GMA, but found that three of the newly-designated Rural Neighborhoods -- Fort Bellingham/Marietta, North Bellingham, and Welcome -- have boundaries that include several larger parcels. The Board remanded the ordinance to the County to consider redrawing those boundaries “to be more consistent with the small-lot 2011 development pattern.” (p. 60)

The draft Comprehensive Plan Map 8 amendments propose new boundaries for the Fort Bellingham/Marietta and North Bellingham Rural Neighborhoods, and remove the Welcome Rural Neighborhood designation. The new boundaries remove larger lots on the periphery of the current Rural Neighborhoods, re-designating them as Rural, and rezoning them to densities of one dwelling per five acres (except where a single lot would be adjacent to no other lots with a Rural designation or a zoning density of one dwelling per five acres). The larger lots that remain in the designations are generally surrounded by existing smaller-lot development, thus smaller-lot development of these lots would be consistent with the established character of the neighborhood.

The lots proposed to be removed from the Rural Neighborhood designations are proposed to be rezoned from RR2A* and RR5A* to RR5A and from R5A* to R5A (the asterisk indicating the Rural Residential Density Overlay). See the attached parcel size analysis maps for these three rural neighborhoods. The proposed boundary changes would reduce the total potential new lots in the Fort Bellingham/Marietta Rural Neighborhood from 52 to 13. In North Bellingham the number of the potential
new lots is reduced from 50 to 30 (see attached analysis maps and Potential New Lots table). Consistent with the potential new lots statistic in the July 2012 LAMIRD Report, Appendix E, these figures do not account for potential units that may be gained through the Rural Residential Density Overlay, where additional units may be allowed through calculation of developed densities surrounding individual parcels.

The current Welcome Rural Neighborhood is zoned R5A* (the asterisk indicating the Rural Residential Density Overlay). In response to the Board’s order, PDS staff removed the larger parcels on the north side of the Rural Neighborhood designation to create a potential new boundary that included only the southern parcels (the dotted green line on the Welcome analysis map). However, the largest remaining parcels within that boundary are about four acres, and the average size of developed parcels within 500 feet would have been too large for any parcel within that boundary to use the overlay to subdivide. Thus, the proposed map amendments eliminate the Welcome Rural Neighborhood designation and rezone the area from R5A* to R5A.

**Issue 5 – LAMIRD Development Regulations**

RCW 36.70A.070(5)(d) contains the requirements for designation of limited areas of more intensive rural development (LAMIRDs) and for the development allowed within those designations. Ordinance 2012-032 made many changes to development regulations in LAMIRDs. The Board found the use/size table in WCC 20.80.100(1) meets the requirements of the GMA, but

> The County stepped beyond GMA bounds...when it adopted WCC 20.80.100(2), (3), and (4) because these sections exempt Type I LAMIRDs from GMA requirements for existing character in 1990 and exempts Type III LAMIRDs from requirements for size, scale, use, and intensity. (p. 69)

The Board also found fault in the County’s approach to “small-scale” development in Type II and III LAMIRDs.

The County has filed an appeal of the Board’s decision in this issue. PDS proposes no changes be made regarding LAMIRD development regulations, pending the outcome of this appeal.

**Issue 6 – Smith & Guide Meridian LAMIRD Boundary**

The Board found the “dog leg” of two RGC-zoned parcels on the north end of the Smith & Guide Meridian LAMIRD “does not create a boundary that is ‘clearly identified and contained,’ as required by statute, nor is it a logical boundary ‘delineated predominately by the built environment.’” (p. 76) The proposed amendments to Comprehensive Plan Map 8 and the official zoning map remove the two parcels and rezone them to R5A.
Issue 7 – Birch Bay-Lynden & Valley View LAMIRD Boundary

In Ordinance 2012-032, the County had retained a two-acre parcel within the LAMIRD boundary that contained a small building in 1990. The Board found “the existence of one small building in 1990 does not equate to a two-acre addition of ‘more intense rural development’...The [logical outer boundary] adopted by the County does not create a boundary that is ‘clearly identified and contained,’ as required by statute, nor is it a logical boundary ‘delineated predominately by the built environment.’” (p. 78) The proposed amendments to Comprehensive Plan Map 8 and the official zoning map remove the parcel and rezone it to R5A.

Issue 8 – Water Lines

RCW 36.70A.110(4) prohibits extension of urban governmental services in rural areas except for health and safety reasons. Urban governmental services generally include sewer lines and large-diameter water lines. Ordinance 2012-032 contained amendments to WCC 20.82.030 that prohibited extension of all sewer lines and allowed large diameter water “transmission lines” in the rural area. In the Compliance Order the Board found the amended code provision “fails to comply with RCW 36.70A.110(4) because ‘transmission lines’ are allowed outright through the rural area without ‘transmission’ being defined as excluding service connection...” (p. 85) The Board also noted that a provision in the County’s Health Code (WCC 24.11.050.C.3) requires service connections to adjacent transmission lines.

The proposed amendments to the zoning code add a definition of “transmission line” in WCC 20.97.452 based on the definition in WAC 246-290-010(267) and refer to that definition in 20.82.030. The amendments also allow extension of service in UGAs and LAMIRDS (but not Rural Neighborhoods), and modify wording in the Health Code, WCC 24.11.050(C), in response to the Board’s discussion. Environmental Health staff has reviewed the proposed Health Code changes.

Whatcom County Criteria for approval of Comprehensive Plan amendments

Pursuant to WCC 2.160.080, the County must find that the following criteria, shown in bold below, are satisfied in order to approve the proposed comprehensive plan amendment. Additionally, pursuant to the Growth Management Act and WCC 20.90.050(4), zoning amendments must be consistent with the Whatcom County Comprehensive Plan.

A. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.
**Growth Management Act**

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, below.

**County-Wide Planning Policies**

County-wide Planning Policy B.1 states, “The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas.” Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County’s web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

County-wide Planning Policy B.2 states, “The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density.” The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Communities (Type I LAMIRDs), and the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policy B.3 states, “Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.” The proposed amendments retain Comprehensive Plan policies under Goals 2HH, 2JJ, 2KK, and 2LL that provide criteria and policies for limited areas of more intensive rural development. Proposed amendments to the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Community boundaries create Type I LAMIRDs that are compliant with RCW 36.70A.070(5)(d)(iv).

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for

**Whatcom County Comprehensive Plan**

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to LAMIRD and Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goals 2HH, 2JJ, and 2MM.

**Interlocal Agreements**

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections without City-County coordination.

**B. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.**

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board’s January 4, 2013 Compliance Order.

**C. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:**

The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The proposed amendments either retain existing zoning intensities and densities or reduce them in rural Whatcom County.

The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

_Anticipated impact upon designated agricultural, forest and mineral resource lands._

No amendments are proposed that increase adverse impacts on designated resource lands.

**D. The amendment does not include or facilitate spot zoning.**

WCC 20.97.186 defines “illegal spot zoning” as “a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole.” Rezonings proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

**E. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.**

No urban growth area amendments are proposed.

**III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**


2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on #######, 2013.

3) The proposed amendments were posted on the County website on March 11, 2013.
4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County’s e-mail list on March 11, 2013.

5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 11, 2013.

6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on ###, 2013.

7) Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on March 8, 2013.


GMA Requirements

9) The Washington Growth Management Act (GMA) requires county comprehensive plans to include a rural element that protects the county’s established rural character by containing or otherwise controlling rural development.

10) GMA (RCW 36.70A.070(5)(a)) allows counties to consider local circumstances in its rural element but requires counties to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of RCW 36.70A. (See Conclusions 2 and 3 below).

11) GMA allows, but does not require, counties to designate “limited areas of more intensive rural development” (LAMIRDs) (RCW 36.70A.070(5)(d)) and describes three types of development patterns that may be considered LAMIRDs:

a) Type I: “Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development villages, hamlets, rural activity centers, or crossroads developments...Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas.” (RCW 36.70A.070(5)(d)(i)) In RCW 36.70A.070(5)(d)(iv), GMA states, “Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands as provided in this subsection.” GMA requires counties to establish logical outer boundaries for areas of more intensive rural development and describes considerations that must be addressed in establishing those boundaries Per RCW 36.70A.070(5)(d)(v), existing areas are those that existed on July 1, 1990.
b) Type II: “The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting but that do not include new residential development...” (RCW 36.70A.070(5)(d)(ii)

c) Type III: “The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents...” (RCW 36.70A.070(5)(d)(iii)

12) GMA requires that the rural element of a county comprehensive plan provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses, and allows counties to use innovative zoning techniques that will accommodate appropriate rural densities and uses that are consistent with rural character.

13) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by:

a) Containing or otherwise controlling rural development;

b) Assuring visual compatibility of rural development with the surrounding rural area;

c) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

d) Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and

e) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

14) GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor’s office informed the Planning Commission and County Council of this requirement and, in accordance with Attorney General’s Advisory Memorandum, advised them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

15) The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. (RCW 36.70A.011)
Growth Management Hearings Board Decisions: Futurewise vs. Whatcom County

16) In Futurewise v. Whatcom County and Gold Star Resorts, Inc. (#05-2-0013 Sept. 20, 2005 Final Decision and Order), the Western Washington Growth Management Hearings Board (WWGMHB) found Whatcom County out of compliance on three issues: The policies pertaining to Small Town, Crossroads Commercial, Resort and Recreational Subdivision, Suburban Enclave, and Transportation Corridor land use designations allow the creation of more intensive areas of rural development that do not comply with RCW 36.70A.070(5)(d); The Rural Residential zones (RR-1, RR-2, RR-3), Eliza Island (EI) zone, Rural two-acre (R-2A), and Rural Residential Island (RRI) zones allow residential densities that are not rural in the rural areas and are not in limited areas of more intensive rural development per RCW 36.70A.070(5)(d); and Urban Residential three-per-acre (UR-3) zoning in urban growth areas (except the UR-3 in Lake Whatcom watershed and the airport hazard area) failed to achieve appropriate urban densities.

17) In June, 2007 Whatcom County rezoned approximately 1,700 acres in the Ferndale and Everson UGAs to UR-4 in 2007 (Ord. 2007-030 and 2007-045) to address the urban density noncompliance issue in the September 20, 2005 Futurewise v. Whatcom County and Gold Star Resorts, Inc. decision.

18) The WWGMHB issued a finding of compliance on the urban density issue on August 30, 2007.

19) The September 20, 2005 Futurewise v. Whatcom County and Gold Star Resorts, Inc. decision relating to the land use designations and rural density issues was reversed in Whatcom County Superior Court in 2006. The Superior Court decision was, in turn, reversed by the Division I Court of Appeals in 2007, which reinstated the 2005 WWGMHB decision and ordered Whatcom County to comply with that decision (140 Wn. App. 378). In December, 2009 the Supreme Court of the State of Washington reversed the Court of Appeals’ holding that the hearings board did not improperly apply a bright line in addressing the challenge to Whatcom County’s rural densities, but affirmed the Court of Appeals’ decision that Whatcom County’s comprehensive plan did not comply with the Growth Management Act’s LAMIRD provisions. The Supreme Court remanded the rural density challenge to the Hearings Board for reconsideration without applying a bright line rule, and ordered Whatcom County to “revise its comprehensive plan to conform to the LAMIRD provision of the Growth Management Act and then apply the statutory criteria to establish appropriate areas of more intensive rural development.” (167 Wn.2d 723, 735, 222 P.3d 791)

20) In August, 2009 Whatcom County amended Whatcom County Code (WCC) Chapter 20.34 Rural Residential – Island District (one of the zones found to be out of GMA compliance in the 2005 Futurewise vs. Whatcom County decision) to change the required minimum lot size from three acres to five acres (Ord. 2009-062).

22) In 2011 the Washington Supreme Court issued a ruling in *Kittitas County* (172 Wash.2d 144) regarding the GMA requirement that county comprehensive plans must contain measures that protect the rural character.

23) On September 9, 2011, the GMHB Order Following Remand from the Supreme Court regarding the remaining rural density from case #05-2-0013 (remanded by the 2009 Supreme Court decision) found Ordinance 2011-013’s retention of rural zoning with density of one dwelling per two acres was compliant with the GMA because it was limited to areas in which similar densities had already been established.


25) The January 9, 2012 GMHB Final Decision and Order (FDO) in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the amendments adopted under Ordinance 2011-013 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

26) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found some amendments adopted under Ordinance 2012-032 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

27) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the population monitoring requirements of Policy 2DD-1 adopted by Ordinance 2012-032 does not create an internal inconsistency which violates GMA and is a “measure to contain and control rural development” that complies with GMA.

**Other Relevant Growth Management Hearings Board Decisions**

28) Regarding the term “built environment,” the built environment includes those facilities which are manmade, whether they are above or below ground, and the built environment must predominate within a LAMIRD, though it may include limited undeveloped lands. (Anacortes vs. Skagit County, Case No. 00-2-0049c, Final Decision and Order, February 6, 2001)

29) The WWGMHB found that RCW 36.70A.115 does not impose an obligation on counties to conduct a needs and capacity analysis for areas outside the UGAs and that provision does not require a rural lands analysis but instead merely requires
the County to ensure sufficient capacity of land for development to accommodate the growth allocated in the County’s countywide planning policies. (Friends of Skagit County vs. Skagit County, Case No. 07-2-0025c, Final Decision and Order, pp-43-43, May 12, 2008)

30) The WWGMHB found the uses a county allows within LAMIRDs designated per RCW 36.70A.070(5)(d)(i) must be consistent with (though not necessarily the same as) the uses as of July 1, 1990, and allowance of a broader range of uses as conditional uses is not compliant with GMA. (Dry Creek Coalition and Futurewise vs. Clallam County, Case No. 07-2-0018c, Final Decision and Order, April 23, 2008)

31) The WWGMHB found Clallam County’s Rural Neighborhood Conservation (NC) Overlay (Clallam County Code 33-10-015), which permits rural densities outside LAMIRDs greater than one dwelling per five acres based on a calculation of the density of developed lots within 500 feet of a property, to be compliant with the Growth Management Act. The Board stated, “Because infill allowed by the NC overlay is limited to neighborhoods that have already been substantially developed, this will not lead to the ‘inappropriate conversion of undeveloped lands into sprawling, low-density development...’”, a reference to Goal 2 of the GMA. (Dry Creek Coalition and Futurewise vs. Clallam County, WWGMHB No. 07-2-0018c, Compliance Order, November 3, 2009, p.10)

32) The Washington State Supreme Court has held that a growth management hearings board cannot base its evaluation of a county’s permitted rural densities on a “bright line” rural density of one dwelling per five acres. (Thurston County vs. Western Washington Growth Management Hearings Board, 164 Wn.2d 329, 190 P.3d 38, 2008; and Gold Star Resorts vs. Futurewise and Whatcom County, 167 Wn.2d 723, 735, 222 P.3d 791, December 17, 2009)

33) The WWGMHB found Whatcom County used appropriate Type I LAMIRD criteria to revise its comprehensive plan designation boundary in the Lake Samish area. (Leenstra vs. Whatcom County, WWGMHB Case No. 03-2-0011, Final Decision and Order, September 26, 2003)

34) The WWGMHB found Jefferson County was not clearly erroneous when it designated a LAMIRD adjacent to an urban growth area where the City of Port Townsend had decided it was inappropriate to expand its urban growth area. (People for a Liveable Community, Jim Lindsay, et al. vs. Jefferson County, WWGMHB Case No. 03-2-0009c, Final Decision and Order, August 22, 2003)

35) The WWGMHB found that the use of the term “or” rather than “and” in RCW 36.70A.070(d)(i)(C) “appears to indicate a Legislative determination that the factors of building size, scale, use, or intensity are ones that may be considered in determining the character of the existing area, but that development is not required to meet every one of those parameters. If the Legislature had intended to use the word ‘and’ in the statute, they would have done so.” (Dry Creek Coalition vs. Clallam County, WWGMHB Case No. 08-2-0033, Final Decision and Order, June 12, 2009, p.8)
Whatcom County Policy and Requirements

36) WCC 2.160.080 requires that, in order to approve the proposed comprehensive plan amendments the Planning Commission and County Council must find all of the following:

a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

b) Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.

c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.

d) The amendment does not include or facilitate spot zoning.

e) Urban growth area amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a designated TDR sending area, with certain exceptions.

37) Whatcom County’s County-wide Planning Policies include policies related to rural lands:

a) County-wide Planning Policy B.1 states, “The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas.”

b) County-wide Planning Policy B.2 states, “The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density.”
c) County-wide Planning Policy B.3 states, “Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.”

d) County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened.

Public Participation

38) Whatcom County’s County-wide Planning Policies include policies related to citizen involvement:

a) County-wide Planning Policy A.2 states, “The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees.”

b) County-wide Planning Policy A.4 states, “Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process.”

39) The Whatcom County Planning Commission held open work sessions on the proposed amendments on March 14, 2013 and held public hearings on March 28, 2013. Since publication of the first draft amendments on March 11, 2013, the most current draft amendments have been continuously posted on the County’s web site, as have all documents presented to the Planning Commission and all written public comments.

IV. PROPOSED CONCLUSIONS

F. The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.

G. The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020.

a. Urban growth. Comprehensive Plan Policy 2DD-1 encourages development in urban areas by concentrating growth in urban areas...
per the adopted population projections and monitoring rural growth and taking actions as necessary to keep rural growth consistent with adopted projections. The proposed amendments do not affect this policy.

b. Reduce sprawl. Proposed Comprehensive Plan Policy 2DD-8 and policies guiding growth within rural land use designations (under Goals 2GG, 2JJ, 2KK, 2LL) reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area through use of LAMIRDs with clearly defined boundaries and criteria for creating or changing those boundaries consistent with RCW 36.70A.070(5)(d). Policies 2MM-1 and 2 control and contain areas of higher rural densities. The proposed amendments do not affect these policies.

c. Transportation. Comprehensive Plan Policy 2DD-1, which encourages growth in urban areas and keeps rural growth consistent with adopted projections, is consistent with effective planning of efficient countywide multimodal transportation systems. Policies 2FF-1, 2FF-2, 2FF-4 and the text describing rural character and lifestyle support rural employment opportunities, which can reduce vehicle trips from rural to urban areas. The proposed amendments do not affect these policies.

d. Housing. Comprehensive Plan Policies 2GG-2 and 2GG-3, in conjunction with the development regulations in WCC 20.32 Residential Rural District and 20.36 Rural District, allows for residential development at a variety of densities appropriate to established rural character and development patterns. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.

e. Economic development. Comprehensive Plan Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-3, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas within the capacity of natural resources and appropriate levels of rural services. The proposed amendments do not affect these policies.

f. Property rights. Neither the rural element nor the process leading to its adoption has taken private property for public use without just compensation or involved arbitrary and discriminatory actions. On March 28, 2013 the Planning Commission was briefed on the Attorney General's Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

g. Permits. Nothing in the rural element prevents permit applications from being processed in a timely and fair manner.

h. Natural resource industries. Comprehensive Plan Policy 2FF-2 and development regulations in WCC 20.69 Rural Industrial/Manufacturing District support resource-based industries. Policies 2DD-2.D, 2FF-3, 2GG-4 support minimizing conflicts with resource uses. The proposed amendments do not affect these policies.
i. Open space and recreation. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-2.B, 2DD-2.C, which adopt by reference various development regulations, provide measures to assure visual compatibility with surrounding rural areas, reserve open space through lot clustering, and to protect wildlife habitat and water resources. The proposed amendments do not affect these policies.

j. Environment. Policy 2DD-2.C, which adopts by reference various development regulations, provides measures to protect critical areas and surface and ground water resources. The proposed amendments do not affect this policy.

k. Citizen participation and coordination. Throughout the process to develop and adopt amendments to the rural element, citizens and local jurisdictions have been kept informed and invited to participate through use of e-mail and internet.

l. Public facilities and services. Policy 2DD-2.A.4, which adopts by reference WCC 20.80.212 Concurrency, ensures that no subdivision, commercial development or conditional uses be approved without a written finding that service providers have adequate capacity to serve the development and that no County facilities will be reduced below applicable levels of service as a result of the development. The proposed amendments do not affect this policy.

m. Historic preservation. Policy 2DD-7 supports maintaining the historic character and cultural roles of each rural area and community. The proposed amendments do not affect this policy.

H. The rural element of the Comprehensive Plan and the county development regulations, as amended, meet the requirements of the Growth Management Act, RCW 36.70A.

a. The rural element includes measures that protect the rural character per RCW 36.70A.070(5)(c) in Policies 2DD-1, 2DD-2, 2GG-2, 2GG-3, and 2MM-1-4.

b. The rural element provides for limited areas of more intensive rural development, limited per the requirements of RCW 36.70A.070(5)(d), in policies 2HH-1 through 3, 2JJ-1 through 8, 2KK-1 and 2, and 2LL-1-4. The proposed amendments do not affect these policies.

c. The rural element contains a description of rural character and lifestyle that considers local circumstances as permitted in RCW 36.70A.070(5)(a), and contains the GMA definition of rural character per RCW 36.70A.030(15). The proposed amendments do not affect that description.

d. Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas, as supported by RCW 36.70A.011. The proposed amendments do not
affect these policies.

e. Comprehensive Plan policies describing rural land use designations and rural services (under Goals 2EE, 2GG, 2JJ, 2KK, 2LL, and 2MM), and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(b), which requires the rural element to provide for a variety of rural densities, uses, essential public facilities and rural governmental services. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.

e. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-5, 2DD-6, 2GG-6, and 2MM-2 support innovative techniques, consistent with RCW 36.70A.070(5)(b). The proposed amendments do not affect these policies.

g. The County has evaluated the Comprehensive Plan and development regulation amendments to ensure that they do not result in an unconstitutional taking of private property, per RCW 36.70A.370.

I. The amendments to the rural element of the Comprehensive Plan and the county development regulation resolve the noncompliance and invalidity findings of the January 4, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom County (#11-2-0010c):

a. Variety of Rural Densities: Comprehensive Plan Policy 2GG-3 restricts rezonings from R10A to districts allowing higher densities, thus ensuring a variety of rural densities similar to that which already exists.

b. Lot Clustering: Amendments to WCC Title 20 consolidate lot clustering provisions into one code section that provides enforceable criteria and does not allow the development of reserve tracts.

c. Rural Neighborhoods: Amended boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels in order to be more consistent with the small-lot 2011 development pattern.

d. Smith & Guide Meridian LAMIRD: The amendments to the LAMIRD designation and zoning map excludes two parcels to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).

e. Birch Bay-Lynden & Valley View LAMIRD: The amendments to the LAMIRD boundary and zoning map excludes one parcel to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).

f. Water Lines: The amendments to WCC 20.82.030 and 20.97.452 clarify that urban-scale water service cannot be extended into rural areas by adding a definition of “transmission line” based on the definition in WAC 246-290-010(267), and by amending wording in the Heath Code, WCC
20.11.050(C) which implied that service connections could be made to transmission lines.

J. The subject comprehensive plan amendment complies with the approval criteria of WCC 2.160.080, which requires that the County must find the following criteria, are satisfied in order to approve the proposed comprehensive plan amendment.

a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.

i. Growth Management Act

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, above.

ii. County-Wide Planning Policies

County-wide Planning Policy B.1 states, “The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas.” Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County’s web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

County-wide Planning Policy B.2 states, “The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density.” The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Communities (Type I LAMIRDs), and the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policy B.3 states, "Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas." The proposed amendments retain Comprehensive Plan policies under Goals 2HH, 2JJ, 2KK, and 2LL that provide criteria and policies for limited areas of more intensive rural development. Proposed amendments to the Smith & Guide
Meridian and Birch Bay-Lynden & Valley View Rural Community boundaries create Type I LAMIRDs that are compliant with RCW 36.70A.070(5)(d)(iv).

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. On March 28, 2013 the Whatcom County Prosecuting Attorney’s office advised the Planning Commission on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

iii) Whatcom County Comprehensive Plan

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to LAMIRD and Rural Neighborhood boundaries are consistent with the criteria provided under: WCCP Goals 2HH, 2JJ, and 2MM.

iv) Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections without City-County coordination.

b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board’s January 4, 2013 Compliance Order.

c. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The proposed amendments either retain existing zoning intensities and densities or reduce them in rural Whatcom County.
ii. The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.

No amendments are proposed that increase adverse impacts on designated resource lands.

d. The amendment does not include or facilitate spot zoning.

WCC 20.97.186 defines “illegal spot zoning” as “a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole.” Rezonings proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

e. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.

No urban growth area amendments are proposed.

