### CLEARANCES

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td>MD</td>
<td>7/11/13</td>
<td>7/23/13</td>
<td>Intro</td>
<td></td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td>7/11/13</td>
<td>8/6/13</td>
<td>Finance</td>
<td></td>
</tr>
<tr>
<td>Prosecutor:</td>
<td></td>
<td>7/11/13</td>
<td></td>
<td>Committee;</td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td></td>
<td></td>
<td>Council</td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td>7/11/13</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### TITLE OF DOCUMENT: 2013 Supplemental Budget Request #9

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

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Requested Date:</th>
</tr>
</thead>
</table>

### 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 #9 requests funding from the General Fund:
1. To appropriate $44,500 in Non-Departmental to fund WhatComm E911 operations from grant proceeds.
2. To appropriate $165,600 in Planning and Development Services to fund Funk farm purchase of development rights.

**Real Estate Excise Tax I:**
3. To appropriate $30,000 in Administrative Services – Facilities to fund security improvements to the Central Plaza Building.

**Public Utilities Improvement Fund:**
4. To appropriate $780,000 in Executive to fund Nooksack Water Treatment Plant upgrade.

### COMMITTEE ACTION:

### COUNCIL ACTION:

7/23/2013: Introduced
ORDINANCE NO.
AMENDMENT NO. 9 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>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund - Non Departmental</td>
<td>44,500</td>
<td>(44,500)</td>
<td>0</td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>165,600</td>
<td>(77,500)</td>
<td>88,100</td>
</tr>
<tr>
<td>Real Estate Excise Tax Fund I</td>
<td>30,000</td>
<td>-</td>
<td>30,000</td>
</tr>
<tr>
<td>Public Utilities Improvement Fund</td>
<td>780,000</td>
<td>-</td>
<td>780,000</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td><strong>1,020,100</strong></td>
<td><strong>(122,000)</strong></td>
<td><strong>898,100</strong></td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of ____________________, 2013.

ATTEST:

Dana Brown-Davis, Council Clerk

Kathy Kershner, Chair of the Council

APPROVED AS TO FORM:

Jack Louws, County Executive

Date: ____________________
<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 - Non Departmental</td>
<td>To fund WhatComm E911 operations for 2013-2014 from grant proceeds.</td>
<td>44,500</td>
<td>(44,500)</td>
<td>-</td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>To fund Funk farm purchase of development rights.</td>
<td>166,600</td>
<td>(77,500)</td>
<td>88,100</td>
</tr>
<tr>
<td>Real Estate Excise Tax Fund I</td>
<td>To fund security improvements to the Central Plaza Building.</td>
<td>30,000</td>
<td>-</td>
<td>30,000</td>
</tr>
<tr>
<td>Public Utilities Improvement Fund</td>
<td>To fund Nooksack Water Treatment Plant upgrade.</td>
<td>780,000</td>
<td>-</td>
<td>780,000</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td><strong>1,020,100</strong></td>
<td><strong>(122,000)</strong></td>
<td><strong>898,100</strong></td>
</tr>
</tbody>
</table>
Supplemental Budget Request

Executive

Supp#ID # 1564  Fund 1  Cost Center 4259  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 2013-14

X

Department Head Signature (Required on Hard Copy Submission)  Date 7/12/13

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4334.0182</td>
<td>State Enhanced 911 Funds</td>
<td>($44,500)</td>
</tr>
<tr>
<td></td>
<td>7220</td>
<td>Intergov Subsidies</td>
<td>$44,500</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:
This is a continuation of a state-funded (pass-through) grant from the Washington State Military Department to reimburse What-Comm Communications Center for eligible E911 operating expenditures under WAC 118-66-050 (eligible professional development and operational expenses).

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 passing through the local county government (by subrecipient agreement). 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:
911 services cost reductions for our community due to state subsidies

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. William Slodysko, What-Comm Deputy Director

6. Funding Source:
Washington State Military Department
MEMORANDUM

To: Whatcom County Executive Jack Louws and
   Whatcom County Council Members

From: Suzanne Mildner, Grants Coordinator

Subject: Supplemental Budget Request for E911 funding (Pass through Grant to
         What-Comm)

Date: July 11, 2013

The County is in the process of entering into a subrecipient agreement with the City of
Bellingham to facilitate a pass-through grant from The Washington State Military
Department. The grant funding is for FY2013-14 Emergency 911 operational expenses
for What-Comm Communications.

The grant contract period is July 2013 through August 2014, for a total of $44,500. The
execution of the Subrecipient Agreement will be contingent upon your approval of this
budget authority. Accordingly, we are requesting approval for supplemental funding in
the amount of $44,500 to support 911 operations at What-Comm Communications.
MEMORANDUM

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

THROUGH: Sam Ryan, Director

FROM: Mark Personius, Long Range Planning Manager

DATE: July 1, 2013

RE: Resolution and Supplemental Budget Request for Funk Conservation Easement

Introduction

The Whatcom County Purchase of Development Rights (PDR) Program was initiated in September of 2001. The program has successfully purchased 110 development rights on approximately 778 acres. The Purchase of Development Rights Oversight Committee recommended the purchase of seven additional development rights on the 39-acre Funk farm property. A supplemental budget request in the amount of $165,600 is proposed, which will allow for this purchase to take place (see below for details). The action requested is to authorize purchase based on the contingencies included in the purchase and sale agreement. Attached to this memo are the supplemental budget request, purchase and sale agreement, and proposed agricultural conservation easement deed with exhibits.

Background and Purpose

The Funk property, located north of Birch Bay-Lynden Road Road, and west of Stein Road near its intersection with Loomis Trail Road, in unincorporated Whatcom County, is the fourteenth purchase under the County’s Agricultural Purchase of Development Rights Program. The property is currently an active farm, with a mix of raspberries and hayfields. It also contains riparian areas where the south fork of Dakota Creek passes through the northern portion of the property. This supplemental budget request totaling $165,600 provides for the cost of easement purchase and other associated costs (please refer to the table below).

After the purchase has been approved and completed, Whatcom County will issue a reimbursement request of $77,500 to the USDA-NRCS Farm and Ranch Lands Protection Program (through the Commodity Credit Corporation). Therefore, the final Whatcom County budget request will be $88,100.

The total purchase price for the existing developments rights on the farm is $155,000, and is acceptable to the owners. The value is derived by an appraisal completed by a professional appraiser, and confirmed by an appraisal reviewer. Fifty percent or
$77,500 of the easement purchase price will be reimbursed by the USDA-NRCS Farm and Ranch Lands Protection Program. The matching funds are from a 2012 Cooperative Agreement with Whatcom County (USDA Agreement No. 73-0546-12-003; Whatcom County Contract No.201208017).

**Funk PDR Supplemental Budget Request**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price for Development Rights</td>
<td>$155,000</td>
</tr>
<tr>
<td>Whatcom Land Trust</td>
<td></td>
</tr>
<tr>
<td>· Monitoring fund fee</td>
<td>$4,600</td>
</tr>
<tr>
<td>· Background Documents preparation</td>
<td>$2,500</td>
</tr>
<tr>
<td>Closing Costs</td>
<td>$3,500</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$165,600</strong></td>
</tr>
</tbody>
</table>

**USDA program match to be reimbursed** $77,500

**Whatcom County - Conservation Futures Fund** $88,100

**Request Summary**

This request is consistent with Resolution 2010-022 (re-affirmed in Resolutions 2011-013 and 2012-012), which authorizes the Executive to enter into a purchase and sale agreement, provided:

a. Appraisals are completed and conservation easements are drafted which meet the requirements of both the Whatcom County Purchase of Development Rights program, and the federal or state match funding agency;

b. Matching funds are provided by either the Federal Farm and Ranchland Protection Program or the State Recreation and Conservation Office to cover 50% of each easement purchase price; and

c. Landowners have agreed to the offer price and conservation easement conditions.

Commitments are in place for all of the above provisions related to the Funk easement purchase.

The purchase and sale agreement includes the understanding that the seller accepts the appraised value, accepts the terms and conditions contained in the conservation easement, and understands that this purchase is contingent on receiving matching funds from USDA-NRCS. It obligates both parties to act on the agreement within 90 days of signature. With the exception of approving the supplemental budget request, no further action will be required for the purchase of this conservation easement if all the terms of the purchase and sale agreement are met.

Upon county budget authorization, and authorization by the USDA-NRCS, final purchase of the Funk farm property conservation easement will be completed.

Please contact Mark Personius at 50620 if you have any questions or concerns regarding the terms of this request.
1a. Description of request:
The proposed budget amendment is for the purchase of development rights on the Funk farm. Over 39 acres will be under a perpetual conservation easement which will be monitored by Whatcom Land Trust. The easement limits the uses on the property to soil based agriculture.

1b. Primary customers:
The community at large benefits from this program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality and stormwater retention are among the benefits for the community.

2. Problem to be solved:
The primary focus of the Purchase of Development Rights Program is to permanently protect prime/productive agricultural land from conversion to non-agricultural uses. This property is prime and is located in an area targeted for agricultural land preservation by the Agricultural Advisory Committee.

3a. Options / Advantages:
The Agricultural Advisory Committee has considered the PDR program an integral component of any overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. TDRs are contemplated in the future. PDR's are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.

3b. Cost savings:
Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land – especially land with water rights as this has – also helps support the agriculture economy.

4a. Outcomes:
The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a "Rural Land Study" that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of this farm to the PDR land base will occur, if funded, by the end of September.
### Supplemental Budget Request

<table>
<thead>
<tr>
<th>Planning &amp; Development Services</th>
<th>Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supp# ID #:</strong> 1560</td>
<td><strong>Fund:</strong> 175</td>
</tr>
</tbody>
</table>

#### 4b. Measures:

The easement on this farm will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchase marks the outcome of this specific request.

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

This project is a joint project which involves the USDA-NRCS (partial funding), the Whatcom Land Trust (ongoing monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding.

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

The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County.