V. RECOMMENDATION

Staff recommends the Planning Commission forward to the County Council a recommendation of approval of the attached draft Comprehensive Plan, Zoning Code, and Zoning Map amendments.
Attachments:

Summary of Issues Table

Rural Neighborhood Parcel Size Analysis Maps

Table of Potential New Lots in Revised Rural Neighborhoods

Exhibit 1. Draft Comprehensive Plan Amendments (including proposed changes to Map 8)

Exhibit 2. Draft Whatcom County Code Amendments

Exhibit 3. Draft Whatcom County Zoning Map Amendments
**Summary of Issues in 1/4/13 Compliance Order**

**Issue on which action is required**

<table>
<thead>
<tr>
<th>Issue</th>
<th>C.O. Pages</th>
<th>GMA Section</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Variety of rural densities -- rural element lacks measures to protect lower rural densities (10A)</td>
<td>29-32</td>
<td>RCW 36.70A.070(5)(b)</td>
<td></td>
</tr>
<tr>
<td>2 Lot clustering -- cluster provisions &quot;fail to protect rural character by vesting too much discretion in the building officials without enforceable criteria&quot;</td>
<td>33-39</td>
<td>RCW 36.70A.070(5)(c)(iii)</td>
<td>Board reserved decision on County’s measures to protect water resources beyond the Lake Whatcom measures, to allow the question to be thoroughly briefed and argued in Case No. 12-2-0013</td>
</tr>
<tr>
<td>3 Lake Whatcom -- current regulations do not protect Lake Whatcom water resources</td>
<td>48-54</td>
<td>RCW 36.70A.070(5)(c)(iv)</td>
<td></td>
</tr>
<tr>
<td>4 Rural Neighborhood boundaries -- 3 Rural Neighborhood boundaries include large lots and do not conform to small lot development patterns of 2011</td>
<td>56-61</td>
<td>RCW 36.70A.070(5)(c)(iii)</td>
<td>The Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhood boundaries are subject to invalidity</td>
</tr>
<tr>
<td>5 LAMIRD development regulations -- dev. regs do not conform with GMA's &quot;size, scale, use, intensity&quot; and &quot;small-scale&quot; requirements for development in LAMIRDS</td>
<td>61-74</td>
<td>RCW 36.70A.070(5)(d)(i-iii)</td>
<td>The 1990 use/size table in WCC 20.80.100(1) is valid and remains in effect; The exemptions from that table in WCC 20.80.100(2), (3), and (4), and portions of other chapters that refer to those exemptions, are subject to invalidity</td>
</tr>
<tr>
<td>6 Smith/Guide Meridian LAMIRD boundary -- two parcels do not comply with GMA LAMIRD boundary requirements</td>
<td>75-76</td>
<td>RCW 36.70A.070(5)(d)(iv)</td>
<td></td>
</tr>
<tr>
<td>7 Birch Bay-Lynden/Valley View LAMIRD -- one parcel does not comply with GMA LAMIRD boundary requirements</td>
<td>76-78</td>
<td>RCW 36.70A.070(5)(d)(iv)</td>
<td></td>
</tr>
<tr>
<td>8 Water lines -- transmission lines are permitted outright in rural areas with no exclusion of new service connections</td>
<td>78-85</td>
<td>RCW 36.70A.110(4)</td>
<td></td>
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</tbody>
</table>
### Issues on which the County prevailed

<table>
<thead>
<tr>
<th>Issue</th>
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<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 Population allocation -- CP policy 2DD-1 does not create an inconsistency that violates GMA and monitoring is a measure to contain and control rural development</td>
<td>22-29</td>
<td>RCW 36.70A.070(5)(c)(i) and (iii)</td>
<td></td>
</tr>
<tr>
<td>10 Visual compatibility -- measures are contained in CP Policy 2DD-2, and in landscaping and lot coverage requirements</td>
<td>39-42</td>
<td>RCW 36.70A.070(5)(c)(ii)</td>
<td></td>
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<tr>
<td>11 Chuckanut Wildlife Corridor -- County has adopted measures to protect the corridor by downzoning</td>
<td>42-47</td>
<td>RCW 36.70A.070(5)(c)(iv)</td>
<td></td>
</tr>
<tr>
<td>12 Rural Neighborhood designations adjacent to UGAs - petitioners failed to carry burden of proof that RN and the RRDO overlay are noncompliant</td>
<td>56-61</td>
<td>RCW 36.70A.070(5)(c)(iii)</td>
<td>Only the boundaries of three rural neighborhoods is out of compliance, see Issue 4 above</td>
</tr>
<tr>
<td>13 1990 uses and sizes in LAMIRDS -- County properly addresses 1990 uses and sizes in WCC 20.80.100(1) table</td>
<td>68-71</td>
<td>RCW 36.70A.070(5)(d)(i-iii)</td>
<td>Only the exemptions to the table are out of compliance, see Issue 5 above</td>
</tr>
<tr>
<td>14 Type II LAMIRD 20 acre limit -- petitioners failed to carry burden of proof that 20 acre maximum lot size violates GMA</td>
<td>71-74</td>
<td>RCW 36.70A.070(5)(d)(ii)</td>
<td>However, County is out of compliance with respect to &quot;small-scale&quot; standards, see Issue 5 above</td>
</tr>
<tr>
<td>15 Structure of cross-referencing and rural character narrative in the CP -- petitioner have not met their burden of demonstrating why cross-referencing development regulations as protective measures, or the wording of the rural character narrative violates GMA</td>
<td>14-21</td>
<td>RCW 36.70A.070(5)(c)(i) - (iv)</td>
<td>Cross-referencing between CP policies and DR provisions will require the County to cross reference both if it makes a change to either in the future</td>
</tr>
</tbody>
</table>
CLEARANCES

Originator: Josh Fleischmann
  Initial:  [Initial]
  Date:  04/25/13

Division Head: Mark Personus
  Initial:  [Initial]
  Date:  04/25/13

Dept. Head: J.E. “Sam” Ryan
  Initial:  [Initial]
  Date:  4-25-13

Prosecutor: Karen Frakes
  Initial:  [Initial]
  Date:  4-26-13

Purchasing/Budget:
  Initial:  [Initial]
  Date:  

Executive: Jack Lounis
  Initial:  [Initial]
  Date:  

TITLE OF DOCUMENT:  Zoning amendment to allow Packinghouses in the Agriculture Zoning District

ATTACHMENTS:
  1) Staff memo to Council
  2) Exhibit A – Working document from April 9 Planning and Development Committee Meeting
  3) Exhibit B – Proposed revisions to Exhibit A

SEPA review required?  ( X ) Yes  ( ) NO  Should Clerk schedule a hearing?  ( X ) Yes  ( ) NO
SEPA review completed?  ( X ) Yes  ( ) NO  Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:  (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.)

To allow packinghouses of up to 10,000 square feet as an accessory use, or greater than 10,000 square feet as a conditional use. Review criteria include limits on out-of-county livestock, adequate services by necessary facilities, an approved and implemented waste management plan, appropriate vehicular approaches, limits on, noxious emissions, and requires avoidance of prime soils to the extent feasible, among other criteria.

An alternative (Exhibit B) allows packinghouses of up to 10,000 square feet as an administrative approval use, or greater than 10,000 square feet as a conditional use. Review criteria include limits on out-of-county livestock, limitations on holding pens, requirements for waste handling and disposal, requirements for access to water, and requires avoidance of prime soils to the extent feasible, among other criteria.

COMMITTEE ACTION:  

COUNCIL ACTION:  

Related County Contract #:  
Related File Numbers:  
Ordinance or Resolution Number:  

Please Note:  Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at:  www.co.whatcom.wa.us/council.
Memorandum

TO: Whatcom County Council
FROM: Joshua Fleischmann, Planner
THROUGH: Mark Personius, Long Range Planning Manager
DATE: April 25, 2013
SUBJECT: Packinghouses Zoning Text Amendment, RE: PLN2012-00008

At the April 9th Planning and Development Committee meeting, Jeff Hegedus from the Whatcom County Health Department and Kurt Baumgarten from the Washington State Department of Ecology provided an in depth discussion of the permitting pathways to legally dispose of waste from slaughtering activities that had been provided to you in the past. At that meeting, Council asked how a prospective operator of a packinghouse would know what permits they would need in order to legally operate. Included in your packet is Exhibit B, which is amended from Exhibit A, your working exhibit as identified at the April 9th meeting. Among the changes are criterion for disposal of wastes, availability of water, language addressing proliferation of packinghouses, and limiting holding pens. Additionally, Exhibit B proposes changing Accessory Uses to Administrative Approval Uses. This change would provide Whatcom County with a greater ability to ensure that the concerns shared by the public are alleviated on a case-by-case, site-specific bases.

At the May 7th Planning and Development Committee meeting, staff will also provide a brief PowerPoint presentation with a basic review of topics which include Custom vs USDA facilities, supply/demand, and water/wastewater.
EXHIBIT A

Chapter 20.40 AGRICULTURE (AG) DISTRICT
20.40.100 Accessory Uses

.114 Packinghouses, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

(1) The total allowable building area is no larger than 10,000 square feet.
(2) The facility processes at least 50 percent agricultural goods produced in Whatcom County and that originate from uses permitted in WCC 20.40.051.
(3) For purposes of public notice, the applicant shall submit stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.
(4) The facility will be serviced adequately by necessary facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and wastewater treatment.
(5) The facility shall provide and implement a waste management plan, approved by the Whatcom County Health Department.
(6) The facility will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
(7) The building shall avoid prime agricultural soils to the extent feasible. Where the site is predominantly in prime soils and avoidance is not feasible, the applicant shall demonstrate that the buildings:
   a. Are sized to be as small as feasible; and
   b. Located to maximize the agricultural use of the remaining area; and
   c. Achieve the most suitable locations in terms of minimizing roads, impervious surfaces, and allowing for water availability and septic suitability.
(8) The packinghouse, as identified in WCC 20.97.282.1, shall emit no noxious emissions 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 of adjacent property.

20.40.150 Conditional Uses

.164 Packinghouses, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

(1) The total allowable building area is larger than 10,000 square feet
(2) The facility processes at least 50 percent agricultural goods produced in Whatcom County and that originate from permitted uses in WCC 20.40.051.

(3) The facility will be serviced adequately by necessary facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and wastewater treatment.

(4) The facility shall provide and implement a waste management plan, approved by the Whatcom County Health Department.

(5) The facility will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

(6) The building shall avoid prime agricultural soils to the extent feasible. Where the site is predominantly in prime soils and avoidance is not feasible, the applicant shall demonstrate that the buildings:
   a. Are sized to be as small as feasible; and
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Chapter 20.69 Rural Industrial Manufacturing (RIM)
20.69.130 Administrative approval uses
20.69.131 Slaughterhouses. Agricultural slaughtering facilities, if done in compliance with WAC Title 16 (Department of Agriculture) and RCW Title 16 (Animals and Livestock):

Chapter 20.80 Supplementary Requirements
20.80.200 Setback requirements
20.80.255 Agriculture District.
(1) The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment, the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

(2) The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, packinghouses, or areas used to contain, house or feed animals or store manure or feed, shall be 300 feet.
New farm uses such as barns, pens, milking sheds, packinghouses, or areas used to contain, house or feed animals or store manure or feed, shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements. (3) The minimum separation between packinghouses and schools shall be 500 feet.

20.97.282.1 Packinghouse
"Packinghouse" means a plant that both slaughters animals and subsequently processes carcasses into cured, smoked, canned or other prepared meat products. Rendering and importation of animal by-products is strictly prohibited in packinghouses. Packinghouses shall not slaughter poultry. Packinghouses exclude temporary, mobile or other on-farm, owner-raised poultry slaughtering operations regulated under WAC 16-170 and/or RCW 69.07 that do not require USDA inspection. Agricultural producers who raise poultry may slaughter up to one thousand (1,000) poultry raised on their own farm annually subject to the special poultry permit requirements of WAC 16-170. Agricultural producers who process between one thousand (1,000) and twenty thousand (20,000) poultry a year on their farm are subject to the food processor license requirements of RCW 69.07.

20.97.310 Poultry
"Poultry" means products derived from the slaughter and processing of broilers, other young chickens, mature chickens, hens, turkeys, capons, geese, ducks, small game fowl such as quail or pheasants, and small game such as rabbits.

20.97.343 Rendering
"Rendering" means the process or business of producing tallow, grease, and high-protein meat and bone meal from animal by-products.

20.97.343.1 Rendering Plant
"Rendering plant" means a plant that processes animal by-product materials for the production of tallow, grease, and high-protein meat and bone meal.

20.97.423.1 Slaughterhouse
"Slaughterhouse" means a facility that slaughters animals and has as its main product fresh meat as whole, half or quarter carcasses or small meat cuts.

20.97.424 Slaughtering
"Slaughtering" means the killing and processing of animals for human consumption.
EXHIBIT B

Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.100 Accessory Uses

20.40.130 Administrative Approval Uses

144-139 Packinghouses, which shall be located, designed, and operated so as to not interfere with the overall agricultural character of the area, provided the following criteria are met:

1. The total allowable building area is no larger than 10,000 square feet.
2. The facility processes at least 50 percent agricultural goods produced in Whatcom County and that originate from uses permitted in WCC 20.40.051.
3. Holding pens associated with packinghouses shall be limited to that necessary to accommodate animals intended for immediate processing.
4. Holding pens associated with packinghouses shall be reviewed and considered for cumulative impacts within the Agriculture Zone.
5. The facility shall comply with solid waste handling standards as set forth in WAC 173-350, as administered by the Whatcom County Health Department as adopted by reference in WCC 24.06.
6. The facility shall be water-sourced for processing, as approved by the Whatcom County Health Department.
7. An approved state waste discharge permit from the Washington State Department of Ecology that complies with WAC 173-216, WAC 173-226 industrial stormwater permits (general permits), and/or an NPDES Permit (RCW 90.48 and WAC 173-220), if required by the Washington State Department of Ecology.
8. For purposes of public notice, the applicant shall submit stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.
9. The facility shall be serviced adequately by necessary facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and wastewater treatment.
10. The facility shall provide and implement a waste management plan, approved by the Whatcom County Health Department.
11. The facility shall have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
12. The building shall avoid prime agricultural soils to the extent feasible.

Where the site is predominantly in prime soils and avoidance is not feasible, the applicant shall demonstrate that the buildings:

a. Are sized so as to be as small as feasible; and
b. Located to maximize the agricultural use of the remaining area; and

Comment [13]: As an Administrative Approval Use, the County would have a greater ability to ensure that the criteria are met.

Comment [12]: Limiting holding pens to necessary to accommodate animals intended for immediate processing would prevent packinghouse holding pens from becoming facilities—concern expressed by some members of the public. By not adding a specific a limitation of an upper limit of holding pens, each facility will have flexibility to adjust their business accordingly.

Comment [13]: Similar to Administrative Approval Use criteria WCC 20.84.235(6)(a), which applies to agricultural uses in rural areas. This would allow packinghouses to be more flexible and respond to market changes, while still maintaining the agricultural character of the area.

Comment [14]: This language has been reviewed by the Whatcom County Health Department and I have incorporated their suggestions.

Comment [15]: This language regarding state waste discharge permits has been reviewed by staff at the Department of Ecology Bellingham Field Office.

Comment [16]: Duplicate. Requested by Administrative Approval Use review criteria WCC 20.84.235(6).

Comment [17]: Duplicate. Requested by Administrative Approval Use review criteria WCC 20.84.235(6), which references WCC 20.84.220(6).

Comment [18]: Clarified above in criteria (5) and (7).

Comment [19]: Duplicate. Requested by Administrative Approval Use review criteria WCC 20.84.235(6), which references WCC 20.84.220(6).
c. Achieve the most suitable locations in terms of minimizing roads, impervious surfaces, and allowing for water availability and septic suitability.

(8) The packinghouse, as identified in WCC 20.97.282.1., shall emit no noxious emissions 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 of adjacent property.

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(2) The facility processes at least 50 percent agricultural goods produced in Whatcom County and that originate from permitted uses in WCC 20.40.051.

(3) Holding pens associated with packinghouses shall be limited to that necessary to accommodate animals intended for immediate processing.

(4) For new packinghouses, the presence and proximity of similar existing uses shall be reviewed and considered for cumulative impacts within the Agriculture zone.

(5) The facility shall comply with solid waste handling standards as set forth in WAC 173-350, as administered by the Whatcom County Health Department as adopted by reference in WCC 24.06.

(6) The facility will be serviced by a water source sufficient for processing, as approved by the Whatcom County Health Department.

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a. Are sized to be as small as feasible; and

Comment [10]: Can be addressed by standards through current criteria WCC 20.84.235(9)(d), which references WCC 20.84.220(7).

Comment [11]: Limiting holding pens to that necessary to accommodate animals intended for immediate processing would prevent packinghouse holding pens from becoming feedlots, as typically envisioned. By not adding defined size limits, each facility will have flexibility to adjust their business accordingly.

Comment [12]: Similar to Administrative Approval Use criteria WCC 20.84.235(9)(c), which applies to administrative uses in rural areas. This language would extend to the agricultural zone for packinghouses only, with the idea of considering cumulative impacts of such uses in the Ag. zone—a situation highly unlikely to occur but the potential of which has been raised by some members of the public. This discretionary area-specific approach is much more flexible (and market-friendly) than a strict limit on the number of such facilities allowed in the zone. The Hearing Examiner would be required to assess whether proliferation of pre-existing packinghouses in the Ag. zone—at the time of consideration of a permit application for a new packinghouse—together constituted a significant adverse impact on neighboring properties, the natural environment or the agricultural character of the area in question, sufficient to deny or further condition the new packinghouse permit application.

Comment [13]: This language has been reviewed by the Whatcom County Health Department and I have incorporated their suggestions.

Comment [14]: This language regarding state waste discharge/industrial stormwater/NPDES permits has been reviewed by staff at the Department of Ecology Bellingham Field Office and I have incorporated their suggestions.

Comment [15]: Duplicative. Required by Conditional Use review criteria WCC 20.84.230(5).

Comment [16]: Clarified above in criteria (9) and (7).

Comment [17]: Duplicative. Required by Conditional Use review criteria WCC 20.84.220(8).
b. Located to maximize the agricultural use of the remaining area; and
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“Slaughtering” means the killing and processing of animals for human consumption.
CLEARANCES

<table>
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<tr>
<th>Originator: Sanya Lutz</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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Division Head: Mark Personius

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<tr>
<th>Dept. Head: J.E. &quot;Sam&quot; Ryan</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
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Prosecutor:

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Executive:

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<th>Date</th>
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<td>5-14-13</td>
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TITLE OF DOCUMENT: Agricultural Parcel Reconfiguration Code amendments as recommended in the Agricultural Strategic Plan (RES2011-023)

ATTACHMENTS:
1) Staff memo to Council
2) "Clean" version of code amendments
3) Proposed Ordinance

SEPA review required? ( ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO

Should Clerk schedule a hearing? ( ) Yes ( X ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (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.)

Proposed amendments to portions of the Official Whatcom County Zoning (Title 20) and Subdivision (Title 21) Ordinances for categorical changes related to the Parcel Reconfiguration task as recommended in the Ag Strategic Plan File. Changes include: Change to Ag Farmstead Parcel creation, a new Ag Parcel Reconfiguration Tool, Ag Siting Criteria, and Procedurally treating Ag Parcel Reconfigurations similar to Boundary Line Adjustments.

COMMITTEE ACTION:

3/26/2013: Discussed. Reschedule as time allows.
4/9/2013: Discussed. Committee wishes to proceed with option 1 on page four of the March 28 staff memo.
5/7/2013: Discussed. Held in committee for two weeks.

COUNCIL ACTION:

Related County Contract #: RES2011-023

Related File Numbers: RES2011-023

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
MEMORANDUM

TO: Honorable Whatcom County Council Members
CC: The Honorable Jack Louws, County Executive
FROM: Samya Lutz, Planner
THROUGH: Mark Personius, Long Range Planning Manager
DATE: May 8, 2013
SUBJECT: Whatcom County Agricultural Strategic Plan Implementation (PLN2012-00007): Agricultural area amendments and Parcel Reconfiguration

Staff discussed with the Council Planning Committee on May 7, 2013 the proposed agricultural area amendments, which followed discussion during the March 26 and April 9 Council Planning Committee meetings on the agricultural area amendments and parcel reconfiguration amendments. Staff received direction to bring back to the committee the original amendments as passed by the Whatcom County Planning Commission on February 28. The following materials are attached to this memo:

- A 'clean' version of effected portions of county code with NO TRACKED CHANGES. This differs from previous versions of this document in that it includes ALL code chapters affected by the amendments, not just the Ag and Definitions chapters. Also, this version depicts highlighted areas which reflect the specific portions of the amendments having to do with parcel reconfiguration. All changes recommended by the Planning Commission on February 28 are included in this version as accepted.

- An ordinance with findings and conclusions as adopted by the Planning Commission, with Exhibit 1. This exhibit contains the draft code amendments, showing all changes to the CURRENT code related to the February 28 version under consideration.

As discussed on May 7, staff will present information focused specifically on the parcel reconfiguration amendments. This follows previous staff presentations that have focused on the overall approach, the balancing of property flexibility and agricultural protection, and the specific ag area amendments allowing for small residential 1-to-3 acre lots to be created with an associated deed-restricted agricultural reserve parcel in advance of a home being built (as opposed to the current allowance to create these small lots only after a home is built).

Please note that related materials have been distributed and are on record in association with the previous meetings mentioned above, and that all related materials are posted on the Agricultural Program website, located here:

Staff members look forward to discussing these amendments with you during the Planning Committee meeting on May 21. Feel free to contact Amy Keenan (x50264) or me (x51072) with any questions.
Ag Area Amendments, with Parcel Reconfiguration portions highlighted

"Clean" Re-organization


Re-organized and non-tracked version of zoning and subdivision code chapters

incorporating code changes as recommended by the Whatcom County Planning
Commission for portions of chapters that are subject to the proposed changes.

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Prepared by Whatcom County PDS staff

May 8, 2013
Chapter 20.40 AGRICULTURE

20.40.010 Purpose.
The primary purposes of this district are to implement the agricultural designation of the Comprehensive Plan, established pursuant to RCW 36.70A.170, preserve, enhance and support the production of food and fiber in Whatcom County, to maintain a sufficiently large agricultural land base to ensure a viable agriculture industry and to maintain the economic feasibility of supporting services. Whatcom County supports agricultural activities as the highest priority use in the Agriculture District, with all other uses being subordinate to agricultural activities. Whatcom County seeks to minimize conflict with surrounding zoning districts, in conjunction with Chapter 14.02 WCC, Right to Farm. In order to limit the further fragmentation of the commercial agricultural land base, the Agriculture District includes smaller areas of land with poorer quality soils or nonagricultural uses, which do not meet the definition of agriculture lands of long-term commercial significance.

A secondary purpose of this district is to serve as a holding district when located within the urban growth area Comprehensive Plan designation to allow agricultural uses in the near term while protecting the area from suburban sprawl and preserving the potential for future urban development consistent with the protection of the resource land.

20.40.250 Division or Modification of Parcels
It is the intent of this section to allow divisions which benefit the long-term viability of agriculture. This section describes the requirements for division or modification of parcels within the agricultural district that are either consistent with the minimum lots size or would result in substandard parcels or make existing substandard parcels further substandard.

Requests for land division, boundary line adjustment, or agricultural parcel reconfiguration in the Agriculture District shall be made on forms provided by the department and will be reviewed administratively. All divisions must comply with the following provisions:

(1) **Agricultural Divisions.** All divisions of land in the Agriculture District shall proceed in accordance with the local and state subdivision laws.

(2) **Allowable Density.** No division, boundary line adjustment, or agricultural parcel reconfiguration shall result in an increase in allowable density.

(3) **Additional Acreage.** Additional acreage gained through a boundary line adjustment or agricultural parcel reconfiguration shall not be considered in the total acreage calculations for determining density.

(4) **Plat Restrictions.** The following plat restriction is required, prior to recording, on the nonresidential lot of all divisions of land provided for in WCC 20.40.254(2):

- No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction
shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

(5) **Deed Restrictions.** Deed restrictions are required for all boundary line adjustments or agricultural parcel reconfigurations allowed under WCC 20.40.254 (3) and (4).

(a) The following language must be recorded separately and placed by reference of auditors file number on the deed, and placed on the tract map of the nonresidential portion of the adjusted parent parcels prior to recording:

The development density of the original parcel (parent parcel) remains with legal description ______. The ______ (# of acres) appended through boundary line adjustment [or agricultural parcel reconfiguration] to legal description ________ (receiving parcel) shall not be included in calculations to determine total development density for the receiving parcel.

(b) The following deed restriction language must be recorded separately and placed by reference of auditors file number on the deed, and is required when there is no additional means to further subdivide the property due to the parcel sizes and density standards of this zone:

No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

**20.40.251 Minimum Lot Size.**

The minimum lot size in the Agriculture District is 40 acres, except as provided for in WCC 20.40.253 and .254. The creation of a lot less than the minimum size is permitted only when the subject application meets the standards contained in WCC 20.40.253, .254 and .650 as applicable.

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Minimum Lot Size</th>
<th>Minimum Lot Size Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional Parcel</td>
<td>40 acres</td>
<td>Reconfiguring existing nonconforming parcels</td>
</tr>
<tr>
<td><strong>Farmstead Parcels Created through Agricultural Short Subdivision or Agricultural Boundary Line Adjustment</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farmstead Parcel – Parent Parcel with Existing Farmstead with public water</td>
<td>1 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1), (2) &amp; (4)</td>
</tr>
<tr>
<td>Farmstead Parcel – Parcel with Existing Farmstead without public water</td>
<td>2 acres</td>
<td>Up to 3 acres pursuant to WCC 20.40.253 (1) &amp; (4)</td>
</tr>
</tbody>
</table>

Prepared by Whatcom County PDS staff  May 8, 2013
20.40.252 Minimum lot width and depth.

(1) For parcels created consistent with the minimum lot size the: The minimum length to width ratio is 1/5. The terms “length” and “width” refer to the average length and average width of the parcel.

(2) For lots created or rearranged pursuant to WCC 20.40.254, the following lot width and depth shall apply:

<table>
<thead>
<tr>
<th>Minimum Width at Street Line</th>
<th>Minimum Width at Bldg. Line</th>
<th>Minimum Mean Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>70' [A]</td>
<td>80’</td>
<td>100’</td>
</tr>
</tbody>
</table>

[A] Applies only to land divisions or parcel reconfigurations where the parcel(s) does not contain a farmstead homesite at the time of the application.

20.40.253 Farmstead or Reconfigured Parcel Minimum Lot Size Exceptions

The base maximum for the farmstead parcel shall be consistent with the minimum lots size in 20.40.251, except as follows:

(1) A greater area is determined necessary by the health officer pursuant to Chapter 24.05 On-Site Sewage System Regulations;

(2) A greater area is determined necessary by the responsible official to accommodate a driveway or other access necessary for the farmstead parcel;
(3) For farmstead parcels without public water: Unless substantial evidence is provided by the responsible official indicating the location is not feasible, wells and wellhead protection zones shall also be located within farmstead parcel. Wells located outside of the farmstead parcel area shall be sited to minimize potential impacts on agricultural activities.

(4) For farmstead parcels with existing farmstead homesites: There is an existing agricultural structure(s) within the farmstead parcel and any of the following criteria are met:

(a) The separation between the agricultural structure(s) and the primary residential structure is less than 150 feet; or

(b) Current use of the agricultural structure(s) is not related to an agricultural activity; or

(c) There is a low potential for future use of the agricultural structure(s) to be associated with an agricultural activity due to physical condition or compatibility with agricultural practices; or

(d) Water is not available for use at the agricultural structure(s).

20.40.254 Separation of the Farmstead Parcel Criteria:

(1) The criteria for approval for the farmstead parcel and remainder parcel created through Agricultural Boundary Line Adjustment, Agricultural Short Subdivision and Agricultural Parcel Reconfiguration shall be the following:

(a) The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and

(b) The farmstead parcel size shall be as stated in WCC 20.40.251, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed the maximum lot size consistent with the exceptions in WCC 20.40.253; and

(c) The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and

(d) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

(e) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) or (5) shall be included on the short plat, boundary line adjustment, or agricultural parcel reconfiguration for the remainder parcel prior to final approval; and

(f) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the remainder parcel for purchase of the farmstead parcel before they are offered on the open market; and

(g) A right to farm disclosure statement as provided for in WCC 14.02.040(B) will be signed by the farmstead parcel owner and subsequent purchasers of the farmstead parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and
Ag Area and Parcel Reconfiguration Amendments  

WCC “clean” re-organized & non-tracked version

(h) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

(i) The overall submittal shall comply with WCC 20.40.250 et seq.