#### 6. Funding Source:

Conservation Futures Fund (as requested) and an existing contract with USDA-NRCS (through the Commodity Credit Corporation) for $77,500. USDA-NRCS will reimburse up to their contract amount after purchase. Therefore the total coming out of Conservation Futures will be $88,100.
FUNK
CONSERVATION EASEMENT DEED
PURCHASE AND SALE AGREEMENT

This CONSERVATION EASEMENT DEED PURCHASE AND SALE AGREEMENT ("Agreement") is entered into on July month/date, 2013 between Whatcom County, a municipal corporation ("Buyer"), and Thomas R. Funk and Diane Funk, property owners ("Seller").

RECATALS:

A. Seller is fee simple owner of real property (the "Property") in Whatcom County, Washington. Exhibit A of Attachment # 1 is the legal description of the Property and is incorporated herein by reference.

B. The Buyer wishes to protect the Property from development and preserve its quality as productive farmland.

C. The Buyer desires to purchase and the Seller desires to sell an agricultural protection conservation easement deed ("Easement") under which Whatcom County and Whatcom Land Trust are grantees, a copy of which is attached as Attachment #1 and is incorporated herein by reference.

D. Seller acknowledges that $77,500 of the easement cost is provided by the Farm and Ranch Lands Protection Program of the Natural Resource Conservation Service – U.S. Department of Agriculture; and thus entitles them to the rights identified in the Easement Deed. The primary focus of this fund is to acquire development rights on farmlands and ensure the land remains available for agricultural practices.

E. The Property is approximately 38 acres and is currently farmed.

F. The Property has significant agricultural value to the Buyer and to the people of Whatcom County and the State of Washington.

G. Conveyance of rights and imposition of restrictions described in the Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided as Exhibit C of Attachment #1, to preserve land for agricultural purposes and has substantial public benefits.

H. As owner of the Property, Seller has the right to convey the rights and restrictions contained in the Easement in perpetuity.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:
AGREEMENT

1. **Real Property.** Seller agrees to sell and Buyer agrees to purchase an Agricultural Conservation Easement Deed ("Easement") in perpetuity over the Property, consisting of certain rights and restrictions as defined in the Easement.

2. **Purchase Price.** The total purchase price for the Conservation Easement ("Purchase Price") is **one hundred and fifty five thousand DOLLARS ($155,000)**. The Purchase Price, less the Seller’s share of closing costs, will be paid to Seller at closing.

3. **Title Policy.** Seller shall cause Chicago Title Company to issue to Grantees at closing a standard coverage owner’s policy of title insurance insuring Grantees’ title to the Easement in the full amount of the Purchase Price subject only to the Permitted Encumbrances ("Title Policy"). The Title Policy must be dated as of the date of execution and delivery of the Easement (the "Closing Date").

4. **Closing.** The costs of closing, including but not limited to fees of an escrow agent, if any, and title insurance shall be divided and borne equally by the parties, except for excise tax which shall be paid by Seller. The Seller’s share shall be deducted from the Purchase Price and the reduced amount shall be reflected in the final payment. Closing will occur within 90 days of the signing of this Agreement, unless the parties agree otherwise.

5. **Notices.** Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

   **Buyer:**
   
   Whatcom County  
   Attn: Agricultural PDR Administrator  
   5280 Northwest Drive  
   Bellingham, WA 98226

   **With a copy to:**
   
   Whatcom County Prosecutor’s Office  
   Attn: Royce Buckingham  
   311 Grand Ave.  
   Bellingham, WA 98225  
   Facsimile No.: 360-738-4561

   **Seller:**
   
   Tom and Diane Funk  
   8421 Stein Road  
   Custer, WA 98240

   Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.
6. **Counterparts; Faxed Signatures.** This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

7. **Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

8. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

9. **Time of the Essence.** Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

10. **Nonmerger.** The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

11. **Assignment.** Buyer shall not assign this Agreement without Seller’s prior written consent. Seller may not assign this Agreement, except in whole, without the Buyer’s prior written consent. As a condition to approving any assignment of this Agreement, Buyer may require that the assignee confirm its status as an institutional investor or otherwise confirm compliance with any securities laws. No assignee of this Agreement shall ever be permitted to certificate the payments to be made by the Buyer under this Agreement as part of a private placement or public securities offering.

12. **Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement contemplated herein.

13. **Condition of Property.** Seller agrees to deliver the Property to the Buyer in substantially the same condition that it was in on the date of this Agreement, normal farming practices excepted (i.e. harvesting, pasturing, etc.). Any activities undertaken by anyone, with or without the Seller’s permission and not permitted in Section VI of Attachment #1, or other activities that result in Property waste or render the Property unsuitable or unable to comply with the purpose of the conservation Easement as contained in Section III of Attachment #1 are prohibited. Such shall make this Agreement voidable by the County at its discretion.

14. ** Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Easement, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.
IN WITNESS WHEREOF, the parties have executed this Agreement as set forth above.

SELLER:

R. Diane Funk

Date: 7/9/2013

Thomas O. Funk

Date: 7/9/2013

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

I certify that I know or have satisfactory evidence that Thomas and Diane Funk, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Seller(s) of the Property to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 9, 2013

Suzanne M. Mildner
Notary Public
Print Name Suzanne M. Mildner
My commission expires 12-31-14
BUYER:

WHATCOM COUNTY does hereby accept the above Purchase and Sale Agreement for Agricultural Conservation Easement Deed.