(2) **Agricultural Short Subdivisions.** Agricultural Short subdivisions for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251 for a farmstead homesite shall comply with the following provisions:

(a) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable code and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(b) The short subdivision application shall meet the size and performance standards of WCC 20.40.650.

(3) **Boundary Line Adjustments.** Boundary line adjustments for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251 of an existing or proposed farmstead parcel if such boundary line adjustment complies with the following provisions:

(a) Boundary line adjustments shall not make a lot substandard or further substandard, except as provided for in WCC 20.40.251.

(b) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable codes and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(c) The farmstead parcel and boundary line adjustment application shall meet the size and performance standards of WCC 20.40.250 and .251, and the siting criteria of WCC 20.40.650.

(4) **Agricultural Parcel Reconfiguration:** Parcels are reconfigured and finalized according to the agricultural parcel reconfiguration process established in Chapter 21.03, Exempt Land Divisions, Boundary Line Adjustments, and Agricultural Parcel Reconfigurations, and when meeting the following performance standards:

(a) Existing parcels to be reconfigured are:

   (i) Smaller than the minimum lot size established for new lots in the Agriculture district. Parcels which meet the minimum lot size may be adjusted as a part of this process, provided the reconfiguration meets the provisions of (4)(b) below;

   (ii) Determined to be legally created and buildable pursuant to WCC Title 21.01.180.

(b) Proposed parcel(s) results in the following:

   (i) No additional parcels; and

   (ii) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

   (iii) The siting criteria of WCC 20.40.650 are met and development standards of WCC 20.40.252 et seq. are met; and

Prepared by Whatcom County PDS staff  
May 8, 2013
(iv) The reconfiguration shall result in achieving four (4) or more of the identified agricultural-related purposes as follows:

(A) Expand the amount of commercially viable resource land under contiguous single ownership; and/or
(B) Protect and buffer designated resource lands; and/or
(C) Reduce impervious surfaces, such as by reducing the amount of road and utility construction required to serve reconfigured lots, or by reducing the amount impervious area for non-agricultural uses that could otherwise occur without parcel reconfiguration; and/or
(D) Reduce the total number of lots of record through voluntary consolidation; and/or
(E) Produce a farm management plan approved through the Whatcom Conservation District or WA Department of Agriculture that demonstrates increased viability of the agricultural operation through the agricultural parcel reconfiguration; and/or
(F) Enable improved floodplain management in cooperation with Whatcom County Public Works; and

(viii) Reconfigured lots shall not be further adjusted by boundary line adjustment without approval under this section.

(c) The responsible official may impose conditions, consistent with Whatcom County Code, on the agricultural parcel reconfiguration to further the purposes of this section.

(d) Parcel reconfigurations will be tracked by County Planning and Development Services so the procedure can be adaptively managed by review of all projects passed per this code in year 2017.

(5) Public Facility. The division is for the purpose of public facilities for health and safety use or expansion of such uses; provided, that:

(a) The division or boundary line adjustment will not adversely affect the surrounding agricultural activities; and
(b) The applicant has demonstrated to the administrator’s satisfaction that the siting of the proposed use cannot be located in an adjacent zoning district or alternative site, if the area is intensively farmed.

(6) Division or Boundary Line Adjustment for Agricultural Purposes Only. Lots smaller than the minimum lot size of WCC 20.40.251 may be created through land division or re-arranged through a boundary line adjustment provided the following:

(a) The parent parcel does not contain an existing residence, or said existing residence will remain on a parcel larger than 40 acres in size; and
(b) The parcel created is greater than 10 acres or is appended to another parcel; and
(c) There is a properly executed deed restriction which runs with the land on lots which have been created through the division or modified by the boundary line adjustment, except those lots at or over 40 acres in size that maintain an associated development density. Such
deed restriction shall be substantially similar to that listed under 20.40.250(5), approved by
the zoning administrator and recorded with the County Auditor specifying:
(i) All land divided or parcels adjusted are to be used exclusively for agricultural or flood
management purposes and specifically not for a dwelling(s), and
(ii) All land divided or parcels adjusted shall have no residential density, and
(iii) For land divisions, the acreage of the newly created parcels shall not be included in
calculations to determine total development density in the future, and
(iv) For boundary line adjustments, the acreage of the newly created parcel and appended
portion shall not be included in calculations to determine total development density in the
future.

20.40.255 Consolidation of Adjacent Tracts.
Consolidation of adjacent tracts in the same ownership shall be required in accordance with 20.83.070
in approval of any subdivision, short subdivision, agricultural parcel reconfiguration, or boundary line
adjustment in the Agricultural District. The County may waive the permit fee for a boundary line
adjustment or agricultural parcel reconfiguration where adjacent lots of record are not in the same
ownership and are consolidated voluntarily for purposes of the agricultural parcel reconfiguration, or
boundary line adjustment.

20.40.256 Establishing Intent.
The burden of establishing intent in and legal proceeding relating to a transaction accomplished or
proposed under the authority of this section shall be upon the land owner or purchaser.

20.40.350 Building setbacks.
Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements). Building
setbacks for parcels of less than five nominal acres shall be administered pursuant to WCC 20.80.250.

20.40.450 Lot coverage.
No structure or combination of structures, including accessory buildings, shall occupy or cover more
than 25 percent of the total area of the subject parcel. Exceptions to the maximum lot coverage may be
allowed when any of the following can be demonstrated:
(1) Proposed structures, in excess of the allowed maximum lot coverage, are located on lesser quality
soils.
(2) Proposed structures in excess of the allowed maximum lot coverage support additional agricultural
production on parcels other than the subject parcel.
(3) Expansion of facilities that were in operation prior to the adoption of the ordinance codified in this
section if it can be demonstrated that substantial on-site investment has been made and location of
additional structures off-site would cause an economic hardship to the farm operation.

Prepared by Whatcom County PDS staff
May 8, 2013
20.40.650 New or Modified Parcel Siting Criteria

The location of vacant farmstead parcels or parcels arranged through agricultural parcel reconfiguration (which may or may not be vacant) shall be consistent with the following siting criteria and standards:

(1) **Minimum Lot Size.** Parcels shall be consistent with WCC 20.40.251.

(2) **Parcel Design.** Parcels shall be located and arranged to provide the maximum protection of agricultural land located both on and off-site. Parcel design and development shall be as follows:

   (a) The residential parcels shall be configured so that property lines are immediately adjacent and physically contiguous to each other. A maximum of two development areas containing no more than four (4) lots may be allowed. The two development areas shall contain no more than a total of six lots, and shall be separated by a minimum of 500 feet to minimize the visibility of the future development and reinforce the purposes of the zone; provided that reductions in the separation standard by up to 10% are allowed if an applicant can demonstrate that the future development visibility from the public right of way or from neighboring properties is minimized and the purposes of the parcel reconfiguration in WCC 20.40.254(4)(b)(iv) are met; and

   (b) Residential parcels shall be located as close as possible to existing public roads, or if none about the property then to existing access roads. New road or driveway development shall be avoided to the maximum extent feasible; and

   (c) Except for parcels that recognize existing farmsteads, residential parcels shall be located to the extent feasible to maximize the remainder lot configuration and farmable area; and

   (d) Except for reconfigured parcels that recognize existing farmsteads, each reconfigured parcel shall be limited to one single family residence and residential accessory structures; and

   (e) Residential building sites shall maintain sufficient separation from on-site and off-site agricultural resources and exterior property lines. The setback, lot coverage, and height standards for reconfigured lots shall be as established in WCC 20.40.350 to 450; and

   (f) Applicants shall verify that reconfigured parcels or farmstead parcels do not prohibit access to a point of withdrawal for any irrigation water rights certificates, claims, permits, or applications on the affected parcels; and

   (g) All development shall be consistent with WCC Chapter 16.16; and

   (h) The farmstead parcel or reconfigured parcels avoid prime soils to the extent feasible. Where the site is predominantly in prime soils and such cannot be avoided, the applicant shall demonstrate that:

        (i) the parcels are sized to be as small as feasible pursuant to WCC 20.40.251; and

        (ii) located to maximize the agricultural use of the remainder lot; and

        (iii) achieve the most suitable locations for parcels in terms of minimizing roads, allowing for water availability, and septic suitability.
(3) Substitute Parcel Design Standards. Applicants proposing a farmstead parcel or agricultural parcel reconfiguration may propose a substitute performance standard in place of a listed standard in .650 (New or Modified Parcel Siting Criteria) provided that the applicant submits a written justification demonstrating the substitute standard better or equally meets the purposes of the zone in WCC 20.40.010 and the agricultural-related purposes described in WCC 20.40.254(4)(b)(iv); except under no condition shall more than the maximum of six (6) residential parcels with no more than four (4) lots in one development area be allowed. Such substitution shall be considered at the Administrator’s discretion.
Chapter 20.80  
SUPPLEMENTARY REQUIREMENTS  
(selected portions)

20.80.210 Minimum setbacks.
(5) Setbacks. For the purposes of this chapter, the road classification used to determine setback requirements shall be as set forth in this section. In the event a particular road is not listed in this section, the department of public works shall determine the classification, which classification shall be based on the Whatcom County Development Standards or such other local, state or federal roadway standards as the department of public works deems appropriate.

(a) Setback Requirements of All Districts.

(i) No manure lagoon or other open pit storage shall be located closer than 150 feet from any property line, or in a manner which creates any likelihood of ground water pollution or other health hazard.

(ii) All manure storage shall be protected from a 25-year flood and shall be located 50 feet from irrigation ditches and waterways, 50 feet from the ordinary high water line of any lake or waterway; provided, that best management practices as determined by the Whatcom County Conservation District are in place. If the best management practices are not in place, 300 feet shall be substituted for 50 feet.

(iii) In all districts where a single-family residence is a primary permitted use, a building permit may be issued for the construction of a replacement dwelling on the same lot; provided, that the owner agrees by filing a statement with the building official that the old dwelling will be demolished, removed or converted to another permitted use upon completion of the new dwelling.

(iv) A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the international Boundary Commission.

(b) Setbacks Table.

***
<table>
<thead>
<tr>
<th>Road Type</th>
<th>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</th>
<th>Collector Arterials or Major Collectors</th>
<th>Minor Collectors</th>
<th>Local Access Streets</th>
<th>Neighborhood Collector</th>
<th>Minor Access Streets</th>
<th>Side Yard</th>
<th>Rear Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>20'</td>
<td>20'</td>
</tr>
</tbody>
</table>

1. The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

2. The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

3. Parcels of less than five nominal acres shall have the following minimum setbacks:

   Front yards:
   - Primary arterials and secondary arterials: 45 feet.
   - Collector arterials: 35 feet.
   - Neighborhood collectors, local access streets: 25 feet.
   - Minor access streets: 20 feet.

Minimum front yard requirements can be reduced by the zoning administrator for agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254 if the proposed placement of the structures will result in a better fit with critical areas or prime soils and goes through the approval process in WCC 21.03. In no case shall front yard depth be less than 20 feet.

Side yards: minimum side yard setbacks shall be five feet. For agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear yards: minimum rear yard setbacks shall be five feet.
4. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

20.80.255 Agriculture District.
(1) The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment, the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

(2) The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed, shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed, shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor's residence, and pastures are excluded from this section's requirements.

(3) Parcels of less than five nominal acres shall have the following minimum setbacks:

Front Yards:
- Primary arterials and secondary arterials: 45 feet.
- Collector arterials: 35 feet.
- Neighborhood collectors, local access streets: 25 feet.
- Minor access streets: 20 feet.

Minimum front yard requirements can be reduced by the zoning administrator for agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254 if the applicant demonstrates better placement of the structures in relation to critical areas or prime soils and goes through the approval process in WCC 21.03, but in no case shall be less than 20 feet.

Side Yards: Minimum side yard setbacks shall be five feet. For agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - .254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear Yards: Minimum rear yard setbacks shall be five feet.
Chapter 20.83
NONCONFORMING USES AND PARCELS
(selected portions)

20.83.110 Reduction of area.
The administrator shall not cause or increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements through boundary line adjustments; provided, however, that the administrator or hearing examiner may approve boundary line adjustments required to satisfy an unidentified or disputed property line or to identify the same in accordance with RCW 58.04.007. In addition, boundary line adjustments or agricultural parcel reconfigurations in the Agricultural zone in conformance with WCC 20.40.253-.254 shall be allowed.

....
Chapter 21.01
GENERAL PROVISIONS
(selected portions)

21.01.010 Title.
This title shall be known and may be cited as the Whatcom County land division regulations.

21.01.020 Purpose.
The purpose of this title is:

(1) To promote the public health, safety, and general welfare, and to protect the natural resources and the environment.

(2) To provide for proper application of Chapter 58.17 RCW.

(3) To facilitate efficient and cost-effective land division and to ensure orderly growth and development consistent with the Whatcom County Comprehensive Plan and the Whatcom County Code.

(4) To establish an orderly transition from existing land uses to urban development patterns in designated urban growth areas.

21.01.030 Authority.
This title is authorized pursuant to the authority delegated to Whatcom County under Chapter 58.17 RCW, Plats -- Subdivisions -- Dedications.

21.01.040 Applicability and exemptions.
(1) This title shall apply to property boundary actions as defined in this title.

(2) The subdivision and short subdivision provisions of this title shall not apply to:

....

(f) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site in accordance with the provisions of this title;

....

(l) Divisions of land into parcels of less than forty acres but greater than ten acres within the area zoned and designated as Agriculture in the Comprehensive Plan for Whatcom County proceeding in accordance with 20.40.254(6).

....

21.01.100 Applications required.
(1) The applicant is encouraged to seek assistance from the subdivision administrator as to which approvals are required for a particular proposal. One or more of the following applications may be required for a particular proposal:

Prepared by Whatcom County PDS staff

May 8, 2013
(a) Exempt land division;
(b) Boundary line (lot line) adjustment or agricultural parcel reconfiguration;
(c) Short subdivision;
(d) Preliminary long subdivision;
(e) Final long subdivision;
(f) Subdivision vacations and alterations;
(g) Preliminary binding site plan;
(h) General binding site plan;
(i) Specific binding site plan;
(j) Agricultural short plat.

....

Prepared by Whatcom County PDS staff

May 8, 2013
Chapter 21.03
EXEMPT LAND DIVISIONS, BOUNDARY LINE ADJUSTMENTS, AND AGRICULTURAL PARCEL RECONFIGURATIONS
(selected portions)

21.03.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of exempt land divisions, pursuant to WCC 21.01.040, boundary line adjustments, and agricultural parcel reconfigurations. The procedure is intended to provide orderly and expeditious processing of such applications.

21.03.020 Exemptions.
Repealed by Ord. 2009-007.

21.03.030 Pre-approval.
Applicants may request that their proposed exempt land division be reviewed by the subdivision administrator and pre-approved using forms supplied by the planning and development services department.

21.03.040 Certificate of exemption.
(1) A certificate of exempt land division shall be obtained from the planning and development services department for exempt land divisions under WCC 21.01.040(2)(b) and (k). A certificate of exempt land division shall consist of a suitably inscribed stamp on the instrument conveying land title and shall be certified prior to the recording of the instrument with the county auditor. County review and/or a county certificate of exemption stamp shall not be required for WCC 21.01.040(2)(a) and (c) through (j).

(2) A certificate of exempt land division shall be approved, approved with conditions, or denied as follows:

(a) Applications shall include information required by WCC 21.03.085.

(b) The exempt land division results in a lot(s) that qualifies as a valid land use pursuant to the Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection.

(c) The exempt land division will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns.

(3) An exempt land division is not considered approved until said instrument has been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of pre-approval. Failure to record within 12 months of pre-approval means the exempt land division application is expired and must be resubmitted for review and approval. The time periods of this section do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and...

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Ag Area and Parcel Reconfiguration Amendments  WCC "clean" re-organized & non-tracked version

approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

21.03.045 Required disclosures.
The following disclosures, if applicable, shall be recorded in the county auditor's office and shall be filed concurrently with all conveyances of property subject to this title:
(1) Right to farm, right to practice forestry, or mineral resource disclosures.
(2) Boundary discrepancies.
(3) Protective covenants, conditions and restrictions.
(4) Latecomers' agreements.
(5) Significant pipeline in vicinity disclosure when the subject property is within 660 feet of a pipeline shown on Map 12, Chapter 5 of the Whatcom County Comprehensive Plan.

21.03.050 Access on state highways.
For parcels that will access onto a state highway, the applicant shall provide evidence of an approved access from the State Department of Transportation prior to approval of the exempt land division.

21.03.060 Boundary line adjustments and Agricultural Parcel Reconfigurations.
The purpose of this section is to provide procedures for the review and approval of adjustments or alterations to boundary lines of existing lots of record which does not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

(1) Procedures. Boundary line adjustments and agricultural parcel reconfigurations shall be approved, approved with conditions, or denied as follows:

(a) Applications shall include information required by WCC 21.03.085.

(b) Any adjustment of boundary lines must be approved by the subdivision administrator prior to the transfer of property ownership between adjacent lots.

(c) The subdivision administrator shall make a preliminary decision on boundary line or agricultural parcel reconfiguration applications within 45 days following submittal of a complete application or revision, unless the applicant consents to an extension of such time period.

(d) A title insurance certificate updated not more than 60 days prior to application, which includes all parcels within the adjustment, must be submitted to the subdivision administrator with boundary line adjustment or agricultural parcel reconfiguration applications.

(e) All persons having an ownership interest within the boundary line adjustment or agricultural parcel reconfiguration shall sign the final recording document in the presence of a notary public.

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(2) Decision Criteria. In reviewing a proposed boundary line adjustment or agricultural parcel reconfiguration, the subdivision administrator or hearing examiner shall use the following criteria for approval:

(a) The boundary line adjustment shall not result in the creation of an additional lot.

(b) With the exception of those boundary line adjustments or lots within agricultural parcel reconfigurations that recognize an existing farmstead home site located within the agricultural zone, the boundary line adjustment or agricultural parcel reconfiguration shall result in lots which contain sufficient area and dimensions to meet minimum requirements for width and area for a building site pursuant to this title.

(c) The boundary line adjustment or agricultural parcel reconfiguration shall be consistent with any restrictions, depictions or conditions regarding the overall area in a plat or short plat devoted to open space, environmental mitigation or conservation.

(d) The boundary line adjustment or agricultural parcel reconfiguration shall be consistent with any restrictions or conditions of approval for a recorded plat, short plat, zoning permit, or development permit.

(e) The boundary line adjustment or agricultural parcel reconfiguration shall not cause boundary lines to cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, or prevent adequate access to water supplies unless suitable mitigation including, but not limited to, the granting of utility easements is provided to the satisfaction of Whatcom County; provided, however, in the agricultural zone only those lots with existing on-site sewage disposal systems or potable water supplies are subject to this provision.

(f) The boundary line adjustment or agricultural parcel reconfiguration will not create a new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road geometry or other safety concerns, as specified in adopted Whatcom County road development standards.

(g) The boundary line adjustment or agricultural parcel reconfiguration on lots without an existing farmstead home site shall demonstrate adequate septic and potable water suitability. Applicants shall demonstrate adequate potable water availability per WCC 24.11. Applicants shall demonstrate septic suitability approval pursuant to WCC 24.05.

(3) Final Approval and Recording Required. To finalize an approved boundary line adjustment or agricultural parcel reconfiguration, the applicant must submit to the subdivision administrator within one year of preliminary approval final review documents meeting the requirements of approval.

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(a) All persons having an ownership interest within the boundary line adjustment or agricultural parcel reconfiguration shall sign the final recording document in the presence of a notary public.

(b) Certified legal descriptions of the lots after the boundary line adjustment or agricultural parcel reconfiguration, together with conveyance document(s) and language clearly binding the property which is conveyed to the remainder portion of the property, shall be prepared by a title company or licensed surveyor for all lots affected by the boundary line adjustment or agricultural parcel reconfigurations.

(c) A title insurance certificate updated not more than 60 days prior to recording of the adjustment, which includes all parcels within the adjustment, submitted to the subdivision administrator with boundary line adjustment or agricultural parcel reconfiguration final review documents.

(d) A final boundary line or agricultural parcel reconfiguration map, prepared by a licensed surveyor, along with legal descriptions, shall be prepared and submitted for review and approval. Two map copies shall be provided for review demonstrating compliance with the preliminary boundary line adjustment or parcel reconfiguration approval.

(e) A boundary line adjustment or agricultural parcel reconfiguration is not considered approved until the conveyance documents have been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of approval of final documents. Failure to record within 12 months of approval means the boundary line adjustment or agricultural parcel reconfiguration application is expired and must be resubmitted for review and approval.

21.03.070 Inactive applications.
An applicant may place an exempt land division, boundary line adjustment, or agricultural parcel reconfiguration application, which has not yet received preliminary approval, on hold for a cumulative maximum of 180 days. This 180-day period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant. Applications which fail to meet these time limits will be considered expired and void. The time periods of this chapter do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

21.03.080 Requirements for a fully completed exempt land division application.
The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application for exempt land divisions under WCC 21.01.040(2)(b) and (k).

(1) Written Data and Fees.
   (a) Name, address and phone number of land owner, applicant, and contact person.

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(b) Intended uses.
(c) A current title report or update of title report issued no more than 60 calendar days prior to application.
(d) Assessor’s parcel number (of the parent parcel).
(e) Fees as specified in the Unified Fee Schedule.
(f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data.
(a) Name of land owner.
(b) Name of proposed land division (if an original drawing is prepared).
(c) General layout of proposed land division.
(d) Common language description of the general location of the land division.
(e) Approximate location and names of existing roads identified as either public or private.
(f) Vicinity map.
(g) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
(h) Section, township, range, and municipal and county lines in the vicinity.
(i) General boundaries of the site with general dimensions shown.
(j) Legal description of the land.

21.03.085 Requirements for a fully completed boundary line adjustment or agricultural parcel reconfiguration application.
The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application.

(1) Written Data and Fees.
(a) Name, address and phone number of land owner, applicant, and contact person.
(b) Intended uses.
(c) A current title report or update of title report issued no more than 60 calendar days prior to application.
(d) Assessor’s parcel numbers of existing parcels.
(e) Fees as specified in the Unified Fee Schedule.
(f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data.
(a) Names of land owners.
(b) Name of proposed boundary adjustment.
(c) Common language description of the general location of the land division.

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21.03.090 Original drawing.

Repealed by Ord. 2009-007.
Chapter 21.04 SHORT SUBDIVISIONS
(selected portions)

21.04.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of short subdivisions.

The provisions of WCC 20.40.253 - 254 provide for the segregation of a farmstead parcel with an existing residence(s) from a remainder parcel used for farming in the Agriculture Zone. The remainder parcel is restricted to agricultural use only. Because no further residential development can occur on the remainder parcel and an existing residential structure is already on the farmstead parcel, many of the standard short plat requirements are unnecessary. Therefore, a shortened review process has been established.

Agricultural short plats that qualify under WCC 20.40.253 - 254 shall be subject to the following:

(1) Agricultural short plats that recognize an existing farmstead homesite shall be processed pursuant to all the requirements of this chapter except that the short plat will not be reviewed for compliance with:

(a) WCC 21.04.060 (Roads);
(b) WCC 21.04.090 (Water supply), when the remainder parcel will not require potable water;
(c) WCC 21.04.100 (Sewage disposal);
(d) WCC 21.04.130 (Land survey);
(e) Chapter 16.16 WCC (Critical Areas); and
(f) Shoreline master program.

(2) Any subsequent development must comply with all applicable codes.

(3) Survey Requirements – Partial. A survey, prepared by a professional land survey in accordance with WCC 21.09.010 and 21.09.020, which provides the location of at least two corners of the farmstead parcel shall be submitted. A survey is not required for the remainder parcel that cannot have further residential development.
Chapter 20.97 DEFINITIONS
Zoning Definitions (selected portions)

20.97.132 Farmstead parcel.
The “farmstead parcel” is the legally subdivided portion of the parent parcel containing an existing or planned farmstead home site.

20.97.133 Farmstead home site.
The “farmstead home site” includes that portion of the parent parcel used for existing or planned residential buildings, uses accessory to residential buildings, drainfields, wells, wellhead protection area(s), established landscaped areas contiguous with the non-agricultural built area, and structures as allowed in WCC 20.40.253.
PROPOSED BY:  
SPONSORED BY:  
INTRODUCTION DATE:

ORDINANCE NO. ________

CODE AMENDMENTS TO ALLOW AGRICULTURAL PARCEL RECONFIGURATION AND RELATED CHANGES AFFECTING THE AGRICULTURE ZONE

WHEREAS, the Whatcom County Agricultural Advisory Committee developed an Agricultural Strategic Plan adopted by County Council Resolution 2011-023; and

WHEREAS, the Agricultural Strategic Plan includes the recommendation to develop a Parcel Reconfiguration tool in the Agricultural areas, which has now been developed; and

WHEREAS, the proposed code amendments have been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, In accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed code amendments; and

WHEREAS, notices of the Whatcom County Planning Commission hearings on the proposed amendments were published in the Bellingham Herald; and

WHEREAS, the Whatcom County Planning Commission held two public hearings on the proposed amendments and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission held five work sessions on the proposed amendments; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the Whatcom County Council has reviewed the Planning Commission recommendation; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

Page 1
FINDINGS

1. The Whatcom County Agricultural Strategic Plan was developed by the county’s Agricultural Advisory Committee made up of farmers and farming industry representatives appointed by the Whatcom County Executive and affirmed by the County Council.

2. The Agricultural Strategic Plan was supported by the County Executive and endorsed by the County Council on July 26, 2011 through Resolution 2011-023.

3. The Agricultural Strategic Plan built upon previous work within the agricultural community including the Rural Land Study (2007; endorsed through Council Resolution 2009-040), and an examination of the existing potential residential development within the agricultural areas of the county as described in four White Papers delivered to the WA State Office of Farmland Preservation in January 2009 and posted on the county’s Agricultural website since that time.

4. The examination of existing development potential was initiated in 2008 through a stakeholder and public process conducted by Whatcom Farm Friends (county contract number 200711051), wherein tools were identified with the goals of both retiring and accommodating existing development potential in ways that benefit agriculture. Tools that retire existing development potential were identified as options to reduce the overall development potential within the agricultural areas, assisting the farming industry by reducing the potential for uses that may conflict with agricultural activities. Accommodation tools were identified as potential options that assist the farming industry through various incentives that neither reduce nor add density to the agricultural areas.

5. The Agricultural Strategic Plan contains a number of priority tasks, one of which is “Parcel Reconfiguration tool development” which was intended to allow the reconfiguration of parcels within and across ownership, to place the existing development potential in areas that are the least valuable as farm land; accommodating existing development potential in a manner that better fits with the farming operation.

6. A Project Review Team consisting of County staff, Agricultural Advisory Committee (AAC) representatives, and a Whatcom Farm Friends representative met throughout the process with assistance from BERK Consulting to review objectives and draft documents. Meeting dates were: February 15, April 12, May 10, and July 26, 2012. This team continued to meet without the assistance from BERK Consulting as a subcommittee of the AAC.
7. A Determination of Nonsignificance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 23, 2012.

8. The preliminary project plan was posted on the county website on March 6, 2012, updated periodically, with draft alternative code amendments added on March 27, 2012 and subsequently updated.

9. A Focus Group meeting conducted by BERK Consulting was held on March 5, 2012 with nine experts in Whatcom County agricultural land use, development, and financing to brainstorm how parcel reconfiguration could work to allow rearrangements of parcels (within and across ownership) to place the existing development potential in areas that are the least valuable as farmland, in a manner that benefits the County and the landowner and is consistent with other state and local priorities.

10. A Public Open House concerning the project and draft alternatives was held at Cornwall Church on May 3 at 6:30 PM, with notice posted on the County website and sent to citizen, media and other groups on the County’s e-mail list on April 19, 2012.

11. A document entitled “Situation Assessment: Incentives for Commercial Agriculture: Parcel Reconfiguration” (Situation Assessment) identifying the current conditions, parcel reconfiguration objectives, key issues, recommendations, public process, draft code amendments, and analyzing Growth Management Act and Hearings Board cases and other jurisdictional examples was published on May 31, 2012 by BERK Consulting and posted on the County website on June 8, 2012.

12. The Situation Assessment contains a list of principles used to help guide the parcel reconfiguration work program:
   - Increase the long-term viability of agriculture while recognizing underlying economic realities.
   - Provide more flexibility/incentives for homes, placed with the least impact to agricultural operations.
   - Reduce potential conflicts with neighbors.
   - Ensure parcel reconfiguration tools are “density neutral.”
   - Overarching principles should drive the regulations (e.g. equal to or better than...).
   - Honor and protect property rights and values to help farmers stay in business.

13. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 7, 2012.
14. The Planning Commission held a work session on July 12, 2012 to discuss the Agricultural Strategic Plan, including background information and all priority tasks. Notice was posted on the County website, and was sent to citizen, media and other groups on the County’s e-mail list on June 27 and on July 5, 2012.

15. A Code Development Technical Workshop open to the public was held on July 16, 2012 to further discuss proposed code amendments, with notice posted on the County website and sent to citizen, media and other groups on the County’s e-mail list on June 27 and on July 10, 2012.

16. The Planning Commission held work sessions on August 9, 2012, November 15, 2012, January 24, 2013, and February 14, 2013, to discuss the Parcel Reconfiguration tool and draft code amendments. Notice of these meetings was posted on the County website, and was sent to citizen, media and other groups on the County’s e-mail list prior to the meetings in accordance with general practices.

17. A Supplemental Analysis and Recommendations document was published on August 31, 2012 to provide updated information following the publication of the “Situation Assessment: Incentives for Commercial Agriculture: Parcel Reconfiguration” prepared by BERK Consulting. The Supplemental Analysis was posted on the County website on September 20, 2012.

18. The Planning Commission held a public hearing on the subject amendment on October 25, 2012. Notice of the Planning Commission hearing was sent to the county email list which includes City representatives from Lynden, Ferndale, Everson, Nooksack and Sumas; citizens; media; and other group representatives on October 4, 2012. Notice of the Planning Commission hearing for the subject amendment was posted on the County website on October 17, 2012. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on October 12, 2012.

19. The Planning Commission held a second public hearing on the subject amendment on February 28, 2013. Notice of the Planning Commission hearing was sent to the county email list which includes City representatives from Lynden, Ferndale, Everson, Nooksack and Sumas; citizens; media; and other group representatives on February 20, 2013. Notice of the Planning Commission hearing for the subject amendment was posted on the County website on February 19, 2013. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on February 17, 2013.

20. The Whatcom County Council held Planning Committee work sessions on the subject amendment on March 26, April 9, May 7 and May 21, 2013, [and
public hearing(s) to be listed here, with related information].

21. In order to approve the zoning amendment, the County must find that it is consistent with the Growth Management Act (GMA). Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

22. The GMA (RCW 36.70A.020) lists thirteen planning goals to guide the development and adoption of comprehensive plans and development regulations. The proposed amendments reflect a balance of these planning goals; primarily: (2) Reduce sprawl, (6) Property rights, (7) Permits, (8) Natural resource industries, (10) Environment, and (11) Citizen participation and coordination.

23. The GMA (RCW 36.70A.030) contains a definition for "agricultural land" meaning "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production."

24. The GMA guides the adoption of development regulations to assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. Both the GMA and Washington Administrative Code (WAC) offer specific guidance:

- Development regulations must assure the conservation of agricultural lands (RCW 36.70A.060).

- Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands (WAC 365-190-040).

- Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption (RCW 36.70A.060).

- Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands (RCW 36.70A.060).
• Counties and cities are encouraged to use a coordinated program that includes non-regulatory programs and incentives to supplement development regulations to conserve natural resource lands (WAC 365-196-480).

25. The GMA (RCW 36.70A.177) encourages counties to consider use of innovative zoning techniques designed to conserve agricultural lands and encourage the agricultural economy, and requires accessory uses to be limited according to the section.

26. Consultant attorney review concluded that the GMA provides some flexibility for the County to allow landowners to vary from minimum lot sizes in individual cases, as long as:

• The County provides appropriate standards with reasonable limits that protect rural character (such as siting criteria that are consistent with the County’s definition for “rural character”) and that conserve agricultural lands;

• The County does not allow the overall pattern of lot sizes and densities to be materially changed, to the detriment of rural character or agricultural conservation; and

• Where appropriate, the County requires compensating areas to be set aside and permanently dedicated to agricultural or open space uses.

27. Whatcom County Comprehensive Plan Goal 8A is to: **Conserve and enhance Whatcom County’s agricultural land base for the continued production of food and fiber.** Additionally, the following policies are relevant to the proposed amendments:

Policy 8A-4: Discourage conversion of productive agricultural land to incompatible nonagricultural uses.

Policy 8A-6: Prioritize agricultural activity in land use decisions when land is composed of prime and/or productive agricultural soils and agriculture is the highest value resource use.

Policy 8A-7: Establish flexibility in land use plans and regulations to encourage maintenance of the productive agricultural land base.

Policy 8A-12: The Agricultural Advisory Committee shall advise the Whatcom County Executive and Council on agricultural issues and
agricultural land use. Whatcom County shall support the Agricultural Advisory Committee with staff and other resources.

The proposed amendment developed through the recommendations of the County Agricultural Advisory Committee prioritizes agricultural activities while providing land owner flexibility and recognizing existing legal lots.

28. Whatcom County Comprehensive Plan GOAL 8C is to: **Preserve and enhance the cultural heritage that is related to agriculture.**
   Additionally, the following policies are relevant to the proposed amendments:

   Policy 8C-1: Find ways for retiring farmers to pass their farms on to their children and for young farmers to be able to afford to buy productive farmland.

   Policy 8C-2: Identify, preserve, and enhance community character, landscape, and buildings associated with agricultural activity.

   Policy 8C-3: Involve those who actually are engaged in agricultural activities in the planning process. Utilize groups working effectively with the agricultural community to help preserve and/or create a sustainable economic agricultural base.

   Policy 8C-4: Support the continuation of owner occupied/family owned farms.

The proposed amendment responds to public input from farmers, agricultural land owners, and the public by providing opportunities for smaller lot sizes that may be easier to finance for farming purposes while allowing existing residential development potential in a way that is minimally disruptive to the agricultural activities.

29. Whatcom County Comprehensive Plan GOAL 8D is to: **Reduce land use conflicts between Whatcom County’s agriculture and non-agricultural landowners.** Additionally, the following policies are relevant to the proposed amendments:

   Policy 8D-1: Work to reduce conflicts between incompatible agricultural activities by establishing zoning regulations which protect productive agricultural lands of long-term commercial significance from conversion to non-compatible uses. This zoning should recognize the diversity of agricultural landowners and agricultural land uses. This zoning should provide flexible regulations, which encourage all agricultural landowners to maintain the productive agricultural land base while protecting them from conflicting uses.
Policy 8D-6: Support agricultural activity in mixed farm/rural residential areas, with the understanding that certain farm practices may conflict with other neighboring rural land uses.

The proposed amendment provides a flexible alternative to larger-lot residential development in a manner that encourages the conservation of the productive agricultural lands.

CONCLUSIONS

1. The subject zoning amendment complies with the Growth Management Act.

2. The subject zoning amendment is consistent and implements the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Code is hereby amended as shown in Exhibit 1.
BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this ____ day of __________, 20__.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

____________________________

Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved    ( ) Denied

Date Signed:____________________
EXHIBIT 1
PROPOSED CODE AMENDMENTS: PARCEL RECONFIGURATION
February 28, 2013

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Chapter 20.40
AGRICULTURE (AG) DISTRICT

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20.40.010 Purpose.

The primary purposes of this district are to implement the agricultural designation of the Comprehensive Plan, established pursuant to RCW 36.70A.170, preserve, enhance and support the production of food and fiber in Whatcom County, to maintain a sufficiently large agricultural land base to ensure a viable agriculture industry and to maintain the economic feasibility of supporting services. Whatcom County supports agricultural activities as the highest priority use in the Agriculture District, with all other uses being subordinate to agricultural activities. Whatcom County seeks to minimize conflict with surrounding zoning districts, in conjunction with Chapter 14.02 WCC, Right to Farm. In order to limit the further fragmentation of the commercial agricultural land base, the Agriculture District includes smaller areas of land with poorer quality soils or nonagricultural uses, which do not meet the definition of agriculture lands of long-term commercial significance.

A secondary purpose of this district is to serve as a holding district when located within the urban growth area Comprehensive Plan designation to allow agricultural uses in the near term while protecting the area from suburban sprawl and preserving the potential for future urban development consistent with the protection of the resource and. (Ord. 2009-071 § 2 (Exh. 8), 2009; Ord. 2005-079 § 1, 2005; Ord. 2001-020 § 1 (Exh. 1 § 1), 2001).

20.40.250 Minimum lot size and land subdivision. Division or Modification of Parcels:

(1) The minimum lot size in the Agriculture District is 40 acres, except as provided for in WCC 20.40.251 and 20.40.252. The minimum length-to-width ration is five to one. The terms "length" and "width" refer to the average length and average width of the parcel.
(2) All divisions of land in the Agriculture District shall proceed in accordance with the local and state subdivision laws.

(3) Boundary line adjustments shall not make a lot substandard or further substandard, except as provided for in WCC 20.40.251 and 20.40.252.

It is the intent of this section to allow divisions which benefit the long-term viability of agriculture. This section describes the requirements for division or modification of parcels within the agricultural district that either are consistent with the minimum lot size, or would result in substandard parcels or make existing substandard parcels further substandard.

Requests for land division or boundary line adjustment, or agricultural parcel reconfiguration in the Agriculture District shall be made on forms provided by the department and will be reviewed administratively. An additional application, deemed sufficient to initiate subdivision or boundary line adjustment review by planning and development services, must be submitted within 24 months of the administrative approval granted pursuant to this section. All divisions must comply with the following provisions:

(1) **Agricultural Divisions.** All divisions of land in the Agriculture District shall proceed in accordance with the local and state subdivision laws.

(2) **Allowable Density.** No divisions or boundary line adjustments, nor agricultural parcel reconfiguration shall result in an increase in allowable density.

(3) **Additional Acreage.** Additional acreage gained through a boundary line adjustment or agricultural parcel reconfiguration shall not be considered in the total acreage calculations for determining density.

(4) **Plat Restrictions.** The following plat restriction is required, prior to recording, on the nonresidential lot of all divisions of land provided for in WCC 20.40.254(2):

No further division or residential structure shall be allowed on this parcel until and unless changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

(5) **Deed Restrictions.** Deed restrictions are required for all boundary line adjustments or agricultural parcel reconfigurations allowed under WCC 20.40.254(3) and (4) 20.40.252.

[a]. The following language must be recorded separately and placed by reference of auditors file number on the deed, and placed on the tract map of the nonresidential portion of the adjusted parent parcel prior to recording:

The development density of the original parcel (parent parcel) remains with legal description. The (# of acres) appended through boundary line adjustment (or agricultural parcel reconfiguration) to legal description (receiving parcel) shall not be included in calculations to determine total development density for the receiving parcel.

**Maximum Lot Size Exceptions.** The inclusion of existing agricultural structure(s) within the farmstead home-site parcel shall be allowed if the farmstead home-site parcel does not exceed three acres, and if any of the following criteria are met:

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(a)-(b) The following deed restriction language must be recorded separately and placed by reference of auditors file number on the deed, and is required when there is no additional means to further subdivide the property due to the parcel size and density standards of this zone:

No further division or residential structure shall be allowed on this parcel unless and until changes in the zoning of this property occur consistent with State and local laws which would result in additional development density, in which case this restriction shall be null and void, and density and uses of the new zone shall apply to the property upon review by the Whatcom County zoning administrator.

20.40.251 Minimum Lot Size.

The minimum lot size in the Agriculture District is 40 acres, except as provided for in WCC 20.40.253 and 20.40.254. The creation of a lot less than the minimum size is permitted only when the subject application meets the standards contained in WCC 20.40.253, .254, and .650, as applicable.

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Minimum Lot Size</th>
<th>Minimum Lot Size Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional Parcel</td>
<td>40 acres</td>
<td>Reconfiguring existing nonconforming parcels</td>
</tr>
</tbody>
</table>

Farmstead Parcels Created through Agricultural Short Subdivision or Agricultural Boundary Line Adjustment

| Farmstead Parcel – Parent Parcel with Existing Farmstead with public water | 1 acre | Up to 3 acres pursuant to WCC 20.40.253 (1),(2) & (4) |
| Farmstead Parcel – Parcel with Existing Farmstead without public water      | 2 acres | Up to 5 acres pursuant to WCC 20.40.253 (1),(4) |
| Farmstead Parcel – Parent Parcel without Existing Farmstead with public water | 1 acre | Up to 2 acres pursuant to WCC 20.40.253 (1) & (2) |
| Farmstead Parcel – Parcel without Existing Farmstead without public water     | 2 acres | Up to 3 acres pursuant to WCC 20.40.253 (1),(2), & (3) |

Parcels Created Through Agricultural Parcel Reconfiguration

| Reconfigured Parcel - reconfiguration with public water | 1 acre | N/A |
| Reconfigured Parcel - reconfiguration without public water | 1 acre | Up to 2 acres pursuant to WCC 20.40.253 (1),(2), & (3) |
Parcels Created for Agricultural Purposes Only

| Created Parcel with deed restriction for no residential buildings | 10 acres | N/A |

20.40.252 Minimum lot width and depth.

(1) For parcels created consistent with the minimum lot size: The minimum length to width ratio is five-to-one. The terms "length" and "width" refers to the average length and average width of the parcel.

(2) For lots created or rearranged pursuant to WCC 20.40.254, the following lot width and depth shall apply:

<table>
<thead>
<tr>
<th>Minimum Width at Street Line</th>
<th>Minimum Width at Side Line</th>
<th>Minimum Mean Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>20' [1]</td>
<td>80'</td>
<td>100' [2]</td>
</tr>
</tbody>
</table>

[1] Applies only to land divisions or parcel reconfigurations where the parcel(s) does not contain a farmstead homestead at the time of the application.

Comment [sld6]: Moved from .250(1)(b)

20.40.253 Farmstead or Reconfigured Parcel Minimum Lot Size Exceptions

The base maximum for the farmstead parcel shall be consistent with the minimum lots size in 20.40.251, except as follows:

(1) A greater area is determined necessary by the health officer pursuant to Chapter 24.05 On-Site Sewage System Regulations;

(2) A greater area is determined necessary by the responsible official to accommodate a driveway or other access necessary for the farmstead parcel;

(3) For farmstead parcels without public water: Unless substantial evidence is provided by the responsible official indicating the location is not feasible, wells and wellhead protection zones shall also be located within the farmstead parcel. Wells located outside of the farmstead parcel area shall be sited to minimize potential impacts on agricultural activities.

(4) For farmstead parcels with existing farmstead homesteads: There is an existing agricultural structure(s) within the farmstead parcel and any of the following criteria are met:

(a) the separation between the agricultural structure(s) and the primary residential structure is less than 150 feet; or

(b) Current use of the agricultural structure(s) is not related to an agricultural activity; or

(c) There is a low potential for future use of the agricultural structure(s) to be associated with an agricultural activity due to physical condition or compatibility with agricultural practices; or

(d) Water is not available for use at the agricultural structure(s).

Comment [sld7]: Moved from .252 (was 20.40.257 in last draft)

Comment [sld8]: Moved from .252

(4) 20.40.254 Separation of the Farmstead Home Site Parcel Criteria:

(1) The maximum lot size criteria for approval for the farmstead parcel and remainder parcel created through Agricultural Boundary Line Adjustment, Agricultural Short Subdivision and Agricultural Parcel Reconfiguration shall be determined by the following criteria for approval:
(a) The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and

(b) The farmstead parcel size shall be as stated in WCC 20.40.251 less than one acre, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed three acres; the maximum lot size consistent with the exceptions in WCC 20.40.253; and

(b-c) The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and

(d) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

(eg) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) or (5) shall be included on the short plat, boundary line adjustment, or agricultural parcel reconfiguration for the remainder parcel prior to final approval; and

(d-f) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the remainder parcel for purchase of the farmstead home-site parcel before they are offered on the open market; and

(eg) A right to farm disclosure statement as provided for in WCC 14.02.040(A) will be signed by the farmstead home-site parcel owner and subsequent purchasers of the farmstead home-site parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and

(fh) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

(g) The overall submittal shall comply with WCC 20.40.250 et seq.

(3)(2) Agricultural Short Subdivisions. Agricultural Short subdivisions for the purpose of reducing the acreage below the minimum lot size as provided in WCC 20.40.251 for a farmstead homesite shall comply with the following provisions:

(a) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable code and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

(b) The short subdivision application shall meet the size and performance standards of WCC 20.40.650.

(3) Boundary Line Adjustments. Boundary line adjustments for the purpose of reducing the acreage below the minimum lot size as provided by WCC 20.40.251(4) of an existing or proposed farmstead home-site parcel if such boundary line adjustment complies with the following provisions:

(a) Boundary line adjustments shall not make a lot substandard or further substandard, except as provided for in WCC 20.40.251 and 20.40.252.

(b) The minimum parcel size is the area necessary to accommodate a house site which meets the applicable dimensional requirements of all applicable codes and provides a remainder (appended) parcel equal to or greater than 10 nominal acres; and

Comment [slkd9]: Repeated from existing code .252(2)(c)

Comment [slkd10]: Moved from old 20.40.250(3).
(b) The farmstead home site-parcel and boundary line adjustment application shall meet the size and performance standards of WCC 20.40.250 and 251, and the siting criteria of WCC 20.40.650.

(4) Agricultural Parcel Reconfiguration: Parcels are reconfigured and finalized according to the agricultural parcel reconfiguration process established in Chapter 21.03, Exempt Land Divisions, Boundary Line Adjustments, and Agricultural Parcel Reconfigurations, and when meeting the following performance standards:

(a) Existing parcels to be reconfigured are:

(i) Smaller than one acre, unless the site, existing structure, and/or well and septic constraints require a larger parcel, but shall not exceed three acres and the minimum lot size established for new lots in the Agriculture district. Parcels which meet the minimum lot size may be adjusted as a part of this process, provided the reconfiguration meets the provisions of (4)(b) below;

(c) The appended parcel shall have no development rights and a condition containing the language as provided in WCC 20.40.251(4) shall be included on the deed for the appended parcel prior to final approval; and

(d) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the remainder parcel for purchase of the farmstead home site parcel before they are offered on the open market; and

(e) A right to farm disclosure statement as provided for in WCC 14.02.040(8) will be signed by the farmstead home site owner and subsequent purchasers of the farmstead home site parcel, and recorded as per WCC 14.02.040(8)(1) and 14.02.050; and

(f) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

(g) The overall submittal shall comply with WCC 20.40.250 et seq.

(3) The division is to allow for the realization of a security interest entered into for the purpose of financing a new house; provided, that the divided parcel shall not be sold separately from the farm except in the event of foreclosure or forfeiture, pursuant to the criteria of subsection (1) of this section.

(4)(ii) Determined to be legally created and buildable pursuant to WCC Title 21.01.180.

(b) Proposed parcel(s) results in the following:

(i) No additional parcels; and

(ii) A remainder parcel shall be created equal to or greater than 10 nominal acres; and

(iii) The siting criteria of WCC 20.40.650 are met and development standards of WCC 20.40.252 et seq. are met; and

(iv) The reconfiguration shall result in achieving four (4) or more of the identified agricultural-related purposes as follows:

(A) Expand the amount of commercially viable resource land and under contiguous single ownership; and/or

(B) Protect and buffer designated resource lands; and/or

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(C) Reduce impervious surfaces, such as by reducing the amount of road and utility construction required to serve reconfigured lots, or by reducing the amount of impervious area for nonagricultural uses that could otherwise occur without parcel reconfiguration; and/or
(D) Reduce the total number of lots of record through voluntary consolidation; and/or
(E) Produce a farm management plan approved through the Whatcom Conservation District or WA Department of Agriculture that demonstrates increased viability of the agricultural operation through the agricultural parcel reconfiguration; and/or
(F) Enable improved floodplain management in cooperation with Whatcom County Public Works; and

(viii) Reconfigured lots shall not be further adjusted by boundary line adjustment without approval under this section.

(c) The responsible official may impose conditions, consistent with Whatcom County Code, on the agricultural parcel reconfiguration to further the purposes of this section.

(d) Parcel reconfigurations will be tracked by County Planning and Development Services so the procedure can be adaptively managed by review of all projects passed per this code in year 2017.

(5) Public Facility. The division is for the purpose of public facilities for health and safety use or expansion of such uses pursuant to WCC 20.40.251; provided, that:

(a) The division or boundary line adjustment will not adversely affect the surrounding agricultural activities; and

(b) The applicant has demonstrated to the administrator’s satisfaction that the siting of the proposed use cannot be located in an adjacent zoning district or alternative site, if the area is intensively farmed.

353.6 Division or Boundary Line Adjustment for Agricultural Purposes Only. Lots smaller than the minimum lot size of WCC 20.40.251 may be created through land division or re-arranged through a boundary line adjustment provided the following:

(a) The parent parcel does not contain an existing residence, or said existing residence will remain on a parcel larger than 40 acres in size; and

(b) The parcel created is greater than 10 acres or is appended to another parcel; and

(c) There is a properly executed deed restriction which runs with the land on lots which have been created through the division or modified by the boundary line adjustment, except those lots at or over 40 acres in size that maintain an associated development density. Such deed restriction shall be substantially similar to that listed under 20.40.250(5), approved by the zoning administrator and recorded with the County Auditor specifying:

(i) All land divided or parcels adjusted are to be used exclusively for agricultural or flood management purposes and specifically not for a dwelling(s), and

(ii) All land divided or parcels adjusted shall have no residential density, and

(iii) For land divisions, the acreage of the newly created parcels shall not be included in calculations to determine total development density in the future; and

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(iv) For boundary line adjustments, the acreage of the newly created parcel and appended portion shall not be included in calculations to determine total development density in the future.

20.40.255 Consolidation of Adjacent Tracts.

Consolidation of adjacent tracts in the same ownership shall be required in accordance with 20.83.070 in approval of any subdivision, short subdivision, agricultural parcel reconfiguration, or boundary line adjustment in the Agricultural District. The County may waive the permit fee for a boundary line adjustment or agricultural parcel reconfiguration where adjacent lots of record are not in the same ownership and are consolidated voluntarily for purposes of the agricultural parcel reconfiguration, or boundary line adjustment.

264-20.40.256 Establishing Intent.

The burden of establishing intent in and legal proceeding relating to a transaction accomplished or proposed under the authority of this section shall be upon the land owner or purchaser.

20.40.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements). Building setbacks for parcels of less than five nominal acres shall be administered pursuant to WCC 20.80.382(3) - 250.

20.40.450 Lot coverage.

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 25 percent of the total area of the subject parcel. Exceptions to the maximum lot coverage may be allowed when any of the following can be demonstrated:

1) Proposed structures, in excess of the allowed maximum lot coverage, are located on lesser quality soils.

2) Proposed structures in excess of the allowed maximum lot coverage support additional agricultural production on parcels other than the subject parcel.

3) Expansion of facilities that were in operation prior to the adoption of the ordinance codified in this section if it can be demonstrated that substantial on-site investment has been made and location of additional structures off-site would cause an economic hardship to the farm operation.

20.40.650 Development New or Modified Parcel Siting Criteria

The location of vacant farmstead parcels or parcels arranged through agricultural parcel reconfiguration (which may or may not be vacant) shall be consistent with the following siting criteria, and standards:

(1) Minimum Lot Size. Parcels shall be consistent with WCC 20.40.251.

(2) Parcel Design. Parcels shall be located and arranged to provide the maximum protection of agricultural land located both on and off-site. Parcel design and development shall be as follows:

(a) The residential parcels shall be configured so that property lines are immediately adjacent and physically contiguous to each other. A maximum of two development areas containing no more than four (4) lots may be allowed. The two development areas shall contain no more than a total of six lots, and shall be separated by a minimum of 500 feet to minimize the visibility of the future development and reinforce the purposes of the zone; provided that reductions in the separation standard by up to 10% are allowed if an applicant can demonstrate that the future...
...development visibility from the public right of way or from neighboring properties is minimized and the purposes of the parcel reconfiguration in Section 254(4)(b)(iv) are met; and

(b) Residential parcels shall be located as close as possible to existing public roads, or if none abut the property then to existing access roads. New road or driveway development shall be avoided to the maximum extent feasible; and

(c) Except for parcels that recognize existing farmsteads, residential parcels shall be located to the extent feasible to maximize the remainder lot configuration and farmable area; and

(d) Except for reconfigured parcels that recognize existing farmsteads, each reconfigured parcel shall be limited to one single family residence and residential accessory structures; and

(e) Residential building sites shall maintain sufficient separation from on-site and off-site agricultural resources and exterior property lines. The setback, lot coverage, and height standards for reconfigured lots shall be as established in WCC 20.40.350 to 450; and

(f) Applicants shall verify that reconfigured parcels or farmstead parcels do not prohibit access to a point of withdrawal for any irrigation water rights certificates, claims, permits, or applications on the affected parcels; and

(g) All development shall be consistent with WCC Chapter 16.16; and

(h) The farmstead parcel or reconfigured parcels avoid prime soils to the extent feasible. Where the site is predominantly in prime soils and such cannot be avoided, the applicant shall demonstrate that:

(i) the parcels are sized to be as small as feasible pursuant to WCC 20.40.253; and

(ii) located to maximize the agricultural use of the remainder lot; and

(iii) achieve the most suitable locations for parcels in terms of minimizing roads, allowing for water availability, and septic suitability.