______________________________          Date: ____________________________
Jack Louws, County Executive

Approved as to Legal Form: _______________
Civil Deputy Prosecuting Atty

STATE OF WASHINGTON          )
   ) ss.
COUNTY OF WHATCOM            )

I certify that I know or have satisfactory evidence that ____________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ______________________________________ of ____________________________ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: ____________________________

Notary Public
Print Name _________________________
My commission expires ______________

(Use this space for notarial stamp/seal)
After Recording Return To:

Whatcom Land Trust
P.O. Box 6131
Bellingham, WA 98227

DOCUMENT TITLE: WHATCOM COUNTY CONSERVATION EASEMENT

GRANTOR: THOMAS R. FUNK AND DIANE FUNK

GRANTEES: WHATCOM LAND TRUST AND WHATCOM COUNTY

ABBR. LEGAL DESCRIPTION: P# 400124 206460 0000

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this ___ day of ______________________, 2013, by Thomas Funk and Diane Funk ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("Grantees"), and the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

I. RECITALS.

The following recitals are a material part of this Easement.

A. Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.

B. Under the authority of the Farm and Ranch Lands Protection Program, (16 U.S.C. Sections 3838h and 3838) the United States Department of Agriculture’s Natural Resources Conservation Service (herein the "United States") has provided on behalf of the Commodity Credit Corporation $77,500.00 (Seventy-Seven Thousand Five Hundred and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.
C. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.

D. The Protected Property is approximately 38.17 acres and is currently farmed.

E. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Exhibit D.

F. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, to preserve land for agricultural purposes and has substantial public benefits.

G. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.

II. CONVEYANCE AND CONSIDERATION.

A. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of $155,000 by Whatcom County and the United States to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

B. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

C. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor’s, successors and assigns in perpetuity.

III. PURPOSE.

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and
utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

IV. RELATIONSHIP OF PARTIES.

A. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

B. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section III. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

C. The above Section IV.A. does not pertain to monitoring and enforcement of a conservation plan, the responsibility for which rests with the Natural Resource Conservation Service and Whatcom County as described in Section VIII A below.

V. RIGHT OF ENFORCEMENT.

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection

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of the Protected Property, in accordance with Federal Farm and Ranchland Program requirements.

VI. PERMITTED USES AND ACTIVITIES.

Grantor may:

A. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section VII below.

B. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.

C. Existing agricultural structures and roads may be removed, maintained, expanded or replaced and new agricultural structures, roads, and improvements used primarily for agricultural enterprises may be constructed by the Grantor on the Protected Property within the “Farmstead”, as defined in Section XII of this Easement, and shown on Exhibit D, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section VII D. Agricultural structures may include, without limitation, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.

D. New agricultural buildings, structures, roads, or improvements proposed for locations outside of “Farmstead Area” may be built or placed only with the written permission of the Grantee. Permission shall be granted only if the agricultural productive capacity and open space character of the Protected Property are not significantly impaired by the construction and use of such structures, disturbance to prime, unique and important soils is minimized and all structures individually and combined are consistent with the terms of this Easement. For the purposes of this section, temporary hoop-houses and temporary greenhouses with no foundation are not considered agricultural building, structures or improvements that require Grantee permission. For the purposes of this section, existing fence repairs and replacement, and new fencing for the customary management of livestock or to delineate the boundary of the Protected Property is not considered agricultural building, structures or improvements that require Grantee permission.
E. Plant or maintain trees on the Agricultural Land, as defined in Section XII of this Easement only as follows:

1. Maintain a woodlot not to exceed two (2) acres for the production of firewood to be used on the Protected Property;

2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.

3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.

F. Install a small-scale wind power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may we sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind power generator prior to installation.

G. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

VII. PROHIBITED USES AND ACTIVITIES.

Unless specifically permitted by Section VI above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

A. Use or activities inconsistent with the purpose of this Easement.

B. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Protected Property, even if that portion of the Protected Property constitutes a separate legal parcel. This restriction does not prohibit minor
boundary line adjustments with adjoining agricultural land, provided there is no net loss in total acreage and no net loss of quantity or quality of Agricultural Land to the Protected Property, provided that no new parcel may be created by such boundary line adjustments, and provided Grantor has obtained prior approval of the Trust Grantee. This restriction also does not prohibit boundary line adjustments in the case of technical errors made in the survey or legal description. In such cases of error, boundary line adjustments cannot exceed 2 (two) acres for the entire Protected Property. Any new land gained through a boundary line adjustment is subject to the terms of this Easement Deed.

C. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.

D. Cover more than two percent (2%) of the area (approximately 33,254 square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, gravel, buildings, or ponds, except animal waste holding ponds.

E. Construct non-agricultural structures or facilities.

F. Conduct any use or activity that removes or degrades the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.

G. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property, except that, with the consent of the County, water rights may be either leased for a period not to exceed ten years for beneficial use for agricultural activities only on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years, or conveyed to the County as provided in Section VIII below.

H. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres. Land subject to such alteration shall be returned to pre-activity conditions in accordance with baseline data set forth in Exhibit D.

I. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.
J. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.

K. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.

VIII. WATER RIGHTS.

A. The Parties agree that the Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.

B. Grantee Trust will include in Baseline Data a copy of the documentation and any information available from Grantor regarding the history of the claimed water rights. In its monitoring visits, Grantee Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Grantee Trust believes that Grantor is not sufficiently informed about protecting Grantor’s water rights, Grantee Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions in Section VI. H.

C. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section IV. RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections XIII and XIV of this Easement or may itself take appropriate action to protect the water rights.

D. If Grantor is unable or unwilling to take the Water Rights protection action cited in Section VII. H., and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County’s use in order to maintain the opportunity for agricultural activity elsewhere in Whatcom County.

IX. CONSERVATION PLAN.

A. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This
conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of noncompliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.

B. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

X. RIGHTS CONVEYED TO GRANTEES.

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

A. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.
B. (1) To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement;

(2) To enter the land at such other times as necessary if the Trust has reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.

C. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, The Trust may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

D. Forbearance by The Trust to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees’ rights under the Easement.

XI. NO PUBLIC ACCESS.

This Easement provides no right of access to the general public.

XII. BASELINE DATA.

To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare baseline data sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The baseline data may consist of reports, maps, photographs, and other documentation. Grantor and Grantee will execute a statement verifying that the baseline data accurately represents the condition of the Protected Property as of this time. Baseline data is contained in Exhibit D. The baseline data will delineate the Homesite, Farmstead and Agricultural Land as defined below.

This Easement Deed specifically exempts the area and extent of the Homesite, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, containing approximately one acre of land. This exempted area is indicated in the baseline data.

The baseline data will specifically establish the extent of the Farmstead, which includes that portion of the Protected Property used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated.
The area not included in either the Homesite or Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas such as critical areas and woodlands as well as cropland or grazing land.

XIII. INFORMAL DISPUTE RESOLUTION.

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

XIV. GRANTEES' REMEDIES.

A. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.

B. If Grantor does not take immediate action to cure the violation and restore the Protected Property, Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys’ fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity.

C. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees’ and the United States’ reasonable enforcement expenses, including attorneys’ and consultants’ fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.

D. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in paragraph A.
E. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor’s control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

XV. RESPONSIBILITY FOR COST AND LIABILITIES.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys’ fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section XIX. L. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

XVI. EXTINGUISHMENT AND TRANSFER.

A. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County’s contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation’s share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation’s share will be in proportion to its percentage of original investment.

B. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.
2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

C. Whatcom Land Trust’s rights and interest in this Easement are assignable only to an agency or organization that is approved by United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

XVII. AMENDMENT.

Upon approval of the United States, Grantor and all Grantees may agree to amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose and that the result of the amendment is to strengthen the effectiveness of the Easement.

XVIII. SUBORDINATION.

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit F.

XIX. GENERAL PROVISIONS

A. Notices.

Any notice under this Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:
Grantor: Thomas and Diane Funk
8421 Stein Road
Custer, WA 98240

Grantee, Trust: Whatcom Land Trust
PO Box 6131
100 Central Ave
Bellingham, WA 98225

Grantee, County: Whatcom County
Attn: Agricultural PDR Administrator
5280 Northwest Drive
Bellingham, WA 98226

NRCS: USDA-NRCS
316 West Boone Avenue
Spokane, WA 99201

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

B. Controlling Law.
The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

C. Liberal Construction.
Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

D. Severability.
If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

E. Entire Agreement.

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This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

F. No Forfeiture.
Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.

G. Warranty of Good Title.
Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.

H. Grantor-Grantees.
The terms “Grantors” and “Grantees,” wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.

I. Successors and Assigns.
The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

J. Federal Enforcement.
In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the FRPP easement.

K. General Indemnification
Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other
liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney’s fees and attorney’s fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor’s negligent acts or omissions or Grantor’s breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

L. **Environmental Warranty**

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

“Environmental Law” or “Environmental Laws” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or
potential hazard to human health or the environment.

M. Merger
The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this conservation easement deed are set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the protected property by or to the Grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of "Merger" or any other legal doctrine.

In the event that either Grantee takes legal title to Grantor's interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 107(h)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.

XX. SCHEDULE OF EXHIBITS.

A. Legal Description of Property Subject to Easement
B. Site Map
C. Ordinance # 2002-054
D. Baseline Data
E. Water Rights
F. Subordination Agreement example

TO HAVE AND TO HOLD unto Grantees and the United States of American, and their successors, and assigns forever.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

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IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this
9th day of July, 2013.

Thomas A. Funk
Grantor

Diane Funk
Grantor

STATE OF WASHINGTON
COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that Thomas Funk & Diane Funk, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the

Grantees of the Property to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 9, 2013

Suzanne M. Mildner
Notary Public
Print Name Suzanne M. Mildner
My commission expires 12-31-14

(Use this space for notary's stamp/seal)
WHATCOM COUNTY does hereby accept the above Agricultural Conservation Easement Deed.