(3) Substitute Parcel Design Standards. Applicants proposing a farmstead parcel or agricultural parcel reconfiguration may propose a substitute performance standard in place of a listed standard in .650 (New or Modified Parcel Siting Criteria) provided that the applicant submits a written justification demonstrating the substitute standard better or equally meets the purposes of the zone in WCC 20.40.010 and the agricultural-related purposes described in WCC 20.40.254(d)(b)(iv); except under no condition shall more than the maximum of six (6) residential parcels with no more than four (4) lots in one development area be allowed. Such substitution shall be considered at the Administrator’s discretion.
CHAPTER 20.80
SUPPLEMENTARY REQUIREMENTS

Sections:
20.80.210 Minimum setbacks.
20.80.230 Measurement of setbacks.
20.80.250 Special setbacks provisions by district.
20.80.252 Rural District.
20.80.255 Agriculture District.
20.80.258 All districts.

20.80.210 Minimum setbacks.

(5) Setbacks. For the purposes of this chapter, the road classification used to determine setback requirements shall be as set forth in this section. In the event a particular road is not listed in this section, the department of public works shall determine the classification, which classification shall be based on the Whatcom County Development Standards or such other local, state or federal roadway standards as the department of public works deems appropriate.

(a) Setback Requirements of All Districts.

(i) No manure lagoon or other open pit storage shall be located closer than 150 feet from any property line, or in a manner which creates any likelihood of ground water pollution or other health hazard.

(ii) All manure storage shall be protected from a 25-year flood and shall be located 50 feet from irrigation ditches and waterways, 50 feet from the ordinary high water line of any lake or waterway; provided, that best management practices as determined by the Whatcom County Conservation District are in place. If the best management practices are not in place, 300 feet shall be substituted for 50 feet.

(iii) In all districts where a single-family residence is a primary permitted use, a building permit may be issued for the construction of a replacement dwelling on the same lot; provided, that the owner agrees by filing a statement with the building official that the old dwelling will be demolished, removed or converted to another permitted use upon completion of the new dwelling.

(iv) A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

Prepared by BERK & Whatcom County PDS staff

February 28, 2013
### Setbacks Table

<table>
<thead>
<tr>
<th>Road Type</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Side Yard</th>
<th>Rear Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial, Industrial, I-5, State Hwys, Principal &amp; Minor Arterials</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>50'</td>
<td>70'</td>
<td>20'</td>
</tr>
</tbody>
</table>

1. The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment and the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

2. The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

3. Parcels of less than five nominal acres shall have the following minimum setbacks:

   - **Front yards:**
     - Primary arterials and secondary arterials: 45 feet.
     - Collector arterials: 35 feet.
     - Neighborhood collectors, local access streets: 25 feet.
     - Minor access streets: 20 feet.

   Minimum front yard requirements can be reduced by the zoning administrator for agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - 254 if the proposed placement of the structures will result in a better fit with critical areas or prime soils and goes through the approval process in WCC 21.03. In no case shall front yard depth be less than 20 feet.

   **Side yards:** minimum side yard setbacks shall be five feet. For agricultural parcel reconfigurations, boundary line

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20.80.255 Agriculture District.

(1) The 50-foot front yard setback requirement for new buildings or additions may be waived if the zoning administrator finds the new building or addition is located along the same building line(s) of existing structures and will result in no additional encroachment, the public interest, safety and health are protected; provided, that for a new building the applicant shall also demonstrate that the proposed location is necessary for the economic viability and the continued operation of the agricultural use.

(2) The minimum separation between new residences not located on the same property and farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed, shall be 300 feet. New farm uses such as barns, pens, milking sheds, or areas used to contain, house or feed animals or store manure or feed, shall be situated at least 150 feet from existing residences not located on the same property. Expansion of existing facilities within the 150-foot buffer, providing such expansion is not closer to a neighbor’s residence, and pastures are excluded from this section’s requirements.

(3) Parcels of less than five nominal acres shall have the following minimum setbacks:

Front Yards:
- Primary arterials and secondary arterials: 45 feet.
- Collector arterials: 35 feet.
- Neighborhood collectors, local access streets: 25 feet.
- Minor access streets: 20 feet.

Minimum front yard requirements can be reduced by the zoning administrator for agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - 254 if the applicant demonstrates better placement of the structures in relation to critical areas or prime soils and goes through the approval process in WCC 21.03, but in no case shall be less than 20 feet.

Side Yards: Minimum side yard setbacks shall be five feet. For agricultural parcel reconfigurations, boundary line adjustments, or farmstead parcels established through WCC 20.40.253 - 254, the exterior side yard and exterior rear yard requirements of habitable structures shall be 30 feet.

Rear Yards: Minimum rear yard setbacks shall be five feet. (Ord. 2001-020 § 1 (Exh. 1 § 2), 2001; Ord. 99-080, 1999).

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February 28, 2013
CHAPTER 20.83  
NONCONFORMING USES AND PARCELS

20.83.110 Reduction of area.

The administrator shall not cause or increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements through boundary line adjustments; provided, however, that the administrator or hearing examiner may approve boundary line adjustments required to satisfy an unidentified or disputed property line or to identify the same in accordance with RCW 58.04.007. In addition, boundary line adjustments or agricultural parcel reconfigurations in the Agricultural zone in conformance with WCC 20.40.251 and 20.40.252(20.40.253-254 shall be allowed. (Ord. 2009-031 § 1 (Exh. 1), 2009).
CHAPTER 21.01
GENERAL PROVISIONS

Sections:
21.01.010 Title.
21.01.020 Purpose.
21.01.030 Authority.
21.01.040 Applicability and exemptions.
21.01.050 Interpretation, conflict and severability.
21.01.060 Enforcement and penalties.
21.01.070 Fees.
21.01.080 Administrative responsibilities.
21.01.090 Pre-application meeting.
21.01.100 Applications required.
21.01.105 Consolidated application process.
21.01.110 Complete application.
21.01.120 Time frames.
21.01.130 Underground utilities.
21.01.140 Regulatory authority for development standards.
21.01.150 Repealed.
21.01.160 City urban growth areas.
21.01.170 Hearing examiner consultation with technical advisory committee.

21.01.010 Title.

This title shall be known and may be cited as the Whatcom County land division regulations. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.020 Purpose.

The purpose of this title is:

(1) To promote the public health, safety, and general welfare, and to protect the natural resources and the environment.

(2) To provide for proper application of Chapter 58.17 RCW.

(3) To facilitate efficient and cost-effective land division and to ensure orderly growth and development consistent with the Whatcom County Comprehensive Plan and the Whatcom County Code.

(4) To establish an orderly transition from existing land uses to urban development patterns in designated urban growth areas. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.030 Authority.

This title is authorized pursuant to the authority delegated to Whatcom County under Chapter 58.17 RCW, Plats — Subdivisions — Dedications. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.040 Applicability and exemptions.

(1) This title shall apply to property boundary actions as defined in this title.
(2) The subdivision and short subdivision provisions of this title shall not apply to:

(f) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site in accordance with the provisions of this title.

(li) Divisions of land into parcels of less than forty acres but greater than ten acres within the area zoned and designated as Agriculture in the Comprehensive Plan for Whatcom County proceeding in accordance with 20.40.244(6).

21.01.100 Applications required.

(1) The applicant is encouraged to seek assistance from the subdivision administrator as to which approvals are required for a particular proposal. One or more of the following applications may be required for a particular proposal:

(a) Exempt land division;
(b) Boundary line (lot line) adjustment or agricultural parcel reconfiguration;
(c) Short subdivision;
(d) Preliminary long subdivision;
(e) Final long subdivision;
(f) Subdivision vacations and alterations;
(g) Preliminary binding site plan;
(h) General binding site plan;
(i) Specific binding site plan;
(j) Agricultural short plat. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).
CHAPTER 21.03
EXEMPT LAND DIVISIONS AND BOUNDARY LINE ADJUSTMENTS, AND AGRICULTURAL PARCEL RECONFIGURATIONS

Sections:
21.03.010 Purpose.
21.03.020 Repealed.
21.03.030 Pre-approval.
21.03.040 Certificate of exemption.
21.03.045 Required disclosures.
21.03.050 Access on state highways.
21.03.060 Boundary line adjustments and Agricultural Parcel Reconfigurations.
21.03.070 Inactive applications.
21.03.080 Requirements for a fully completed exempt land division application.
21.03.085 Requirements for a fully completed boundary line adjustment application.
21.03.090 Repealed.

21.03.010 Purpose.

The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of exempt land divisions, pursuant to WCC 21.01.040, and boundary line adjustments, and agricultural parcel reconfigurations. The procedure is intended to provide orderly and expeditious processing of such applications. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.020 Exemptions.


21.03.030 Pre-approval.

Applicants may request that their proposed exempt land division be reviewed by the subdivision administrator and pre-approved using forms supplied by the planning and development services department. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.040 Certificate of exemption.

(1) A certificate of exempt land division shall be obtained from the planning and development services department for exempt land divisions under WCC 21.01.040(2)(b) and (k). A certificate of exempt land division shall consist of a suitably inscribed stamp on the instrument conveying land title and shall be certified prior to the recording of the instrument with the county auditor. County review and/or a county certificate of exemption stamp shall not be required for WCC 21.01.040(2)(a) and (c) through (i).

(2) A certificate of exempt land division shall be approved, approved with conditions, or denied as follows:

(a) Applications shall include information required by WCC 21.03.085.
(b) The exempt land division results in a lot(s) that qualifies as a valid land use pursuant to the Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection.

c) The exempt land division will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns.

(3) An exempt land division is not considered approved until said instrument has been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of pre-approval. Failure to record within 12 months of pre-approval means the exempt land division application is expired and must be resubmitted for review and approval. The time periods of this section do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. (Ord. 2009-007 § 1; Ord. 2004-031 § 1; Ord. 2002-017 § 1; Ord. 2000-056 § 1).

21.03.045 Required disclosures.

The following disclosures, if applicable, shall be recorded in the county auditor’s office and shall be filed concurrently with all conveyances of property subject to this title:

1. Right to farm, right to practice forestry, or mineral resource disclosures.
2. Boundary discrepancies.
3. Protective covenants, conditions and restrictions.
4. Latecomer’s agreements.
5. Significant pipeline in vicinity disclosure when the subject property is within 660 feet of a pipeline shown on Map 12, Chapter 5 of the Whatcom County Comprehensive Plan. (Ord. 2009-007 § 1; Ord. 2004-031 § 1; Ord. 2002-017 § 1).

21.03.050 Access on state highways.

For parcels that will access onto a state highway, the applicant shall provide evidence of an approved access from the State Department of Transportation prior to approval of the exempt land division. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.01.060 Boundary line adjustments and Agricultural Parcel Reconfigurations.

The purpose of this section is to provide procedures for the review and approval of adjustments or alterations to boundary lines of existing lots of record which does not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

1. Procedures. Boundary line adjustments and agricultural parcel reconfigurations shall be approved, approved with conditions, or denied as follows:

Prepared by BERK & Whatcom County PDS staff

February 28, 2013
(a) Applications shall include information required by WCC 21.03.085.

(b) Any adjustment of boundary lines must be approved by the subdivision administrator prior to the transfer of property ownership between adjacent lots.

(c) The subdivision administrator shall make a preliminary decision on boundary line or agricultural parcel reconfiguration applications within 45 days following submittal of a complete application or revision, unless the applicant consents to an extension of such time period.

(d) A title insurance certificate updated not more than 60 days prior to application, which includes all parcels within the adjustment, must be submitted to the subdivision administrator with boundary line adjustment or agricultural parcel reconfiguration applications.

(e) All persons having an ownership interest within the boundary line adjustment or agricultural parcel reconfiguration shall sign the final recording document in the presence of a notary public.

(2) Decision Criteria. In reviewing a proposed boundary line adjustment or agricultural parcel reconfiguration, the subdivision administrator or hearing examiner shall use the following criteria for approval:

(a) The boundary line adjustment shall not result in the creation of an additional lot.

(b) With the exception of those boundary line adjustments or lots within agricultural parcel reconfigurations that recognize an existing farmstead home site located within the agricultural zone, the boundary line adjustment or agricultural parcel reconfiguration shall result in lots which contain sufficient area and dimensions to meet minimum requirements for width and area for a building site pursuant to this title.

(c) The boundary line adjustment or agricultural parcel reconfiguration shall be consistent with any restrictions, depictions or conditions regarding the overall area in a plat or short plat devoted to open space, environmental mitigation or conservation.

(d) The boundary line adjustment or agricultural parcel reconfiguration shall be consistent with any restrictions or conditions of approval for a recorded plat, short plat, zoning permit, or development permit.

(e) The boundary line adjustment or agricultural parcel reconfiguration shall not cause boundary lines to cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, or prevent adequate access to water supplies unless suitable mitigation including, but not limited to, the granting of utility easements is provided to the satisfaction of Whatcom County; provided, however, in the agricultural zone only those lots with existing on-site sewage disposal systems or potable water supplies are subject to this provision.

(f) The boundary line adjustment or agricultural parcel reconfiguration will not create a new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road...
geometry or other safety concerns, as specified in adopted Whatcom County road development standards.

(g) The boundary line adjustment or agricultural parcel reconfiguration on lots without an existing farmstead home site shall demonstrate adequate septic and potable water suitability. Applicants shall demonstrate adequate potable water availability per WCC 24.11. Applicants shall demonstrate septic suitability approval pursuant to WCC 24.06.

(3) Final Approval and Recording Required. To finalize an approved boundary line adjustment or agricultural parcel reconfiguration, the applicant must submit to the subdivision administrator within one year of preliminary approval final review documents meeting the requirements of approval.

(a) All persons having an ownership interest within the boundary line adjustment or agricultural parcel reconfiguration shall sign the final recording document in the presence of a notary public.

(b) Certified legal descriptions of the lots after the boundary line adjustment or agricultural parcel reconfiguration, together with conveyance document(s) and language clearly binding the property which is conveyed to the remainder portion of the property, shall be prepared by a title company or licensed surveyor for all lots affected by the boundary line adjustment or agricultural parcel reconfigurations.

(c) A title insurance certificate updated not more than 60 days prior to recording of the adjustment, which includes all parcels within the adjustment, submitted to the subdivision administrator with boundary line adjustment or agricultural parcel reconfiguration final review documents.

(d) A final boundary line or agricultural parcel reconfiguration map, prepared by a licensed surveyor, along with legal descriptions, shall be prepared and submitted for review and approval. Two map copies shall be provided for review demonstrating compliance with the preliminary boundary line adjustment or parcel reconfiguration approval.

(e) A boundary line adjustment or agricultural parcel reconfiguration is not considered approved until the conveyance documents have been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of approval of final documents. Failure to record within 12 months of approval means the boundary line adjustment or agricultural parcel reconfiguration application is expired and must be resubmitted for review and approval. (Ord. 2009-030 § 1 (Exh. 1); Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.070 Inactive applications.

An applicant may place an exempt land division, boundary line adjustment, or agricultural parcel reconfiguration application, which has not yet received preliminary approval, on hold for a cumulative maximum of 180 days. This 180-day period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant. Applications which fail to meet these time limits will be considered expired and void. The time periods of this

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chapter do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.380 Requirements for a fully completed exempt land division application.

The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application for exempt land divisions under WCC 21.01.040(2)(b) and (k).

(1) Written Data and Fees.
   (a) Name, address and phone number of land owner, applicant, and contact person.
   (b) Intended uses.
   (c) A current title report or update of title report issued no more than 60 calendar days prior to application.
   (d) Assessor’s parcel number (of the parent parcel).
   (e) Fees as specified in the Unified Fee Schedule.
   (f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data.
   (a) Name of land owner.
   (b) Name of proposed land division (if an original drawing is prepared).
   (c) General layout of proposed land division.
   (d) Common language description of the general location of the land division.
   (e) Approximate location and names of existing roads identified as either public or private.
   (f) Vicinity map.
   (g) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
   (h) Section, township, range, and municipal and county lines in the vicinity.
   (i) General boundaries of the site with general dimensions shown.
   (j) Legal description of the land. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.03.085 Requirements for a fully completed boundary line adjustment or agricultural parcel reconfiguration application.

The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application.

(1) Written Data and Fees.
   (a) Name, address and phone number of land owner, applicant, and contact person.
   (b) Intended uses.
   (c) A current title report or update of title report issued no more than 60 calendar days prior to application.

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(d) Assessor's parcel numbers of existing parcels.
(e) Fees as specified in the Unified Fee Schedule.
(f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data.
(a) Names of land owners.
(b) Name of proposed boundary adjustment.
(c) Common language description of the general location of the land division.
(d) Map at a common engineering scale of boundaries of existing parcels that are contributing to or receiving land from the proposed adjustment.
(e) Approximate location and labeling of any disputed or undetermined property lines proposing to be resolved by the adjustment.
(f) Clear depiction of property lines proposed for adjustment which identifies existing property lines and proposed property lines.
(g) Legal description and area of original parcels.
(h) Legal description and area of proposed adjusted parcels.
(i) Approximate location and names of existing roads identified as either public or private.
(j) Approximate location of existing buildings and existing on-site septic systems.
(k) Approximate locations of existing utilities and infrastructure.
(l) Vicinity map.
(m) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
(n) Section, township, range, and municipal and county lines in the vicinity.
(o) General boundaries of the site with general dimensions shown. (Ord. 2009-007 § 1).

21.03.090 Original drawing.

Repealed by Ord. 2009-007. (Ord. 2000-056 § 1).
CHAPTER 21.04 SHORT SUBDIVISIONS

Sections:

21.04.010 Purpose.
21.04.031 Pre-application meeting.
21.04.032 Short subdivision application submittal.
21.04.033 Determination of completeness and vesting.
21.04.034 Application procedures.
21.04.035 Final short subdivision review process.
21.04.039 Applications subject to time limits.
21.04.040 Restriction of further division.
21.04.050 Development requirements.
21.04.060 Roads.
21.04.070 Public dedications.
21.04.080 Easements.
21.04.090 Water supply.
21.04.100 Sewage disposal.
21.04.110 Fire protection.
21.04.120 Short subdivision vacation and alteration.
21.04.130 Land survey.
21.04.150 Requirements for a fully completed application for short subdivisions.
21.04.160 Final review and submittal.
21.04.170 Disclosures and notes.

21.04.010 Purpose.

The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of short subdivisions.


The provisions of WCC 20.40.253 - 2542(4) provide for the segregation of a farmstead parcel with an existing residence(s) from a remainder parcel used for farming in the Agriculture Zone. The remainder parcel is restricted to agricultural use only. Because no further residential development can occur on the remainder parcel and an existing residential structure is already on the farmstead parcel, many of the standard short plat requirements are unnecessary. Therefore, a shortened review process has been established.

Agricultural short plats that qualify under WCC 20.40.253 - 2542(4) shall be subject to the following:

Prepared by BERK & Whatcom County PDS staff

February 28, 2013
1. Agricultural short plats that recognize an existing farmstead homesite shall be processed pursuant to all the requirements of this chapter except that the short plat will not be reviewed for compliance with:

(a) WCC 21.04.060 (Roads);

(b) WCC 21.04.090 (Water supply), when the remainder parcel will not require potable water;

(c) WCC 21.04.100 (Sewage disposal);

(d) WCC 21.04.130 (Land survey);

(e) Chapter 16.16 WCC (Critical Areas); and

(f) Shoreline master program.

2. Any subsequent development must comply with all applicable codes.

3. Survey Requirements – Partial. A survey, prepared by a professional land survey in accordance with WCC 21.09.010 and 21.09.020, which provides the location of at least two corners of the farmstead parcel shall be submitted. A survey is not required for the remainder parcel that cannot have further residential development.
CHAPTER 20.97 DEFINITIONS

Zoning Definitions

20.97.132 Farmstead parcel.

The “farmstead parcel” includes that portion of the property-parent parcel containing an existing or planned primary and secondary agricultural structures and the farmstead home site. (Ord. 2005-073 § 1, 2005; Ord. 2001-020 § 1 (Exh. 1 § 3), 2001).

20.97.133 Farmstead home site.

The “farmstead home site” includes that portion of the farmstead-parent parcel used for existing or planned residential buildings, uses accessory to residential buildings, drainfields, wells, wellhead protection area(s), established landscaped area continuous with the non-agricultural built area, and structures as allowed in WCC 20.40.253(a) through (d). (Ord. 2005-073 § 1, 2005).
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**TITLE OF DOCUMENT:**

**ATTACHMENTS:**

- SEPA review required? ( ) Yes ( X ) NO
- SEPA review completed? ( ) Yes ( X ) NO

Should Clerk schedule a hearing? ( ) Yes ( X ) NO
Requested Date:

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

Strategy planning discussion and positions to be taken regarding collective bargaining.
(per RCW 42.30.140(4)(a))

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

*Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).*
WHATCOM COUNTY COUNCIL  
Regular County Council  

April 23, 2013

CALL TO ORDER

Council Chair Kathy Kershner called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

(7:01:01 PM)

Present: Barbara Brenner, Ken Mann, Sam Crawford, Bill Knutzen, Kathy Kershner and Carl Weimer.

Absent: Pete Kremen.

FLAG SALUTE

ANNOUNCEMENTS

There were no announcements.

MINUTES CONSENT

Brenner moved to approve the Minutes Consent items.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

1. COMMITTEE OF THE WHOLE FOR MARCH 26, 2013
2. REGULAR COUNTY COUNCIL FOR MARCH 26, 2013
3. BOARD OF HEALTH FOR APRIL 2, 2013
4. REGULAR COUNTY COUNCIL FOR APRIL 9, 2013

PUBLIC HEARINGS

1. ORDINANCE AMENDING ORDINANCE 2012-048 IN THE MATTER OF THE ADOPTION OF THE FINAL BUDGET OF WHATCOM COUNTY FOR THE
BIENNIUM 2013-2014 AND RESTRICTING THE EXPENDITURE OF CERTAIN FUNDS THEREIN (AB2013-144) (7:02:39 PM)

Jack Louws, County Executive, gave a staff report and stated he submits substitute language (on file) for the Council to consider tonight.

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

Ellen Baker submitted and read from a handout (on file) and stated don’t give up the power to control the government purse. Maintain the balance of power. Reject the amendment.

Karen Brown stated don’t approve the ordinance. Leave the authority to the Council. The Council is part of the check and balance system.

Hearing no one else, Kershner closed the public hearing.

Crawford moved to adopt the ordinance with the amendment presented by the Executive, “(D) Administration of the budget is the responsibility of the County Executive and therefore the County Executive is authorized to manage County budgets. The County Executive may by transferring appropriation authority between departments within the General Fund and cost centers within other County funds, if authorized by the County Council.

Brenner stated the Executive said he would come back if the change isn’t consistent with the Charter. The change the Council made is consistent with the Charter. The reason given for this change now is that the process is burdensome, but it’s appropriate to maintain a check and balance even if it’s burdensome. Efficiency isn’t everything. Make sure things don’t happen intentionally or inadvertently. She has a problem with shuffling money without it coming to the Council. She understands there are lots of little things, and is open to language that accommodates that. Cost centers are big things. There are broad funds with lots of cost centers. The amendment is better than what was initially proposed, but still allows major changes without Council authority.

Weimer asked if the proposed language takes away the Executive’s authority to move cost centers. Louws stated he has the authority to make those changes given his ability to manage the budget as the administrative authority of Whatcom County.

Weimer stated he supports the amendment.

Mann stated he supports the amendment in its current form. This amendment is much different from the original version proposed. The annual budget doesn’t even have a cost center layer. He doesn’t need to see that detail. He does want to maintain appropriation authority.

Brenner stated an example is moving funds in cost centers within the road fund from new construction to repaving another road. Those things shouldn’t happen. Louws stated the Executive can’t spend anything over the contract limits set by Council. If money is transferred from one cost center to another, there has to be a corresponding contract and Council approval for the expenditure of that money. It would be very difficult for the
administration to go rogue on the dollars it has. There is a tremendous amount of checks and balances. The Council will have department authority, which it hasn’t had for years. He has no problem with that. The administration doesn’t have authority to move around thousands of dollars to do with what it wants.

Brenner stated the Council won’t notice if the administration spends less, and the extra money is put elsewhere. The Executive could tell the Council if the administration has money elsewhere. The Council doesn’t have the same daily scrutiny of the budget that the Executive has. Leave it the way it is, or come up with better language. With this language, big movements can still happen.

Kershner asked for an example of a transfer from one cost center to another.

Brenner stated there will be plenty of minutia, but it’s about more than the minutia.

Louws stated an example is funds transferred in the Sheriff’s Office from office and operating supplies in the amount of $11,621,62, transferred to a fund for small tools and equipment. This was for a boat repair. It’s an example of shifting money between accounts to be able to take care of operations within a department.

Kershner asked the cost of an average cost center transfer, and how high that amount can get. Louws stated it could be as high as a few hundred thousand, if the Council approves a contract for a project, and the administration takes money from a reserve account and puts into a project-based budget.

Brad Bennett, Administrative Services Department, stated most transfer amounts are small. For example, there may be salary money left over from a staff person who has retired, and that money can be moved to pay for another item that comes up instead of asking for a supplemental request.

Kershner asked if there is a reconciliation process at the end of the year or biennium that shows how much was budgeted and how much was spent. Bennett stated departments create a budget six months before the biennium starts, and then begin to execute the budget. If there is a purchase order request, the administration looks into the cost center to make sure the money for the purchase is in the cost center. Things can change, and some money isn’t spent while new needs come up. The departments will transfer money between the line items to accomplish their mission within the amount of money the Council allocated to the department. The budget control mechanism is to check and see if there is money in the line item for the need. If there isn’t, the department must submit a supplemental budget request or find the money elsewhere within the existing budget. Now, these cost centers will come to the Council for approval. He is asking to regain the authority he had until the end of last year. Grant the administration authority to do those internal transfers, which are based on the approval of the Council’s budget. They are all backed up by contracts. The checks and balances remain in the budget ordinance.

Brenner stated she found $1.5 million that was put where it wasn’t supposed to be. She understands a lot of it will be minutia. Some things will also be significant. It’s important for the Council to have a second look at it.
Mann asked if Councilmember Brenner would accept a quarterly report of all cost center adjustments.

Brenner stated that would be fine.