Dated: ___________________________  Grantee

By ____________________________

Jack Louws, County Executive

Approved as to Legal Form:

By ____________________________

Senior Civil Deputy Prosecuting Atty

STATE OF WASHINGTON  
COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that ____________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: ____________________________

Notary Public
Print Name _______________________
My commission expires ___________________

(Use this space for notarial stamp/seal)
ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS  

Date

State of __________________________
County of _______________________

On this _____ day of _____________, 20__, before me, the undersigned, a Notary Public in and for the State, personally appeared __________________ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he is the Contracting Officer of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of Washington
Residing at __________________________
My Commission Expires __________________________
The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above Agricultural Conservation Easement Deed.

Dated: ______

By ______________________

Its ______

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that ______________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ______________________ of ______________________ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: ______________________

______________________________
Notary Public
Print Name ______________________
My commission expires ____________

(Use this space for notarial stamp/seal)
EXHIBIT A

Legal Description

All that portion of the Northeast Quarter of the Northwest Quarter, Section 24, Township 40 North, Range 1 East of W.M., described as follows:

Commencing at the Northeast corner of said Northeast Quarter of the Northwest Quarter; thence South 330 feet to the point of beginning; thence South 660 feet; thence West 330 feet; thence North 660 feet; thence East 330 feet to the point of beginning;

Except Stein Road along the East line thereof; Also Except those portions deeded to Whatcom County for road purposes under Auditor's File No.'s 2000500249, 2000500291 and 2000800514, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

APN/Parcel ID: 118316
Tax Map ID: 400124 206460 0000

This Easement Deed excepts 1 acre including the homesite as indicated in Exhibit D – Baseline Documentation.

The above legal description is subject to the following encumbrances:

GENERAL EXCEPTIONS

A. Rights or claims of parties in possession, or claiming possession, not shown by the Public Records.

B. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

C. Easements, prescriptive rights, rights-of-way, liens or encumbrances, or claims thereof, not shown by the Public Records.

D. Any lien, or right to a lien, for contributions to employee benefit funds, or for state workers' compensation, or for services, labor, or material heretofore or hereafter furnished, all as imposed by law, and not shown by the Public Records.

E. Taxes or special assessments which are not yet payable or which are not shown as existing liens by the Public Records.

F. Any lien for service, installation, connection, maintenance, tap, capacity, or construction or similar charges for sewer, water, electricity, natural gas or other utilities, or for garbage collection and disposal not shown by the Public Records.

A-1
G. Unpatented mining claims, and all rights relating thereto.

H. Reservations and exceptions in United States Patents or in Acts authorizing the issuance thereof.

I. Indian, tribal codes or regulations, Indian treaty or aboriginal rights, including easements or equitable servitudes.

J. Water rights, claims or title to water.

K. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

SPECIAL EXCEPTIONS

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

2. Unpatented mining claims; reservations or exceptions in the United States Patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

3. Title to any property beyond the lines of the real property expressly described herein; or title to streets, roads, avenues, lanes, ways or waterways on which such real property abuts, or the right to maintain therein vaults, tunnels, ramps, or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.

4. Any question that may arise due to shifting and changing in the course or boundaries of South Fork Dakota Creek.

5. General and special taxes and charges, payable February 15, delinquent if first half unpaid on May 1, second half delinquent if unpaid on November 1 of the tax year (amounts do not include interest and penalties):

<table>
<thead>
<tr>
<th>Year</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Account Number:</td>
<td>118316/400124 206460 0000</td>
</tr>
<tr>
<td>LevyCode:</td>
<td>2040</td>
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<tr>
<td>Assessed Value-Land:</td>
<td>$338,840.00</td>
</tr>
<tr>
<td>Assessed Value-Improvements:</td>
<td>$92,743.00</td>
</tr>
<tr>
<td>General and Special Taxes:</td>
<td></td>
</tr>
<tr>
<td>Billed:</td>
<td>$1,668.23</td>
</tr>
<tr>
<td>Paid:</td>
<td>$834.14</td>
</tr>
</tbody>
</table>
6. The Land has been classified as Farm and Agricultural and is subject to the provisions of RCW 84.34, which include the requirement of a continuation of restricted use in order to continue the present assessment rate. A change in use can cause an increased assessment rate for present and past years. Notice of Application was recorded as set forth below:

- Recording Date: March 23, 1977
- Recording No.: 1245958

Any sale or transfer of all or a portion of said Land requires execution of a Notice of Compliance Form by the new owner and submission to the county assessor within 60 days of such sale.

Note: If the proposed transaction involves a sale of the Land so classified or designated, there will be additional requirements regarding the Real Estate Tax Affidavit. Please contact Whatcom County Assessor's Records Section or the Company for additional information.

7. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein, as disclosed by the document

- Entitled: Memorandum of Farm Lease
- Lessor: Tom Funk and Diane Funk, husband and wife
- Lessee: Maberry Packing, Inc., a Washington business corporation
- Recording Date: March 12, 1999
- Recording No.: 1990302487

8. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein, as disclosed by the document

- Entitled: Memorandum of Lease
- Lessor: Tom Funk and Diane Funk, husband and wife
- Lessee: Maberry Packing, Inc., a Washington corporation
- Recording Date: March 10, 2004
- Recording No.: 2040301966

9. A deed of trust to secure an indebtedness in the amount shown below,

- Amount: $147,000.00
- Dated: August 17, 2003
- Trustor/Grantor: Thomas R. Funk and R. Diane Funk, husband and wife
- Trustee: First American Title Insurance Company
- Beneficiary: Washington Mutual Bank
- Recording Date: August 25, 2003
- Recording No.: 2039806733

10. A deed of trust to secure an indebtedness in the amount shown below,

- Amount: $35,000.00
- Dated: September 18, 2003
Trustor/Grantee: Thomas R. Funk & R. Diane Funk
Trustee: Group 9, Inc
Beneficiary: Washington Mutual Bank
Recording Date: October 1, 2003
Recording No.: 2031000240
Modification thereto;
Recorded: March 1, 2007
Recording No.: 2070300059

11. Farm Lease, or memorandum thereof, including its terms, covenants, conditions and provisions;
Dated: March 2, 2004
Recorded: September 28, 2010
Recording No.: 2100903178
Lessor: Tom & Diane Funk
Lessee: Maberry Packing, Inc.
Affects: Portion of said premises

END OF EXCEPTIONS
Whatcom County 2012 PDR Program Property  
- Proposed Protected Area

Funk Property

APN 400124 206460 - 39.17 Acres
EXHIBIT C: Ordinance

SPONSORED BY: Planning
PROPOSED BY: Planning
INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM AND OVERSIGHT COMMITTEE

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

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

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land, and timber land; and

WHEREAS, Resolution #2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to $30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that

1 The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1
2. 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 10 day of September, 2002

ATTEST:

Dana Brown-Davis,
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Ward Nelson, Council Chair

APPROVED as to form

Karen N. Frakes, Civil Deputy Prosecutor

(Approved) (Denied)

Pete Kremen, Executive
EXHIBIT D

Baseline Documentation

The Baseline Data Inventory for the Funk Agricultural Conservation Easement Deed is included in the following pages. The remainder of this page is intentionally blank.
EXHIBIT D

FUNK AGRICULTURAL PROTECTION CONSERVATION EASEMENT

Baseline Data Inventory
Whatcom Land Trust

BACKGROUND INFORMATION:

Property Owners
Thomas R. Funk
R. Diane Funk

Physical Address
8421 Stein Road
Custer, WA 98240

Grantors
Thomas R. Funk
R. Diane Funk

Grantees
Whatcom Land Trust,
Whatcom County, and
United States of America

Easement History

In consideration of payment of $155,000 by Whatcom County and the United States to Grantors, Grantors hereby grant, convey and warrant to Grantees a Conservation Easement in perpetuity over the Property, consisting of certain rights and restrictions as defined in this Easement, granted in 2013.

Easement Purpose

The purpose of this Easement is to:
1. Protect the present and future ability to use the Property for agricultural purposes;
2. Preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber;
3. Enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility.

The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h) (4) (A) of the Internal Revenue Code. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose.

Purpose of a Baseline Data Inventory

To establish the present condition of the Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement. The baseline data may consist of reports, maps, photographs, and other documentation. The baseline data specifically establishes the extent of the Farmstead, which includes that portion of the Property used for primary and secondary agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. The area not included in the Farmstead will be depicted under the category of "Farmland". Farmland may include non-farm areas such as critical areas and woodlands as well as cropland or grazing land.
DESCRIPTION OF PROPERTY:

Driving Directions
From Bellingham, travel north on Interstate-S. Turn left on exit 270, right on onto Birch Bay-Lynden Rd. Turn left onto Stein Rd, travel north for .8 miles. Property is on the left, west side of Road.
Address: 8421 Stein Road
(See Vicinity Map)

General Description
The Funk property is located in Western Whatcom County in the Dakota Creek watershed near Custer. The Funk family has worked their 38.54 acre farm since the 1966. The 38.54 acre property has a home (excluded from the Conservation Easement) and farmstead and is currently used raspberry production. There is a hay field in the northern half of the property and the South Fork of Dakota Creek runs through the property surrounded by Conservation Reserve Enhancement Program (CREP) plantings.
(See Vicinity and Topographic Map)

General Attributes
Assessor’s Tax Parcels: total of approximately 38.17 acres - APN - 400124206460
GIS acres is approximately 38.54 acres
(See Parcel Map)

Property Elevation
The property is generally flat at approximately 60 feet above sea level with gentle micro relief. The South Fork of Dakota Creek passes through the property flowing east to west at approximately the 50 ft. contour. The very south west corner of the property slopes to an unnamed tributary stream also at the 50 foot contour.
(See Topographic Map and 2011 Air Photo Map)

Property History
The property was purchased by the Funk family in 1966 from Rolf Michaelson. The farm has been utilized for hay and cattle grazing, strawberry production, and since 2000 used for raspberry production. It is currently leased by Mayberry Packing L.L.C.

Current Land Use and Development
The property is currently leased by another farmer for the production of raspberries.