Louws stated the Finance Division can generate a report for the Council.

**Brenner moved** to add language, “This will not include cost centers as long as the Council gets a quarterly report of all cost center movement.”

**Kershner suggested a friendly amendment**, “The Council will receive a quarterly report of all cost center transfers.”

**Brenner accepted** the friendly amendment.

Kershner stated it would be up to the Executive when the Council would receive the reports, as long as the Council receives reports four times per year. The Executive can send one hard copy of the report to the Council Office, and then email the report to all councilmembers.

**Crawford accepted the language as a friendly amendment to his original motion** to approve with amendments.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)

**Nays:** None (0)

**Absent:** Kremen (1)

### 2. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.27A, AQUATIC INVASIVE SPECIES (AB2013-145) (7:31:29 PM)

Chris Brueske, Public Works Department, gave a staff report.

Kershner opened the public hearing, and, hearing no one, the following people spoke:

Joan Ellsworth stated she supports including Lake Samish in the ordinance because the water in the lake is the only source of water for the residents. Also, she is concerned about additional boat use coming from Lake Whatcom due to the new program. Be prepared for the invasive species.

Wolfgang Schlager stated the fees may discourage boats from coming to Lake Whatcom, which may result in higher inspection fees in the future, until only privileged people can afford to put a boat into the lake. It’s possible for mussels to appear in a lake without any human interaction. The mussels can travel from one water body to another through migration.

Betsy Brinson stated this is not a well-thought out plan, but the purpose is not to ban power boats from the lake. Small boats are most likely to spend time in other bodies of water. Don’t exempt them. There is no exemption for boats that don’t leave Lake
Whatcom. This is a tax on motorized watercraft, not a plan to prevent invasive species. She is also concerned that fees will continue to go up and be passed on to the boaters. Boaters are already paying a large share of money for the ability to use the lake. Coordinate the plan better with the City of Bellingham. Don’t adopt the ordinance in haste.

Dan Dahlgren stated he understands the objective of the ordinance, but questions the program. He understands that they will collect fees this year, but not begin inspections for two more years. He wants to know what exactly an inspector will do. Work out the details first. This is just another form of taxation. He is opposed to the ordinance as it is now.

Joe Boyd, Borderline Bassin’ Contenders, stated the program was planned hastily. He paid his fee and had his inspection. He is a member of a bass fishing club, which has limited its event to 25 participants. He wants to know why this program begins on April 27. Their event had to pay $94 to the State for this tournament. There are ten tournaments scheduled through October for boats coming all over the State. They charge a $100 fee for participation in a tournament, 80 percent of which is returned in award money. He contacted the Public Works Department about his tournament, but hasn’t heard anything back. Fishing season runs through October 31, but the program ends in September. They also have to pay for a Discovery Pass to park at Lake Terrell.

Greg Brown stated this is out of control. Don’t move ahead without accepting the real motives.

Wendy Harris stated most communities don’t have the privilege of recreational boating on someone’s water supply. She reluctantly supports the ordinance because it does something, but it doesn’t do enough. Securing safe water is more important for the future than recreational use of the lake. She prefers there be no boats on Lake Whatcom. Development and shoreline modification and recreational use are two things that cause invasive species. Focus on development and shoreline modification. The ordinance doesn’t include seaplanes. When a water body is already infested, it creates a greater risk of spreading invasive species from one end of the lake to another. They aren’t dealing with the current infestation. If people knew the true cost to control the clams already in the lake, they would take a more serious look at this proposal. Go much further to protect drinking water.

Bob Harriman, Borderline Bassin’ Contenders Legislative Liaison, stated the County and the City are not prepared for this. Olympia is having a hard time passing its invasive species act. For example, it’s not possible to clean and dry an entire anchor rope length. The State owns the water, not the City of Bellingham. His club has worked on protection for many years. He’s been describing these problems all along, but the City did not pay attention. The boat trailer licenses include a fee for aquatic invasive species, which sits in a trust fund. It’s against the law to charge for the same thing twice. The discovery pass fee is required to park. Other fees are also collected. He is not in favor of the program as it is. The fee amounts are higher than in other states.

Hearing no one else, Kershner closed the public hearing.
Weimer moved to adopt the ordinance.

Brenner stated she agrees with having a fee system. This was done poorly. Many things weren’t covered, such as a one-time charge for people who keep their boats on Lake Whatcom. Clams are commonly dumped from aquariums, but zebra mussels aren’t. They were told by staff that infestation isn’t likely to happen from waterfowl. All boats should be checked. She likes the idea of having a class. This doesn’t get at what they’re trying to do. She can’t support it the way it is.

Knutzen stated he heard the bass club issues have been taken care of.

Laurel Baldwin, Noxious Weed Board Coordinator, stated she heard that the City of Bellingham offered the club participants a $5 day pass on the day of the event.

Brenner stated the bass club has paid through the State and filled out a report about aquatic invasive species, so they should also be exempted. Work with this and other clubs about setting up classes. Give respect to the people who have done the work and have a proven track record.

Crawford stated he supports the motion. There is speculation about what could be wrong with the program, but they are in a tough situation because of time. The County is cornered into doing a program that mirrors what the City is doing. The City and County share responsibility for the lake. They need to work together. He hopes that the Joint Lake Whatcom meeting of the councils will have this on the next agenda. He prefers to require some level of licensing that reflects an inspection regimen for the smaller craft. He’s somewhat concerned that they are subsidizing a program that will become a legacy program, incurring ongoing costs that grow over time. Concerns about increasing fees are well-founded. However, they have a problem in the lake with Asian clams. These types of mollusks have been proven to be transferred on boats. Boats are a primary mode of transportation. The County and City aren’t the only municipalities dealing with this. Most jurisdictions with lakes are dealing with this. Even though this isn’t as refined or inclusive as he likes, he supports the program. The program in 2013 will be a test program.

Knutzen stated he agrees with Councilmember Crawford. He reluctantly will support the ordinance. He has concerns that this will create long waits for boaters. There aren’t very many other options. The City rushed into this. He wants to make sure that staff follows through with the bass club entry fees. Review this again next year in the Joint Lake Whatcom meeting.

Mann stated this is a real threat. It’s not made up to keep boats off the lake. It would be irresponsible to not do anything. The County spent last summer collecting data, and will continue to refine the process. They can make changes to the program as necessary. The City didn’t force the County into this. He supports expanding the program to smaller boats. He is also not opposed to subsidizing this inspection program. The fees don’t have to cover the cost of the program. The County subsidizes all kinds of recreational opportunities. It’s unfortunate if a bird can bring quagga mussels from Lake Mead, but the County doesn’t have control over that. The County does have control of the boats that come to Lake Whatcom. Reevaluate the program next year to include all the boats. He would support a fee reduction this year until they can include all the boats.
Kershner asked for an update on the State legislation. Brueske stated the program passed the Senate and House, and is before the Governor for signature. He described the State legislation related to aquatic invasive species. There is a large program on paper that addresses this. The Department Fish and Wildlife will write a Washington Administrative Code (WAC).

_Brenner_ stated make the changes they all want to see right now. She _moved_ to amend to add a one-time charge for any boat that is only on Lake Whatcom.

Kershner asked how they enforce it.

Brenner stated the Sheriff’s Office will drive around and stop anyone. It’s about trusting people.

_Brenner restated her motion_ to amend section 2.27A.050(D)(iii), to add a one-time charge for any boat that is only on Lake Whatcom. Have staff make the change in the appropriate section and come back in two weeks.

Kershner asked Public Works staff how that would work. Brueske stated they would have to discuss enforcement in committee. He doesn’t know how to document that a boat has never left Lake Whatcom. It might create a problem with the Sheriff.

Brenner stated they can’t inspect a whole boat, so they can’t document that an infestation isn’t in a boat. At some point, they must start with trusting people.

Mann stated he’s not opposed to the plan. With a one-time fee, everyone would still have to pay this year. Implement the program and grant an exemption for boats who don’t leave the lake as a part of the follow-up revisions.

Weimer stated he agrees with Councilmember Mann that everyone would have to pay this year. He asked if the Council can amend this ordinance this year, even if the ordinance is adopted this evening. There is reason to do this sooner than later. Brueske stated there is no restriction to how often they can amend the ordinance.

Weimer stated that would be his preference.

Kershner stated she supports Councilmember Weimer’s suggestion of bringing it up soon with more thoughtful discussion.

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Crawford, Knutzen, Kershner and Weimer (5)

**Absent:** Kremen (1)

_Brenner moved_ to allow legitimate organizations that the Council knows about and that have worked with the State to fill out the State form should have an event exemption.

Knutzen stated more thought needs to be put into this, and establish a group discount for a group inspection. Try to address these issues in two weeks.
The motion failed by the following vote:

Ayes:  
Brenner (1)

Nays:  
Mann, Crawford, Knutzen, Kershner and Weimer (5)

Absent:  
Kremen (1)

(8:20:43 PM)

Brenner moved to have a fee for all boats, not just motor boats. Create a graduated fee schedule for all boats depending on the difficulty of inspection. If it’s necessary to adopt it tonight, adopt it as an emergency ordinance. The whole purpose of a hearing is for the Council to take in information and come up with a final draft for adoption.

Mann stated he needs more information.

Brenner stated that’s why it should go into committee.

Knutzen stated they should have dealt with this at the committee meeting today. He is concerned that the City is going to start enforcing this on April 27. Boat launches are on Lake Whatcom, both in the city and in the county. He asked if there will be two different enforcements on different portions of the lake.

Brenner stated the County would not do any enforcement until it adopts something.

The motion failed by the following vote:

Ayes:  
Brenner (1)

Nays:  
Mann, Crawford, Knutzen, Kershner and Weimer (5)

Absent:  
Kremen (1)

Kershner stated Lake Samish is included in the ordinance, but they aren’t going to fully implement the inspection program at Lake Samish. Boats that want to use Lake Samish will have to trailer to Lake Whatcom for inspection. She moved to remove Lake Samish from this ordinance this year, until they can create a full program at Lake Samish.

Crawford stated he is against the amendment. If this amendment were to pass, he would be very concerned about the folks on Lake Samish, as folks simply try to avoid paying a fee. The Council was told that staff would do their best to do home site visits.

Knutzen stated he is also opposed. All it does is add pressure on Lake Samish that is already crowded in the summer. If this is really about aquatic invasive species, the program should be countywide, not just on Lake Whatcom.

Kershner withdrew her motion. If they are serious about aquatic invasive species, the statewide program should be in effect at the border to ensure aquatic invasive species don’t enter the state. It’s a huge burden for individual municipalities and counties to protect all the water bodies in their jurisdictions. Birds are a major contributor of transporting seeds and bugs. The program will cost taxpayer money without any guarantee that they can keep anything out of the lake. However, the City has supported the program, which is about to be implemented. Having two programs at odds with each other will be a disaster, so she will reluctantly support the ordinance. She will try to make changes in conjunction with Councilmember Brenner and the City.
Weimer stated he supports the ordinance. They are trying to plug as many holes as possible, especially the ones with the most risk. There is a clear threat. Other jurisdictions have infected lakes. People who draw their water from the lake could face thousands of dollars to protect their water if these mussels get into the lake. The City could have a cost of millions of dollars to protect Lake Whatcom if the mussels get into the lake. It’s a work in progress. He understands the pain due to already paying fees to the State. The State has a program, but it doesn’t do anything. The State of Idaho has a program the State of Washington should have. Other things should be changed, such as exempting boats that don’t ever leave the lake; considering the risk of small craft such as kayaks, canoes, and rowboats; finding an easy way for the people at Lake Samish to get inspected, without hauling their boats to Bellingham and back. He supports this because they need to start. The program will be a lot better next year.

Brenner stated councilmembers seem intimidated into approving a program. Instead of doing this now, set up special meetings this week or adopt it as an emergency. Don’t lose the trust of the people.

The motion carried by the following vote:

Ayes: Mann, Crawford, Knutzen, Kershner and Weimer (5)
Nays: Brenner (1)
Absent: Kremen (1)

Kershner stated this can be scheduled in the Public Works, Health, and Safety Committee in two weeks.

3. ORDINANCE AMENDING THE WHATCOM COUNTY UNIFIED FEE SCHEDULE TO INCLUDE AQUATIC INVASIVE SPECIES INSPECTION FEES (AB2013-146) (8:36:55 PM)

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

Joe Boyd, Borderline Bassin’ Contenders, stated it’s inappropriate to say a boat coming from Yakima could cause invasive species. He described the inspection process he went through, which took about three minutes for the $50 fee. Based on the inspection he received, it’s clear this is a launch fee, not an aquatic invasive species prevention fee. Make the program run from April 1 to March 31 of the next year, not to December 31.

Greg Brown stated the Council adopted this due to pressure from the City.

Bob Harriman, Borderline Bass Contenders, stated the fee schedule should be comparable to other states and municipalities. The City’s $20 and $50 fees are excessive. Have a $5 fee. Several of his members have said they won’t pay a $50 fee to fish on Lake Whatcom. His club makes contributions such as free fishing derbies for the kids and enhancing habitat. If it’s for water quality, everyone must pay the cost of invasive species. Sportsman groups throughout the state are trying to work with the State. He is opposed to the ordinance. The Council doesn’t know what it’s doing. His club is willing to help the councilmembers understand.
Karen Brown stated Councilmember Crawford said at a previous meeting that he wants the fee to be $100. Otters also bring mussels into Lake Whatcom.

Hearing no one else, Kershner closed the public hearing.

Mann moved to adopt the ordinance. He moved to amend to make the fees $25 for the annual sticker and $10 for the day pass until they have a more comprehensive plan.

Kershner asked if the annual pass is only good until September 31.

Chris Brueske, Public Works Department, stated the annual permit would go January to December of the calendar year.

Kershner stated discuss that in a couple of weeks with the other amendments. People are buying their permits now.

Knutzen stated he supports the motion to amend. He suggested a friendly amendment to add a $5 day pass for group inspections and scheduled events.

Mann asked if there is a provision for group inspections in the proposed ordinance. Brueske stated there is not currently.

Mann did not accept the friendly amendment. There aren’t provisions for that in the ordinance. Stick to the current framework.

Weimer asked how the fees would be collected, and if people will bypass the City of Bellingham and go to all the County inspections. Brueske stated he’ll have to think about how that would be implemented. It will create confusion for sure.

Jack Louws, County Executive, stated Bellingham charges a fixed amount of $50. A County fee structure that charges less can be implemented only if the County creates its own inspection station. He’s not sure how to collect a fee that is less than the City’s fee.

Brenner stated the City didn’t try to work with the County when it tried to pass this. Go through with the amendment.

Kershner asked if it’s possible to take time, create an aquatic invasive species subcommittee of the Council, talk to the City Council about these concerns, and see if the City is open to coming up with solutions to some of these changes. The City has passed its ordinance. If the County makes changes to the program, it will create a nightmare of confusion.

The motion failed by the following vote:

**Ayes:** Brenner, Mann and Knutzen (3)

**Nays:** Crawford, Kershner and Weimer (3)

**Absent:** Kremen (1)

Knutzen moved to add a $5 day pass for group event inspections.
Crawford stated he is opposed to the motion. He appreciates the concern. A group event can be likely to bring in more boats from out of the area than everyday use. He’s not sure what they’re accomplishing by offering group discounts. The County could have a quarter-million dollar program with the City and not charge anything to the boaters. The Council is attempting to recover some of its cost. Realize the overall cost of the program and try to make the program self-sustaining with its own costs. To now propose a discount for a larger number of boats at one time doesn’t make much sense unless they have evidence that a group event contaminates the lake less than the regular boater.

Brenner stated there is a State form that shows what each person in the group has to go through. She trusts people who use this form.

Knutzen stated they could authorize the ability to charge the $5 day pass for group event inspections.

Weimer stated he is against the amendment. Put it on the growing list of things to talk about. It’s not in the ordinance to define how they identify these groups or how these groups qualify for a $5 fee. They would have to backup and put it in the original ordinance. They don’t have the wording to do that this evening.

Knutzen withdrew his motion.

The motion carried by the following vote:

Ayes:  Mann, Crawford, Knutzen, Kershner and Weimer (5)
Nays:  Brenner (1)
Absent:  Kremen (1)

4. ORDINANCE AMENDING WHATCOM COUNTY CODE SECTION 1.14, ELECTORAL PRECINCTS, TO CHANGE CERTAIN VOTING PRECINCT BOUNDARIES IN WHATCOM COUNTY (AB2013-147) (9:00:40 PM)

Debbie Adelstein, Auditor, gave a staff report.

Mann asked which district precinct 183 is in. Auditor stated precinct 183 is in the 42nd legislative district. She’s not sure which Council district it is in.

Kershner opened the public hearing, and the following person spoke:

Ellen Baker stated the map says Council District 1, but should say Council District 2.

Hearing no one else, Kershner closed the public hearing.

Brenner moved to adopt the ordinance with a correct map showing the correct Council District. Adelstein stated she will have to ask the map maker about the correct Council district. She will confirm that it’s correct before making final changes. If changes are necessary, and the district is split, it will have to come back before the Council.

Brenner withdrew her motion to adopt and moved to hold in Council for two weeks.
The motion carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)

**Nays:** None (0)

**Absent:** Kremen (1)

*(Clerk’s Note: Discussion of this item continued later in the meeting.)*

**OPEN SESSION**

The following people spoke:
- Greg Brown submitted a handout *(on file)* and spoke on the issues of the yard waste facility, the Glacier campground trail, and reconveyance allocation, Cornwall Housing, and the appointment to the Public Health Advisory Board.
- Sheri Lambert spoke on the issue of a motocross track on Hemmi Road.
- Wendy Harris spoke about a planned goose roundup scheduled at Silver Lake Park.
- John Lesow spoke about the Point Roberts Character Plan.
- Ellen Baker submitted and read from a letter *(on file)* about the Glacier campground.
- Alice Werkema spoke about the Cornwall Housing proposed project.
- Delaine Clizbe spoke about a Glacier trail project.
- Karen Brown spoke about the membership of County committees and boards, a Foothills communication project, and the Glacier trail project.
- Tom Fenton submitted a handout and spoke about timber harvesting on the reconveyance lands.
- Russ Angus referenced an email he sent today and spoke about the Glacier trail project.

Jack Louws, County Executive, stated the County Executive webpage has a board and commission vacancy list. He read the list of Executive-appointed vacancies. The Council also has a vacancy list. The lists are posted. When there aren’t applicants, he asks members of the committee and staff to find members so the committees may stay active. He read the list of Council-appointed vacancies. He encourages the community to submit applications. The staff does a good a job as they can to publish the vacancies and get people involved.

Brenner stated the Council appointments are posted all the time.

**CONSENT AGENDA**

*(9:37:09 PM)*

*Mann* reported for the Finance and Administrative Services Committee and *moved* to approve Consent Agenda items one through six.

Brenner withdrew items four and six.
The motion to approve Consent Agenda items one through three and five carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)

**Nays:** None (0)

**Absent:** Kremen (1)

1. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE OPPORTUNITY COUNCIL FOR CARE NAVIGATION SERVICES FOR FAMILIES OF SPECIAL NEEDS CHILDREN AND YOUTH, IN THE AMOUNT OF $40,000 (AB2013-151)**

2. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM TO OPERATE THE LAKEWAY YARD WASTE COLLECTION FACILITY, IN THE AMOUNT OF UP TO $45,000 FOR 2013 AND $25,000 FOR 2014 (AB2013-152)**

3. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO AWARD BID #13-10 FOR THE DELIVERY AND SUPPLY OF ASPHALTIC MIXES TO BOTH VENDORS WHO PLACED BIDS (PUBLIC WORKS STAFF WILL SELECT THE VENDOR THAT IS THE BEST VALUE BASED ON PRICE AND TRANSPORT COST TO THE SPECIFIC JOB SITE), IN AN ANNUAL AMOUNT THAT COULD EXCEED $35,000 (AB2013-153)**


**Mann moved** to approve the request.

Brenner stated she doesn’t support the item because it uses real estate excise tax (REET) 2 money, which should go toward stormwater projects.

Knutzen stated he agrees with Councilmember Brenner. He’s not opposed to the project, but opposes the use of REET 2 funds.

Kershner stated the Council already approved the project. Tonight they’re approving the bid from Faber Construction. All these projects come forward in several stages.

Brenner stated she has always opposed using REET 2 funds for this project.

Mann stated he voted against this project in the past. As he did research, he realized it’s a safety issue on the road, and now doesn’t have a problem using REET funds. He supports the project.

Knutzen stated there is $163,000 in the park improvement fund. There are plans to deplete that fund. He asked if they can use those funds.

Jack Louws, County Executive, stated the Council can make that determination.
Knutzen moved to amend to pay for it with the park improvement fund instead of REET 2 funds.

Kershner asked if the park improvement funds are committed. Louws stated that in the 2013 budget, the park improvement fund had $1.522 million, which was transferred into the conservation futures fund. They also anticipated paying for one full-time equivalent (FTE) from the park improvement fund. The money for the FTE is still in the budget. Later this year he will move the funding for the FTE out of the park improvement fund or freeze the position.

It’s appropriate to use the REET 2 fund for this. In the next biennium, they will decide on whether they will use REET 2 funds on more stormwater projects. Awarding the contract is the right thing to do at this time. He has no problem if the Council decides to pay the park improvement fund down to zero, and use the REET 2 funds for the balance. They need to get the project done.

Kershner stated she is against the motion. The park improvement fund is undedicated, and can be used for any project in the county. The REET 2 fund has specific, limited allowed uses.

Brenner stated that at some point, they will have to decide what is more important. During the hearing, she heard how important it is to protect Lake Whatcom water quality. They don’t have enough money in the REET 2 fund to protect water quality. The REET 2 fund is over-dedicated. Any new jail will be required to have big stormwater facilities. She supports this project, but use the park improvement fund.

The REET 2 fund has fund balance over $7 million. The estimated ending fund balance in 2014 is $3.752 million. Only $785,000 is being spent on stormwater projects. Protect REET money for stormwater projects.

Louws stated the County committed to put $1 million per year into the general fund, which then is transferred into the jail property acquisition fund. The legislature allowed for REET 2 to go into the general fund, which isn’t restricted, in the amount of $1 million per year for four years. They’ve decided to use that $4 million on a new correctional facility.

Brenner stated that’s even less money available for stormwater facilities.

Knutzen asked for information on the FTE planned for from the park improvement fund. Louws stated it’s related to the reconveyance. The position is authorized in the current budget, but isn’t filled. When the $1.5 million was in the park improvement fund, it would have funded the operation of the reconveyance for quite a few years. The Council determined to put that money back into conservation futures fund, which makes that money unavailable for ongoing operations and maintenance of the reconveyed properties.

Brenner stated that money was never supposed to be in the park improvement fund.

The motion to amend failed by the following vote:

Ayes: Brenner and Knutzen (2)
Nays: Mann, Crawford, Kershner and Weimer (4)
Absent: Kremen (1)

The motion to approve carried by the following vote:

Ayes: Mann, Crawford, Kershner and Weimer (4)
Nays: Brenner and Knutzen (2)
Absent: Kremen (1)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO AWARD BID #13-09 FOR THE DELIVERY AND SUPPLY OF ASPHALTIC EMULSIONS TO THE LOW BIDDER, PARAMOUNT PETROLEUM, IN THE AMOUNT OF $1,300,000 (AB2013-155)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO APPLY FOR A PLANNING AND ENGINEERING GRANT THROUGH THE WASHINGTON FEDERAL LANDS ACCESS PROGRAM FOR A MULTI-USE TRAIL BETWEEN GLACIER AND THE DOUGLAS FIR CAMPGROUND (AB2013-156) (9:56:18 PM)

Mann moved to approve the request.

Crawford stated the application should be amended to remove the name of the business that doesn’t support the project, and change language from “100 percent of businesses support” to “many businesses support.” He assumes it’s a scrivener’s error. Otherwise, he supports the request. He asked how this came forward.

Mike McFarlane, Parks and Recreation Department, gave a staff report. The application requires a local or State sponsor and a federal sponsor, which is the U.S. Forest Service. The County submits the application. The County already submitted the application, but he can contact the Washington Federal Lands Access program with an amendment.

Brenner stated the community is going to do the match. The County is not committing general funds. McFarlane stated the Sheriff committed the outside worker group. The County has not contributed match dollars, but spent time on administration, which could be used as a match in the future. They are tracking the County’s time spent on this.

Brenner asked what happens if the next grant doesn’t appear. McFarlane stated this gets them to the point of having a project with an estimated cost that could be bid for. The next grant is to take the next step of construction. If that next grant doesn’t appear, the plan is still valid. The costs would need to be refreshed in the future.

Kershner asked who would own and maintain the trail. McFarlane stated the trail is on private property owned by the State Department of Transportation and U.S. Forest Service. The Glacier Chamber and community would maintain the trail.

Mann stated he supports this item. The Council should encourage citizens to do this type of thing. Pass it along for review. It’s not the Council’s job to protect the federal government from giving money to a community. He supports having a trail there, because the area is very dangerous. Support citizens who are trying to make a grant application.
Knutzen stated he agrees with Councilmember Mann. He asked what is the Whatcom Parks and Recreation Foundation. McFarlane stated it is a 501(c)(3) foundation that is separate.

Kershner stated she agrees with Councilmember Mann. It’s a good community project. She’s a bit uncomfortable approving something that has already been done. She will abstain from the vote, since her vote has no real value. She’s not against the project.

Brenner asked how it happened that the grant was submitted before it came to the Council. McFarlane described the schedule and deadline. The County received it five days before it was due, and it was completed the day it was due. This is just notification that an application was sent in. It’s the process that the Executive notify the Council when an application is made. If the grant is awarded, there will be a contract, which is what this Council will need to approve.

Jack Louws, County Executive, stated the administration has authority to apply for grants. Within a certain period of time, he needs to notify the Council of the application. The Council has the ability to say no. If so, he will pull out of it. When opportunities come up, he has the ability to make applications. If approved, the Council has the ability to look at them and reject them.

Kershner stated that if the Executive has information about something that may shock the public, she’d like to know about it before trying to make a decision about it.

**Brenner moved** to amend, “Request authorization for the County Executive to apply accept for a planning and engineering grant through the Washington Federal Lands Access program for a multi-use trail between Glacier and the Douglas Fir campground (AB2013-156)”

Weimer stated they are voting to authorize the Executive to submit a grant. It seems the Executive doesn’t need Council authorization to submit the grant, just to accept it. He asked if it hurts anything if the Council doesn’t approve the item. Louws stated the grant application is in. It hasn’t been reviewed at this time. If the Council’s desire is not to get involved or move forward, he will pull the grant from consideration and not spend any more County time on it from this point forward.

Weimer stated that’s not his intent. He doesn’t want to pull the grant from consideration.

Brenner restated her motion to amend.

Mann stated accepting the grant is a bigger deal than applying for it.

The motion to amend was not voted on.

Kershner stated her point has been made, and she will change her vote.

Mann stated they should thank the Glacier community for putting this forward. There was no shady operation. If they get the grant, they can then decide if they want to build a two-mile trail.
The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

OTHER ITEMS

1. ORDINANCE AMENDING THE 2013 WHATCOM COUNTY BUDGET, FIFTH REQUEST, IN THE AMOUNT OF $150,533 (AB2013-142) (10:15:19 PM)

Mann reported for the Finance and Administrative Services Committee and moved to adopt the ordinance. He withdrew his motion so the Council could return to Public Hearing Item four.

PUBLIC HEARINGS

4. ORDINANCE AMENDING WHATCOM COUNTY CODE SECTION 1.14, ELECTORAL PRECINCTS, TO CHANGE CERTAIN VOTING PRECINCT BOUNDARIES IN WHATCOM COUNTY (AB2013-147) (9:00:40 PM)

(Clerk’s Note: Discussion continued from earlier in the meeting.)

Kershner moved to reconsider the vote to hold in Council.

The motion to reconsider carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

Adelstein stated the precinct being created in the forest land would be in Council District 1. The northern part of Whatcom County goes to the forest land boundary. Council District 1 goes to the forest land boundary. Because there are no voters in that district, it just expands the Newhalem precinct that was there to cover the whole thing. It’s all contained in legislative district 42 and congressional district 1. Adopt the ordinance as proposed.

Brenner moved to adopt the ordinance.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

OTHER ITEMS
1. **ORDINANCE AMENDING THE 2013 WHATCOM COUNTY BUDGET, FIFTH REQUEST, IN THE AMOUNT OF $150,533 (AB2013-142)** *(10:15:19 PM)*

   **Mann moved** to adopt the ordinance.

   Brenner stated she likes much of what's in the ordinance, but can't support more funds for the reconveyance. She would support the budget request without it.

   Knutzen asked for more information on the boater safety program.

   **Brenner moved** to amend to remove item two.

   The motion to amend failed by the following vote:
   - **Ayes:** Brenner and Knutzen (2)
   - **Nays:** Mann, Crawford, Kershner and Weimer (4)
   - **Absent:** Kremen (1)

   The motion to adopt carried by the following vote:
   - **Ayes:** Mann, Crawford, Kershner and Weimer (4)
   - **Nays:** Brenner and Knutzen (2)
   - **Absent:** Kremen (1)

2. **RESOLUTION AMENDING THE 2013 WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BUDGET, FIRST REQUEST, IN THE AMOUNT OF $1,124,550 (AB2013-143)** *(10:21:24 PM)*

   *(Clerk's Note: Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)*

   **Mann** reported for the Finance and Administrative Services Committee and **moved** to approve the resolution. He is opposed to the resolution. He is against the principle of bailing out folks who built in very hazardous areas. Granting a building permit doesn't mean they've conferred government protection against any natural disaster in perpetuity. If someone builds in a really dangerous place, the County can't foolproof the world. He can't spend $2 million of taxpayer money to bail out people who built where they shouldn't have.

   Brenner stated this was done many years ago, before they knew anything they know now about critical areas and other things. The County may not have liability, but it shares a responsibility.

   Mann stated this was an alluvial fan in 1961. People need to take responsibility for the ground on which they're building.

   Brenner stated it was permitted, which means the County didn't understand, either. Many rules they have now are overkill because the County has a responsibility. People trust that something permitted was legal.

   The motion carried by the following vote:
   - **Ayes:** Brenner, Crawford, Knutzen and Weimer (4)
3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A LOAN AGREEMENT BETWEEN WHATCOM COUNTY AND CORNWALL HOUSING, LLC TO SUPPORT THE CORNWALL HOUSING PROJECT, IN THE AMOUNT OF $300,000 (AB2013-150) (10:25:16 PM)

Mann reported for the Finance and Administrative Services Committee and stated this item is held in committee.

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND THE LUMMI NATION FOR CONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF HAXTON WAY ROUNDABOUT AND ASSOCIATED PUBLIC APPURTENANCES (AB2013-157)

Brenner reported for the Public Works, Health, and Safety Committee and moved to approve the request with the contingency that maintenance costs in the amount of $50,000 are credited toward the $2 million the County must spend according to the ferry lease.

Dan Gibson, Prosecutor’s Office, gave a staff report. The focus belongs on construction. Make sure the roundabout is constructed according to standard specifications. That agreement has been reached. There was no discussion about charging the amount beyond what was being provided by way of grant money for the construction. There was also a question about accident history in this area. There have been a number of fatal accidents in this intersection. This roundabout, for which the Lummi Nation has obtained federal funding and will oversee construction, has been negotiated. He recommends approval and presented.

Brenner spoke about the lease being illegal. The County will pay for maintenance of this roundabout from now on. She appreciates what the Lummis are doing, but wants the amendment.

Mann asked if there is a legal reason they can’t do this amendment. Gibson stated there was no legal reason to ask for an additional contribution during negotiation, because significant money is brought to the table for a County facility.

Knutzen asked what qualifies for credit on the construction projects that they’re required to do in the amount of $2 million. Gibson stated this is not something that qualifies for credit in the lease. Certain things such as traffic calming measures may be incorporated into this. That’s what the county committed to apart from the money the councilmembers are talking about. The $2 million every five years does not include this item. This item can count toward the traffic calming measures, which is separate from the $2 million.

Joe Rutan, Public Works Department, stated the County already met it’s requirements for traffic calming procedures in the agreement.
Mann stated the cost of maintenance is a big, expensive commitment in perpetuity. The County engineer said the ongoing maintenance would be about $2,000 per year. The committee came up with a number of $50,000 as a reasonable amount to be deducted from the County’s $2 million obligation. There’s no reason they can’t work that out.

Knutzen stated he’s concerned it doesn’t comply with the agreement in terms of a construction project. This project is for maintenance.

Mann stated it’s not hard to amend the least that changes the first $2 million lump sum payment to $1.95 million.

Kershner stated make this separate from the lease.

Jack Louws, County Executive, stated the Council can make the request. Tying it to the lease will reopen the lease discussion. This is a safety project for tribal and nontribal members. He described the collision summary. The County is working with the Lummi Nation on many issues, including the ferry lease, the Governor’s shellfish initiative and water quality issues, the Slater Road trust application issue, the water rights federal determination, and many other issues. The ongoing maintenance of this project is a small amount folded into everyday maintenance costs. The Lummi Nation is provided a fair amount of federal money from the Bureau of Indian Affairs (BIA) to take care of a safety improvement project that benefits everyone in Whatcom County. Move this forward. The County and Lummi Nation will work together for generations. Making special exceptions for maintenance and operation after the road is built is more than the County expects from other developers.

Brenner stated no other developer has made the County pay $6 million to cross a public right-of-way and highway. The Lummi Nation did a great job with its negotiation. The County didn’t do a great job. Louws stated he agrees that the County is paying a disproportionate amount to what the County gained from the lease, but the lease is signed. The County has a legal obligation to meet it. He must look at these things independently and work cooperatively when possible. When necessary, he will reserve the right to be a tough negotiator. This isn’t the proper issue to be tough on.

Mann stated they are trying to compensate the County for it’s time. He’s been hearing for too long that the County should be nice and not cause any trouble because of upcoming big issues. It’s time the County stand up for itself and negotiate with the Tribe like it would negotiate with anyone.

Crawford moved to amend the motion to remove the contingency and consider the request as presented. The project was discussed many times during the lease discussions, but the project was not part of the improvements on the road. The County is not paying anything for this project other than maintenance. This is a significant road improvement project that has safety and aesthetic benefits. Consider this a learning experience in what it takes to maintain a roundabout. Approve the agreement.

The motion carried by the following vote:

**Ayes:** Crawford, Knutzen, Kershner and Weimer (4)

**Nays:** Brenner and Mann (2)

**Absent:** Kremen (1)
Crawford moved to approve the request as originally presented.

The motion carried by the following vote:
Ayes: Brenner, Crawford, Knutzen, Kershner and Weimer (5)
Nays: Mann (1)
Absent: Kremen (1)

5. NOMINATION AND APPOINTMENT TO FILL VACANCIES ON THE WHATCOM COUNTY SURFACE MINING ADVISORY COMMITTEE - APPLICANT(S): VARIOUS (AB2013-108) (10:50:40 PM)

Crawford nominated all the applicants and moved to appoint Christopher Secrist by acclamation to the Forestry position.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

Geologist

Kershner moved to move Dan McShane into an environmental consultant slot. She would like to appoint as many qualified people as possible. She hasn’t had a chance to talk to Mr. McShane, but the Council can make the appointment conditional on his acceptance.

Mann stated he could just apply to the environmental consultant position in two weeks

Kershner withdrew the motion.

(Clerk’s Note: See the attached voting sheet for Geologist, Round 1.)

The Council appointed Dan McShane.

Members of Surface Mining Industry

(Clerk’s Note: See attached voting sheet for Member of the Surface Mining Industry.)

The Council appointed Steve Cowden and Brad Davis.

Geologist

Brenner stated she would like to reconsider appointing Dan McShane as the environmental consultant. It’s been a difficult position to fill.

Weimer moved to reconsider the vote for geologist. He suspects Mr. McShane wants to be on the committee, regardless of which position.
The motion to reconsider carried by the following vote:

- **Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
- **Nays:** None (0)
- **Absent:** Kremen (1)

Environmental Consultant

**Kershner moved** to appoint Dan McShane to the environmental consultant position by acclamation.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
- **Nays:** None (0)
- **Absent:** Kremen (1)

Geologist

*(Clerk’s Note: See the attached voting sheet for Geologist, Round 2.)*

The Council appointed Shannon Logan to the geologist position.

6. NOMINATION AND APPOINTMENT TO FILL VACANCIES ON THE WHATCOM COUNTY FORESTRY ADVISORY COMMITTEE - APPLICANT(S): VARIOUS (AB2013-137)

Knutzen nominated all applicants.

Commercial Forest Landowner or Qualified Designee

Kershner stated there are two applicants for two positions.

**Knutzen moved** to appoint both nominees, Aubrey Stargell and Gordon Iverson, by acclamation.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
- **Nays:** None (0)
- **Absent:** Kremen (1)

The Council appointed Aubrey Stargell and Gordon Iverson.

Forestry Harvester

**Knutzen moved** to appoint Greg Zender and Rod Lofdahl by acclamation.

The motion carried by the following vote:

- **Ayes:** Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
- **Nays:** None (0)
- **Absent:** Kremen (1)
Forest Product Manufacturer

(Clerk’s Note: See attached voting sheet for Forest Product Manufacturer.)
The Council appointed Gary E. Jones and Max Perry.

Small Forest Landowner

(Clerk’s Note: See attached voting sheet for Small Forest Landowner.)
The Council appointed Gerry Millman and Herb Barker.

Citizen with Forestry Expertise: Round 1

(Clerk’s Note: See attached voting sheet for Citizen with Forestry Expertise, Round 1.)
The Council appointed Sharon Westergreen.

Citizen with Forestry Expertise: Round 2

(Clerk’s Note: See attached voting sheet for Citizen with Forestry Expertise, Round 2.)
The Council appointed Phil Cloward.

7. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF JON HUTCHINGS TO THE WHATCOM COUNTY PUBLIC HEALTH ADVISORY BOARD (AB2013-158)

Knutzen moved to confirm the appointment.

Crawford stated he wants to clarify that Mr. Hutchings is or was not a member of the Health Department.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

8. REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF DANIEL LARNER TO THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT (AB2013-159) (11:12:34 PM)

Crawford moved to confirm the appointment.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)
INTRODUCTION ITEMS

(11:12:57 PM)

Brenner moved to accept the Introduction Items.

Kershner stated make sure item three gets to the Lummi Island Ferry Advisory Committee for its review.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Knutzen, Kershner and Weimer (6)
Nays: None (0)
Absent: Kremen (1)

1. RESOLUTION AMENDING THE 2013 WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BUDGET, SECOND REQUEST, IN THE AMOUNT OF $53,155 (AB2013-160)

(Clerk's Note: Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

2. ORDINANCE ESTABLISHING PARKING RESTRICTIONS ON ROMA ROAD (AB2013-161)

3. ORDINANCE AMENDING WCC 10.34, FERRY RATES (AB2013-162)

4. ORDINANCE REGARDING INSTALLATION OF STOP SIGNS ON VARIOUS ROADS WITHIN THE COUNTY (AB2013-163)

5. ORDINANCE AUTHORIZING INTERFUND LOANS TO FINANCE CASH FLOW FOR ROAD CAPITAL PROJECT BUDGETS (AB2013-164)

OTHER BUSINESS

Knutzen stated councilmembers received an explanation of the internal auditor position, which the County cut some time ago. He and Councilmember Mann talked to the County Auditor about reinstating the position. He would like to discuss this item further.

Mann stated he would have the discussion in the Finance and Administrative Services Committee.

Mann asked for an update on where they are at with Medic One negotiations.

Jack Louws, County Executive, stated he is preparing a full report for the Council at the next Council meeting.
DISCUSSION REGARDING ORDINANCE 2013-016, AMENDMENTS TO WHATCOM COUNTY CODE CHAPTER 3.37.070, CHEMICAL DEPENDENCY/MENTAL HEALTH PROGRAM FUND OVERSIGHT ADVISORY COMMITTEE (AB2013-130A)

Brenner reported for the Public Works, Health, and Safety Committee and moved that the full Council ask staff to prepare amendments to the ordinances for the purpose of combining the Behavioral Health Advisory Board and the Behavioral Health Revenue Advisory Committee.

Kershner stated she would like to hear from the Health Department about it.

Crawford stated they can look at it. Some folks on the advisory committee are consumers. The role of determining how the tax is spent may be a very different role. He can think of potential conflicts.

Jack Louws, County Executive, stated he will work with the Health Department to bring forward a recommendation.

Brenner withdrew her motion.

DISCUSSION REGARDING PROPOSED CHANGES TO THE FERNDALE SENIORS JET OLDSTERS ASSOCIATION’S NUTRITION PROGRAM AT THE FERNDALE SENIOR ACTIVITY CENTER (AB2013-165)

Brenner reported for the Public Works, Health, and Safety Committee. Whatcom County contributes $10,000. Other counties contribute more than $100,000 to the meals program. She would like more information on why that is. She would like to see a budget amendment for meals for seniors.

REPORTS AND OTHER ITEMS FROM COUNCILMEMBERS

Crawford stated he thanks the councilmembers for appointing Phil Cloward to the Forestry Advisory Committee. Mr. Cloward is active in the forestry industry and was born and raised in Whatcom County.

Brenner stated that in light of recent events, she’s thankful to be an American.

Knutzen stated he thanks Councilmembers Brenner and Mann for working through challenging issues with Catholic Community Services and the downtown merchants. He hopes they can work out a solution for all. He thanked those folks also for working on the issue.

ADJOURN

The meeting adjourned at 11:25 p.m.

The Council approved these minutes on ______________, 2013.
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Kathy Kershner, Council Chair

______________________________
Jill Nixon, Minutes Transcription
### SURFACE MINING ADVISORY COMMITTEE (AB2013-108)

#### Geologist (1) - ROUND 1

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## FORESTRY ADVISORY COMMITTEE (AB2013-137)

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## FORESTRY ADVISORY COMMITTEE (AB2013-137)

### Citizen with Forestry Expertise (2) - ROUND 1

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### Citizen with Forestry Expertise (2) - ROUND 2

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WHATCOM COUNTY COUNCIL  
Regular County Council  

May 7, 2013

CALL TO ORDER

Council Chair Kathy Kershner called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Sam Crawford, Pete Kremen, Kathy Kershner and Carl Weimer.

Absent: Bill Knutzen.

FLAG SALUTE

ANNOUNCEMENTS

1. CONSIDERATION OF AN APPEAL OF THE HEARING EXAMINER’S DECISION ON FILE NO. APL2012-0005, FILED BY JOSEPH BOWEN, REGARDING APPLICANT THOMAS FENTON’S APPEAL OF AN ADMINISTRATIVE DECISION BY WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES (AB2013-079)

Crawford moved to uphold the Hearing Examiner’s decision.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen and Weimer (5)
Nays: Kershner (1)
Absent: Knutzen (1)

PUBLIC HEARINGS

1. ORDINANCE ESTABLISHING PARKING RESTRICTIONS ON ROMA ROAD (AB2013-161)

This item was withdrawn from the agenda.

2. ORDINANCE AMENDING WCC 10.34, FERRY RATES (AB2013-162)

Frank Abart, Public Works Director, gave a staff report and stated the ordinance was before the Council about a year ago, except with a new start date of January 1, 2013. This...
ordinance changes the 45 percent road fund subsidy, which is calculated on the exact same expense figure as the 55 percent fare revenue calculation.

Kershner opened the public hearing, and the following person spoke:

Greg Brown stated he requests that a budget breakdown be given to the Ferry Advisory Committee. Approve it now, but please provide the committee with information on where a lot of these numbers come from.

Hearing no one else, Kershner closed the public hearing.

Crawford moved to adopt the ordinance.

Brenner moved that the Ferry Advisory Committee gets an update on where those numbers come from. Abart stated he understands the Council will get a letter that makes that request. The letter will provide detail on what the committee wants. Public Works is happy to provide that information.

Brenner withdrew the motion.

Weimer stated he didn’t get the letter from Mr. McKenzie. According to the Advisory Committee minutes, it seems the committee supports the idea of the calculation. He doesn’t have any problem with that. However, everyone seems to miss the ferry deficit reimbursement. He understood that both funds would be removed, to come up with the base 45/55. Now, they’re changing the wording to include only one of those funds the County receives because it has a ferry, but not both of them. He asked how much is in the fund that they aren’t including. Abart stated he doesn’t have that detail. There was a lot of discussion among the attorney, staff accounting person, and Finance Division manager. Everyone concluded that the funding, which is only available to counties with ferry operations, is to reimburse the counties’ road funds for the burden. It is not necessarily for those monies to go back into ferry operations. The Council could decide to include it. Now the ferry deficit revenue is the only revenue that is segregated from funds that come from the State specifically for ferry operations.

Weimer stated that if they are trying to level the playing field so the 45/55 is figured from the same number, he questions why that other subsidy to the road fund regarding ferries is not part of the same calculation. When they wrote this five or six years ago, he thought they tried to include both. Include the other fund. He cannot support the change without the other fund being included in the ordinance. Abart stated the clarification is included because of the discussion they had three or four years ago. It hasn’t been included in the time he’s been with the County.

Weimer stated he knows it hasn’t been included. A number of people have said the only reason the County gets it is because it has a ferry, so it should be part of the calculation.

Brenner moved to refer the ordinance to the Public Works Committee.
Kremen stated he agrees with Councilmember Brenner. He asked if the County is obligated to put the State money into the road fund. Abart stated this revenue comes in with all the other deposits for the road fund. Because Whatcom County has a ferry operation, there is a law that designates this fund for county road funds that have a ferry operation. It’s not necessary to benefit the ferry operation. It’s to benefit the road fund that has the burden of a ferry operation. The County attorney, the Finance Division Manager, and he spent a lot of time reviewing this and came to the same conclusion.

Kremen asked if nothing precludes them from adding it to the ferry operations. Abart stated the Council can designate it if it chooses. It never has. They’ve never done it that way.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

3. ORDINANCE REGARDING INSTALLATION OF STOP SIGNS ON VARIOUS ROADS WITHIN THE COUNTY (AB2013-163)

This item was withdrawn from the agenda.

OPEN SESSION

The following people spoke:

- Greg Brown submitted a handout (on file) and spoke about the Whatcom Land Trust intervening in the Lake Whatcom reconveyance.
- Donna Clark spoke about the aquatic invasive species ordinance.
- Michael Knapp, Whatcom County Sheriff and Police Chief Association Chair, submitted (on file) and spoke about a resolution regarding the proposed jail siting.
- Wendy Harris spoke about the aquatic invasive species ordinance and protecting geese at a County park.
- Tip Johnson spoke about a proposed packing house ordinance.
- Steven J. Carter spoke about a motorcycle track on Hemmi Road.
- Sheri Lambart spoke about a motorcycle track on Hemmi Road.
- Dave Onkels spoke about motorcycle noise, the proposed packing house ordinance, and Lake Whatcom water studies.
- Bob McWhorter spoke about a motorcycle track on Hemmi Road.
- Chet Dowe spoke about the 2016 Comprehensive Plan review.
- Karen Brown spoke about the aquatic invasive species ordinance.

CONSENT AGENDA

Mann reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one and two.
Brenner withdrew item two.

The motion to approve Consent agenda item one carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #13-12 FOR RENTAL CONSTRUCTION EQUIPMENT TO ALL BIDDERS, IN AN AMOUNT THAT MAY EXCEED $35,000 WITH A SINGLE VENDOR (AB2013-173)

2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO USE THE KCDA CONTRACT TO PURCHASE PLAYGROUND EQUIPMENT AS PREVIOUSLY AUTHORIZED IN ASR 2013-5028 FOR SILVER LAKE PARK FROM VENDOR LANDSCAPE STRUCTURES, IN THE AMOUNT OF $84,003.90 (AB2013-174)

Mann moved to approve the request.

Brenner stated spending $85,000 seems extremely extravagant. This contractor is not local and doesn’t do anything to help the local economy. The County could install a big plaque for free advertising as incentive for local bidders. They can keep the cost down by doing the bid that way. It should go back to the County Executive, who should bring it back in a different bid form.

The motion carried by the following vote:

Ayes: Mann, Crawford, Kremen, Kershner and Weimer (5)
Nays: Brenner (1)
Absent: Knutzen (1)

OTHER ITEMS

1. RESOLUTION AMENDING THE 2013 WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BUDGET, SECOND REQUEST, IN THE AMOUNT OF $53,155 (AB2013-160)

   (Clerk’s Note: Council acting as the Whatcom County Flood Control Zone District Board of Supervisors.)

Mann reported for the Finance and Administrative Services Committee and moved to approve the resolution.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)
2. ORDINANCE AUTHORIZING INTERFUND LOANS TO FINANCE CASH FLOW FOR ROAD CAPITAL PROJECT BUDGETS (AB2013-164)

Mann reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

Brenner moved to amend Council packet page 71, “All interfund loans will be reported to the County Council yearly.” The only argument made against it was that it’s no big deal. If it’s no big deal, she should get a report that it’s happening. They probably won’t have to send anything since it rarely happens.

Mann asked if this creates a lot of work, or can be done fairly easily.

Brad Bennett, Administrative Services Department, stated they can handle the request. There won’t be a lot of these.

Kremen stated he supports the motion.

Crawford stated he won’t support the motion. The Treasurer clarified that he has the responsibility to do make sure it’s paid back into the fund. It’s also subject to the annual State audit every year. It would be checked anyway. It’s not necessary. He respects Councilmember Brenner’s desire to look at that stuff.

Brenner stated the Council doesn’t go through all the minutia that the State Auditor goes through. It’s not a big deal. If there are certain things they want and that aren’t a big deal, it should be done. Otherwise, they would have to go through everything. She doesn’t know that the State Auditor looks at that every year.

Crawford stated the motion puts into an ordinance regarding a specific loan a generic, blanket policy. This isn’t an appropriate spot to do it.

Brenner stated that’s not what she’s doing. These are all interfund loans. This isn’t just one loan. It’s any interfund loan from the County road fund to the road capital project funds for cash flow purposes. It’s information. People should be allowed to get information, especially when it’s not a big deal to produce it.

Kershner asked if Mr. Bennett could make these reports, along with other quarterly and cost center reports, without it going into the ordinance. Bennett stated he can. It’s all public information.

Kremen stated the underlying intent is a good government move. Because this does not happen often, the report is only done annually, and the report doesn’t require much work, this motion is beneficial. Putting it into an ordinance may not always be the best thing to do. In this case, in the event that a future administration is unwilling to provide the information requested by the Council, who would therefore have to get a public disclosure request, this codifies the request and is good government. It makes the Council more financially responsible to the people. He supports the motion.
Weimer suggested a friendly amendment, “All new interfund loans from the county road fund will be reported to the County Council annually.”

Brenner accepted the friendly amendment.

Crawford suggested a friendly amendment, “All new interfund loans from the county road fund will provide a report to the County Council annually.”

Brenner amended her motion, “A report of all new interfund loans from the county road fund will be provided to the County Council annually.”

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

The motion to adopt as amended carried by the following vote:
Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)


Mann reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:
Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND FIRE DISTRICT 7 TO SUPPORT THE COSTS ASSOCIATED WITH PARAMEDIC INCENTIVE PAY AND CONTINUING EDUCATION (AS APPROVED BY THE EMS ADVISORY BOARD AND ADOPTED BY COUNTY COUNCIL THROUGH ORDINANCE 2012-048), IN THE AMOUNT OF $117,245 (AB2013-172)

Mann reported for the Finance and Administrative Services Committee and moved to approve the request.

Crawford stated the Ferndale Fire Chief has some concerns about phase-in and timing, how he is going to staff a full unit, reducing the number of units by a half, and increased call volume. He’s looking at potentially hiring about six firefighters. This reimburses for the current situation, not the future. The Chief asked if the Executive anticipates that this would begin in 2014. The Executive responded that it would be in the
second half of 2014. He supports this resolution. There may be renegotiation as this goes forward.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

5. DISCUSSION AND APPROVAL OF THE DRAFT PUBLIC PARTICIPATION PLAN FOR WHATCOM COUNTY COMPREHENSIVE PLAN AND DEVELOPMENT REGULATION AMENDMENTS (AB2013-177)

Mann reported for the Planning and Development Committee and moved to approve the plan with one amendment to packet page 173, table 2.1, to add the WRIA 1 Planning Unit.

Crawford stated he likes the motion to amend in spirit. He is concerned because he’s not sure of the legal status of the group, which Dan Gibson reviewed. He thinks the Planning Unit is still a legal entity, but its roles and responsibilities may have ended. He asked if it’s appropriate to add that group.

Mann stated that question did not come up during committee. The committee thought it was relevant to include. This list is a select group of committees that may be asked to comment on portions of amendments. Nothing obligates them. It’s an opportunity to affirm the Council’s support of the group.

Brenner stated the Prosecutor did not question the Planning Unit’s legality. This just acknowledges that the Planning Unit exists. It’s up to the Council to reactivate the Planning Unit.

Kershner moved to amend to add the Forest Advisory Committee.

The motion to amend carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

The motion to adopt with amendments carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

OTHER BUSINESS

DISCUSSION OF PROPOSED AMENDMENTS TO WHATCOM COUNTY CODE CHAPTER 20.51, LAKE WHATCOM WATERSHED OVERLAY DISTRICT; PLN2011-00015 (AB2013-102)
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

Weimer reported for the Natural Resources Committee and stated most of the changes were given the nod of approval, but they delayed a decision about exempting small lots. More information will come forward.

**DISCUSSION REGARDING WHATCOM COUNTY CODE SECTION 2.27A, AQUATIC INVASIVE SPECIES (AS AMENDED BY ORDINANCE 2013-018 ON APRIL 23, 2013) (AB2013-145A)**

Brenner reported for the Public Works, Health, and Safety Committee and stated there was discussion regarding the aquatic invasive species ordinance. The committee made two recommendations.

*Brenner moved* to ask staff to prepare an amendment that can be implemented as soon as reasonably possible, to allow a one-time charge for boats used exclusively in Whatcom County.

Crawford asked the mechanism used to ensure this would happen.

Brenner stated this is to request staff to make a recommendation on how to make that happen.

The motion carried by the following vote:

**Ayes:** Brenner, Mann, Crawford, Kremen and Kershner (5)

**Nays:** Weimer (1)

**Absent:** Knutzen (1)

*Brenner moved* to ask staff to prepare an amendment to create a graduated fee structure, depending on the difficulty of inspection, for all boats that are not used exclusively in Whatcom County.

Crawford asked if this is for kayaks.

Brenner stated people have said repeatedly that it seems punitive to the motor boats. It should have more to do with whether there is difficulty inspecting the boats.

Crawford stated he will support it. They need to work with the City of Bellingham. The County has to have a plan that fits with the City plan. He will not be in favor of two different plans. As staff prepares this, he hopes to hear from the City that it is willing to adapt their ordinances in a way that makes sense for both.

Brenner stated the City did not work with the County on the fees. The City worked with the County on what they are supposed to be doing. The City did what it did unilaterally. The City represents only city residents. The County represents all residents. The County has a broader responsibility to people. The Council is also the Board of Health. None of the City council members showed up today, although they were invited. The County can't make the City do anything. The County is supposed to do what is in the best interest of the residents it represents.
Mann stated the committee talked today just to give guidance to staff about what the Council would like to see. The committee members don’t know how staff would implement these things. The committee wants to coordinate with the City. This is to ask staff to bring forward changes and how they could be implemented. He wants to see what staff thinks and how it could work with the City.

Weimer stated he supports the motion. They want to look at all types of boats, and he’s interested in what staff will bring forward. They don’t need to pick a fight with the City Council. Their members support a fee for small boats, but thought the County Council wouldn’t approve that.

Kershner stated she won’t support the amendment. She wants to see less regulation. She wants a state program that protects all the waters of the state. Not all localities throughout the state can afford these expensive programs. She’s interested to see what the staff will bring forward. That doesn’t mean she won’t support what the staff brings forward. Continue to look at improvements that make sense. They’ve been told that kayaks are not the source of aquatic invasive species because they don’t live on those things long enough. They don’t have little hiding places. If that’s not the case, she’s willing to listen to different evidence. However, this is the wrong path to go down.

Brenner stated they were never told the invasive species couldn’t survive on small boats. They only talked about motor boats. It didn’t treat everyone the same. She didn’t support the ordinance because she had amendments. It isn’t right to charge some of the people who use their boats, but not others. She would support an amendment to stop the whole program until they get it right.

**Kremen** stated the best way to deal with these invasive species is on a statewide basis. He would ultimately like to see the State Department of Fish and Wildlife and Department of Health collaborate on a statewide program. Therefore, he suggested a friendly amendment, “…in Whatcom County Washington State.” The rationale is that ultimately a state program will happen. It’s uncertain when. The State of Washington will come up with some sort of statewide policy and program that will address invasive species. When that is done and implemented, all the County has to worry about are watercraft outside Washington State.

Brenner accepted the friendly amendment. She restated the motion to ask staff to prepare an amendment to create a graduated fee structure, depending on the difficulty of inspection, for all boats that are not used exclusively in Washington State.

Mann stated this seems premature.

Kremen stated this just asks staff to prepare an amendment for the Council to consider. Councilmember Mann doesn’t have to support the amendment.

Kershner stated they can make that choice when the amendment comes forward.

Brenner stated she received information that only .03 percent of the boats inspected were found with aquatic invasive species, and they were plants. All three of them were from the same lake in British Columbia (B.C.)
Weimer asked if this would only charge a fee for a boat form outside of Washington State.

Brenner stated that’s correct.

Weimer stated he will vote against the motion.

Kershner asked if this amendment would repeal most of the ordinance that the Council adopted, because boats from Washington State would not be subject to the ordinance. They are getting ready for a State inspection program. The Council could implement this in place of the current ordinance.

Brenner stated the State Department of Fish and Wildlife already has paperwork that people fill out regarding aquatic invasive species and how to take care of their boats. There are many spots on a bigger boat that can’t be inspected. They can be cleaned out. The state has the educational material that the County should hand out to people right now.

The motion carried by the following vote:

Ayes: Brenner, Crawford, Kremen and Kershner (4)
Nays: Weimer and Mann (2)
Absent: Knutzen (1)

INTRODUCTION ITEMS

Crawford moved to accept the Introduction Items.

The motion carried by the following vote:

Ayes: Brenner, Mann, Crawford, Kremen, Kershner and Weimer (6)
Nays: None (0)
Absent: Knutzen (1)

1. ORDINANCE AMENDING THE 2013 WHATCOM COUNTY BUDGET, SIXTH REQUEST, IN THE AMOUNT OF $658,009 **702,109** (AB2013-178)

2. ORDINANCE AMENDING ORDINANCE NO. 81-06, AUTHORIZING THE TREASURER TO ESTABLISH A FUND TO BE KNOWN AS THE WHATCOM COUNTY COMMUNITY DEVELOPMENT FUND (AB2013-179)

3. DRAFT ORDINANCE AMENDING WHATCOM COUNTY CODE TITLE 20, THE OFFICIAL WHATCOM COUNTY ZONING MAPS, AND THE WHATCOM COUNTY COMPREHENSIVE PLAN AND MAPS TO IMPLEMENT CHANGES RELATED TO RURAL LAND USE PLANNING (AB2013-180)

4. ORDINANCE AMENDING ORDINANCE 2011-030, ESTABLISHING A PROJECT BASED BUDGET TO FUND CIVIC CENTER EXTERIOR REPAIRS (AB2013-176)
OTHER BUSINESS

Brenner referenced the issues with the Hemmi Road motorcycle track and stated there is a decibel limit. The Sheriff will have those details. It’s unfortunate that it’s gotten really bad for the neighbors. It would be nice if there were sound buffers for these kinds of facilities. Since this is grandfathered in, adopting an ordinance wouldn’t affect this use.

Kremen stated it’s possible for the Council to revise the code, because the owner of the facility seems to be skirting around the commercial prohibition by asking for donations rather than an actual fee. The Council may be able to craft some language to prohibit any compensation whatsoever that would include donations. That might have some effect to minimize the use of the facility. The proprietor advertises and sends out emails and is listed in certain websites that promote his facility. When people use the facility, donations are accepted. Donations generate more money than a set price. The County may be able to provide a disincentive, or reduce the incentive for the proprietor to promote his facility.

Kershner stated she would like the Council’s legal counsel to consider whether the Council can take any legal action.

Karen Frakes, Prosecutor’s Office, stated any legal action would have to go through the entire Planning staff and Planning Commission process.

Kershner stated she would support any emergency action to allow a cease and desist order for what’s going on out there. She would like to know if that can happen.

Kremen stated that the administration should aggressively do what it can to shut down that facility as soon as possible, with whatever justification or legality available. It’s an untenable situation that has been going on for years. The use has significantly increased the last couple of years.

Weimer stated he’s communicated with the Sheriff’s Office, Prosecutor’s Office, and neighbors. The Prosecutor’s Office has already noted some part of the code that could be used as leverage in this situation. A deputy has been assigned to work with the neighbors. The neighbors’ evidence will be key. He will forward additional information.

REPORTS AND OTHER ITEMS FROM COUNCILMEMBERS

Mann stated a young person recently died at Whatcom Falls in the creek. He feels bad for the family. This seems to happen every few years. He hopes teenagers are reminded how dangerous the rocks are at Whatcom Creek.

ADJOURN

The meeting adjourned at 8:37 p.m.

The Council approved these minutes on ______________, 2013.
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Kathy Kershner, Council Chair

______________________________
Jill Nixon, Minutes Transcription

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**TITLE OF DOCUMENT:** Executive Louws to present "State of the County"

**ATTACHMENTS:** No attachments

**SEPA review required?**  ( ) Yes ( x ) NO
**SEPA review completed?** ( ) Yes ( x ) NO

Should Clerk schedule a hearing?  ( ) Yes ( x ) NO
Requested Date:

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

County Executive Jack Louws to present the "State of the County" address

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

Related County Contract #:  Related File Numbers:  Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
**TITLE OF DOCUMENT:** Executive Louws to read proclamation regarding Public Works Week

**ATTACHMENTS:** No attachments

**SEPA review required?** ( ) Yes ( x ) NO  **Should Clerk schedule a hearing?** ( ) Yes ( x ) NO

**SEPA review completed?** ( ) Yes ( x ) NO  **Requested Date:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)

County Executive Jack Louws will proclaim National Public Works Week May 19-25, 2013

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
WHATCOM COUNTY COUNCIL AGENDA BILL

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Dept. Head:

Prosecutor:

Purchasing/Budget:

Executive:

Date: 5/8/13

RECEIVED
MAY 14 2013

WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Annual and Quarterly Report to County Council on the local Behavioral Health Program Fund (formally known as the Chemical Dependency and Mental Health Program Fund.

ATTACHMENTS:

SEPA review required? ( ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO

Should Clerk schedule a hearing? ( ) Yes ( ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (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.)

The Health Department along with the Behavioral Health Revenue Advisory Committee is providing the 2012 Annual Report as well as a Quarterly Report to the County Council as required in County Code 3.37.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
Memorandum

TO: Jack Louws, Executive
FROM: Jack Hovenier, BHRAC Chair
       Benita Bowen, Vice-Chair
DATE: May 8, 2013
RE: Annual report for 2012 to County Council

On May 21, 2013, the Behavioral Health Revenue Advisory Committee (BHRAC) will present its 2012 annual report and a quarterly report of the Behavioral Health Fund, to the County Council. The Annual report is attached and will be made available to the public.

The Annual report shows that we once again served over 3,000 Whatcom residents last year with our locally funded programs and services. We provided services across our Continuum of Care, known as “PITA”. The PITA acronym represents the four general areas of service focus: Prevention, Intervention, Treatment, and Aftercare.

Our Prevention and Intervention services include educational and support programs to the general public as well as many of our school-based services. Our Aftercare programs support the ongoing recovery of people living with mental illness and addiction. These services include mental health treatment for individuals living in supported housing programs.

At the close of 2012, we have an unencumbered fund balance of $1.4 million. We have been very fortunate over the past couple years to find other funding sources for some of our programs, and renegotiated some contracts to reduce expenses. We have realized savings to our fund by over $500,000 this year alone, with similar savings last year. These savings remain in the fund and are available for use in implementing new programs and services.

Our Quarterly report to the Council will be verbal. Our March 2013 meeting with BHRAC focused on strategizing effective use of our fund balance. It was decided to dedicate a significant portion to increasing programs to youth. Recent statistics reported in the Healthy Youth Survey demonstrate an alarming concern of serious depression and its consequences. The committee understands the
long-term importance of investing in the health and well-being of our children and youth. Therefore, the Health Department will be working with its community partners to add additional programs and services that will provide help and hope to our future adults.

It has been heartwarming and rewarding to hear from recipients of these community services. They are sincerely grateful for the access to treatment and support, which previously were unavailable to them. We will continue to highlight particular programs and their successes in our future quarterly reports to Council.

The Behavioral Health Revenue Advisory Committee continues to meet regularly to understand the needs of the community, review and make recommendations on funding strategies and program priorities, and support an infrastructure that provides quality care in Whatcom County.
Manager’s Comments

Since the 2010 inception of programs supported by these local funds, we have served over 9,000 Whatcom County residents! Federal and State funding cuts to Behavioral Health programs continue to challenge our planning strategies. Nevertheless, we have been successful in growing our services to meet the needs of our residents. This past year has seen the advent of new programs listed in our highlights section of this report. We are grateful for the opportunity afforded by these local funds to provide critical services regardless of one’s ability to pay.

Service Expenditures for 2012

Percentage by Service Area*

- School Programs: 20%
- Jail Services: 9%
- Mental Health Facility: 7%
- Juvenile Court: 4%

*Based on $2,484,300. See back for budget details.

People Served by Program Area
(for individual client services)

![Bar Graph]

- School Programs: 1020
- Jail Services: 928
- Mental Health Facility: 798
- Adult Court: 242
- Juvenile Court: 132
- Crisis Stabilization: 173

Highlights of 2012:

- Community-wide events have provided education and support to more than 700 people.
- Returned more than $100,000 to our service collaborative funding and technical assistance.
- Expanded the network of Mental Health Professionals who provide treatment services through our Behavioral Health Access Program.
- Increased service availability in the community.
- Increased housing support services to previously homeless people living with mental illness.
- Initiated projects for integration of behavioral health services with general medical care.

VISION AND GOALS

Develop a comprehensive infrastructure of behavioral health care that:

1. Provide effective recovery-oriented services that mitigate the need for citizens to default to utilization of the emergency room, hospital beds at the county jail.

2. Provide access and availability for the prevention and treatment services citizens who may have no funding support that affords independent living environments in order to reduce the incidence and severity of developmental disability and mental and emotional disorders of our citizens.

3. Develop interventions that divert and chemically dependent from the criminal justice system with appropriate options of...
# Behavioral Health Sales Tax Fund Annual Report

**Fund Activity—For the year ending December 31, 2012**

<table>
<thead>
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**Expenditures**
- Behavioral Health School Programs: $501,932
- Training and Consultation: $7,459
- Crisis Stabilization: $352,990
- Adult Court Services: $666,353
- Juvenile Court Services: $89,800
- Jail Psych Services and Medications*: $238,891
- Community Treatment: $479,326
- Housing Support Services: $87,416
- Recovery Support Services: $50,133
- **Subtotal Services Provided**: $2,484,300
- Direct Program Support: $121,940
- Administrative Costs: $217,115
- **Total expenditures**: $2,823,355

Net increase in Fund Balance: $558,481

**Beginning fund balance 1/1/12**: $4,616,786
**Ending fund balance 12/31/12**: $5,175,267
**Committed funds:**
- Triage Facility: $3,000,000
- Healthcare Reform - BH Primary Care integration: $450,000
- Housing Support Services: $300,000
- **Total all committed funds**: $3,750,000
**Unencumbered fund balance at 12/31/12**: $1,425,267

*Supplanted amount for 2012 was $202,665 for medication & Jail Psychiatry services

---

**PITA Continuum**

The PITA Model continues to serve as the framework for creating a comprehensive foundation for service-delivery.

---

"It's easier to build a child than mend an adult"
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES     Initial     Date     Date Received in Council Office     Agenda Date     Assigned to:
Originator:     AD         5/8/13     5/21/13     Special        Presentation
Division Head:  KD         5/8/13
Dept. Head:     KD         5/8/13
Prosecutor:     KD         5/8/13
Purchasing/Budget: KD         5/8/13
Executive:      KD         5/8/13

RECEIVED
MAY 14 2013
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT:
Annual and Quarterly Report to County Council on the local Behavioral Health Program Fund (formally known as the Chemical Dependency and Mental Health Program Fund.

ATTACHMENTS:

SEPA review required?   ( ) Yes   ( ) NO
SEPA review completed?  ( ) Yes   ( ) NO
Should Clerk schedule a hearing?   ( ) Yes   ( ) NO
Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (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.)

The Health Department along with the Behavioral Health Revenue Advisory Committee is providing the 2012 Annual Report as well as a Quarterly Report to the County Council as required in County Code 3.37.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:     Related File Numbers:
Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Memorandum

TO: Jack Louws, Executive
FROM: Jack Hovenier, BHRAC Chair  
       Benita Bowen, Vice-Chair
DATE: May 8, 2013
RE: Annual report for 2012 to County Council

On May 21, 2013, the Behavioral Health Revenue Advisory Committee (BHRAC) will present its 2012 annual report and a quarterly report of the Behavioral Health Fund, to the County Council. The Annual report is attached and will be made available to the public.

The Annual report shows that we once again served over 3,000 Whatcom residents last year with our locally funded programs and services. We provided services across our Continuum of Care, known as “PITA”. The PITA acronym represents the four general areas of service focus: Prevention, Intervention, Treatment, and Aftercare.

Our Prevention and Intervention services include educational and support programs to the general public as well as many of our school-based services. Our Aftercare programs support the ongoing recovery of people living with mental illness and addiction. These services include mental health treatment for individuals living in supported housing programs.

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People Served by Program Area
(for individual client services)

![Bar chart](chart.png)

- **School Programs**: 1,020
- **Jail Services**: 928
- **Community Treatment**: 798
- **Adult Court**: 242
- **Juvenile Court**: 132
- **Crisis Stabilization**: 173

Highlights of 2012:

- Community-wide events have provided education and support to more than 2,000 people.
- Returned more than 30% of our funding through collaborative funding and fee-for-service.
- Expanded the network of Mental Health Professionals who provide treatment services through our Behavioral Health Access Program.
- Launched a crisis response program to address the needs of individuals in crisis.
- Increased housing support services to previously homeless people living with mental illness.
- Initiated projects for integration of behavioral health services with general medical care.

Service Expenditures for 2012

![Pie chart](chart.png)

*Based on $2,484,300. See back for budget details.

VISION AND GOALS

Develop a comprehensive infrastructure of behavioral health care that:

1. Provides effective recovery-oriented services that mitigate the need for citizens to default to utilization of the emergency room, hospital beds and the county jail.
2. Provides access and availability for prevention and treatment services to citizens who may have no funding if support that affords independent living.
3. Increases the provision of services in community-based environments in order to decrease the incidence and severity of the dependency and mental and behavioral disorders of our citizens.
4. Provides interventions that divert individuals who are chemically dependent and criminal justice involved to the appropriate options of...
## Behavioral Health Sales Tax Fund Annual Report

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*"It's easier to build a child than mend an adult"*
**Title of Document:** Appointment to the Whatcom County Developmental Disabilities Board

**Attachments:** Application for Appointment; Staff Memorandum regarding board nomination

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**Summary Statement or Legal Notice Language:** (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.)

County Executive Jack Louws requests confirmation of his appointment of Roger Sasnett to the Developmental Disabilities Board.

**Committee Action:**

**Council Action:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
May 1, 2013

TO: Jack Louws, County Executive
FROM: Jessica Lee, Program Specialist, Developmental Disabilities
RE: Nomination for Initial Appointment to the Developmental Disabilities Advisory Board

I am pleased to forward the nomination of Roger Sasnett for initial appointment to the Developmental Disabilities Advisory Board. (DDAB)

The DDAB voted unanimously to recommend Roger’s appointment at the March 25, 2013 Advisory Board meeting.

Roger is new to Whatcom County, but lived in Washington State for many years. In addition to being the parent of children with disabilities, he has also worked in the field of special education. Roger currently works in the Special Education department at WWU, and has experience as both a teacher and a school psychologist working with children along the autism spectrum. Of particular interest to him is the parent experience of raising a child with a disability.

Roger has served on several disability-related boards and understands the importance of building relationships within the community.

Roger’s references describe him as a good team player, professional and conscientious with a strong commitment to working with families.

As you can see, Roger provides valuable expertise in areas that will assist the Board in its work improving the lives of people with developmental disabilities.

Thank you, Jack, for considering this nomination for appointment.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Roger Sasnett Ph.D NCSP
Street Address: 1515 Whatcom St.
City: Bellingham
Mailing Address (if different from street address):

Date: 1/30/2013
Zip Code: 98229

Day Telephone: 650-3724 Evening Telephone: see cell # Cell Phone: (64) 256-2578
E-mail address: rogersasnett@gmail.com

1. Name of board or committee—please see reverse:
   Developmental Disabilities Board

2. You must specify which position you are applying for.
   Please refer to vacancy list.

3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
   (If applicable, please refer to vacancy list.)
   ( ) yes ( ) no

4. Which Council district do you live in?
   ( ) One ( ) Two ( ) Three

5. Are you a US citizen?
   ( ) yes ( ) no

6. Are you registered to vote in Whatcom County?
   ( ) yes ( ) no

7. Have you ever been a member of this Board/Commission?
   ( ) yes ( ) no
   If yes, dates: ________________________________

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?
   ( ) yes ( ) no
   If yes, please explain: ________________________________

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   (see attached)

10. Please describe why you’re interested in serving on this board or commission:
    Given my background, I feel I can make a positive contribution to the work of this board.

References (please include daytime telephone number):
   Dr. Keith Hyatt, 650-2353
   Dr. Gail Cowher, 650-2467

Signature of applicant: ________________________________

THIS IS A PUBLIC DOCUMENT. As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.
After graduating with a B.A. from the U.W., I taught in the Northshore School District in the Bothell area for 15 years, teaching elementary and secondary (math and science). I was diagnosed as an adult with Tourette syndrome, causing me to leave the classroom and shift my focus to school psychology. Pursing advanced degrees, I graduated from Central Washington University with a master’s degree in Education, and from The Ohio State University with a Ph.D. degree in Special Education. I then worked as a nationally certified school psychologist in south-central Pennsylvania (for the past six years), specializing in the identification and treatment of neurodevelopmental disorders. I have also served on the boards of the WA and PA Tourette syndrome associations. Presently, I work as an assistant professor of special education at Western Washington University.
# WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
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<tr>
<th>CLEARANCES</th>
<th>Initial</th>
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<th>Date Received in Council Office</th>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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**TITLE OF DOCUMENT:**
Ordinance amending WCC 9.32 and 9.36 to repeal sections pre-empted by state law

**ATTACHMENTS:**
Ordinance

**SEPA review required?** ( ) Yes ( ) No
**SEPA review completed?** ( ) Yes ( ) No

**Should Clerk schedule a hearing?**  (X) Yes  ( ) No
**Requested Date:** 6/4/2013

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (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.)
The Whatcom County Council has been notified that certain sections of the Whatcom County Code related to possession and display of firearms in county parks and firearm possession by minors are pre-empted by state law and should be repealed.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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ORDINANCE NO. ________

AMENDING WHATCOM COUNTY CODE TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) TO REVISE SECTIONS PRE-EMPTED BY STATE LAW

WHEREAS, the Whatcom County Council has been notified that certain sections of the Whatcom County Code related to possession and display of firearms (possession in county parks and possession by minors) are pre-empted by state law; and

WHEREAS, the Whatcom County Prosecutor's Office recommends amending the County Code to remove these pre-empted sections; and

WHEREAS, the recommendations of the Prosecutor's Office are not based on the merits of the matters addressed, but upon the clear directive that state law occupies and pre-empts local municipalities from regulating these areas except for clear cut exceptions outlined in RCW 9.41.300, none of which apply to the sections recommended here for amendment or repeal.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Section 9.32.085 is hereby amended as outlined in Exhibit A to this ordinance.

BE IT FINALLY ORDAINED that Whatcom County Code Chapter 9.36 is hereby repealed in its entirety as outlined in Exhibit B to this ordinance.

ADOPTED this _______ day of ______________, 2013.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved     ( ) Denied
Date Signed: ___________________
EXHIBIT A

9.32.085 UNLAWFUL FIREARMS AND/OR WEAPONS IN PARKS.

A. It is unlawful within a county-owned park for any person to:

1. Display, exhibit or draw any firearm or dangerous weapon; or

2. Leave any firearm or dangerous weapon unattended and unsecured, or exposed to public view; or

3. Discharge or propel across, in, or into any county-owned park a firearm, bow and arrow, spear gun, harpoon, or air or gas weapon, or any similar dangerous device capable of injuring or killing any person or animal, or damaging or destroying any public or private property.

A violation of this section shall constitute a misdemeanor.

B. The following are affirmative defenses to a violation of this section, which the defendant must prove by a preponderance of the evidence:

1. The activity constituting the violation was authorized by the Whatcom County parks and recreation director as a special recreational activity upon a finding that the activity is consistent with parks use.

2. Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person.

3. Any person making or assisting in making a lawful arrest for the commission of a felony.

4. Any properly licensed hunter during an applicable hunting period or season, who is entering or leaving an approved hunting area, or who traverses park property while entering or leaving an approved hunting area.

5. If otherwise exempted by either RCW 9.41.300(2)(b) or (6) as currently enacted or hereafter amended or by WCC 9.32.090(C), (D), or (G) as currently enacted or hereafter amended.

C. Nothing in this section shall be construed to abridge the right of an individual licensed under RCW 9.41.070 to carry a concealed weapon in a county-owned park. (Ord. 99-007).
CHAPTER 9.36—USE OF FIREARMS BY MINORS

Sections:

9.36.010—Permit required.
9.36.020—Unlawful use or possession of firearms by persons under the age of 16.
9.36.030—Unlawful parental approval.
9.36.040—Violation—Penalty.

9.36.010 Permit required:
A permit for the use and possession of any gun, firearm, or similar instrument capable of propelling any shot or slug by air or otherwise, shall be issued by the chief of police or his agent, of any incorporated city or town, or the sheriff of this county or his agent, upon presentation by the minor requesting the permit of satisfactory evidence that the minor has received proper instruction in the handling of firearms by a qualified instructor at a regularly constituted rifle range or gun club. The permit shall be issued without charge and must be carried by the individual to whom it is issued at all times while he is in the possession of any such firearm. (Prior code § 5.12.030).

9.36.020 Unlawful use or possession of firearms by persons under the age of 16.
It is unlawful for any person under the age of 16 years to carry, shoot, or have in his possession any gun, firearm, or similar instrument for propelling any shot or slug by air or otherwise, unless accompanied by a person over the age of 21 years, and, in addition, having in his possession a permit for the possession and use of firearms issued by a law enforcement agency according to the provisions of Section 9.36.010; provided, that possession of any such firearm shall be lawful by a person under the age of 16 while traveling by direct route to or from a regularly constituted rifle range or gun club. (Prior code § 5.12.010).

9.36.030 Unlawful parental approval.
It is unlawful for any parent or guardian of a person under the age of 16 to knowingly allow said minor to violate any of the provisions of this chapter. (Prior code § 5.12.020).

9.36.040 Violation—Penalty.
Any person who violates any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than $10.00, nor more than $100.00. (Prior code § 5.12.040).