According to the Whatcom County Planning and Development Services, the property is zoned R5A.

There is a house in the center of the eastern edge of the property facing Stein road that is excluded from the Conservation Easement. There is a barn located to the north of the homesite near Stein road and there is power at barn. There is an irrigation station on a concrete pad supplied with power at Photo Point 12. This station also supplies water to a stand pipe west of the pad.

There is no non-farm related commercial use of the property at this time of conveyance of the conservation easement.
Other Human-made Features

Photo Point 1 is the main access point to the property from Stein Road.
(See Photos and Photo Points Map)

ECOLOGICAL FEATURES:

PHYSICAL FEATURES:

Impervious Surfaces

<table>
<thead>
<tr>
<th>Table I. Funk Impervious Surfaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Area¹</td>
</tr>
<tr>
<td>sq. ft.</td>
</tr>
<tr>
<td>1,679,064</td>
</tr>
<tr>
<td>acres</td>
</tr>
</tbody>
</table>

6,173 square feet of impervious surfaces exist on the 38.54 acre property. The maximum impervious surface allowed by this conservation easement is two percent (2%) or 33,581 square feet (.77 acres) of the property (See Table 1).

The Farmstead is the Northeast quarter of the 38.54 acre property. (See Photo Point Map)

Soils

Soil descriptions from the USDA Soil Survey for Whatcom County (1992)

Soil Units:

100- Lynden sandy loam, 3 to 8 percent slopes (38.5 percent of property)
54- Fishtrap muck, drained, 0 to 2 percent slopes (23.8 percent of property)
62- Hale silt loam, drained, 0 to 2 percent slopes (18.5 percent of property)
99- Lynden sandy loam, 0 to 3 percent slopes (12 percent of property)
45- Edmonds-Woodlyn loamy, drained, 0 to 2 percent slopes (4.1 percent of property)
165- Tromp loam, 0 to 2 percent slopes (3 percent of property)

45-Emonds-Woodlyn loamy, drained, 0 to 2 percent slopes.

This map unit is on outwash terraces and outwash plains. The native vegetation is mainly trees and shrubs. Elevation is 50 to 300 feet. The average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F. and the average frost-free period is about 170 days. This unit is 60 percent Edmonds soil and 25 percent Woodlyn soil. The components of this unit occur as areas so intricately intermingled that mapping them separately was not practical at the selected scale of mapping. Included in this unit are small areas of Tromp, Hale, and Fishtrap soils, ponded areas in depressions, and undrained Edmonds and Woodlyn soils. Included areas make up about 15 percent of the total acreage. The Edmonds soil is very deep and somewhat poorly drained. It has been artificially drained. It formed in an admixture of loess and volcanic ash over glacial outwash. Typically, the surface layer is dark brown loam 11 inches thick. The subsurface layer is dark grayish brown loam 7 inches thick. The subsoil is dark brown and yellowish red, discontinuously cemented, mottled sand 19 inches thick. The substratum to a depth of 60

¹ The acreage and equivalent square footage in this baseline documentation may differ slightly from that listed in the body of the conservation easement. The numbers here are based on the legal descriptions and survey data; the easement numbers are based on county assessor records and maps which are not ground-truthed or cross-checked with other data.
inches is sand. It is variegated but is dominantly dark grayish brown. The depth to sand ranges from 14 to 20 inches. In some areas the surface layer is sandy loam. In other areas the soil has loamy glaciomarine or clayey marine deposits at a depth of 40 to 60 inches, has a substratum of sandy loam, or has 15 to 35 percent pebbles in the substratum. Permeability is moderate in the upper part of the Edmonds soil and very rapid in the substratum. Available water capacity is low. The effective rooting depth is limited by a seasonal high water table, which is at a depth of 1.0 to 2.5 feet from November through April. Runoff usually is very slow, and there is no hazard of erosion. The Woodlyn soil is shallow and poorly drained. It has been artificially drained. It formed in an admixture of loess and volcanic ash over glacial outwash. Typically, the surface layer is dark brown loam 9 inches thick. The subsurface layer is dark grayish brown and grayish brown loam 3 inches thick. The upper 5 inches of the subsoil is a dark grayish brown, mottled, indurated hardpan that breaks to loamy sand. The lower 8 inches is a dark brown, mottled, weakly cemented hardpan that breaks to bary sand. The substratum to a depth of 60 inches is coarse sand. It is variegated but is dominantly brown and olive gray. Depth to the hardpan ranges from 10 to 14 inches. In some areas the surface layer is sandy loam. In other areas the soil has loamy glaciomarine or clayey marine deposits at a depth of 40 to 60 inches, has a substratum of sandy loam, has 15 to 35 percent pebbles in the substratum, or has the hardpan at a depth of 14 to 24 inches. Permeability is moderate in the upper part of the Woodlyn soil, very slow in the hardpan, and very rapid in the loose sand. Available water capacity is low. The effective rooting depth is limited by a seasonal high water table, which is at a depth of 1.0 to 2.5 feet from November through April. Runoff is very slow, and there is no hazard of erosion. This unit is used mainly for hay and pasture or as cropland. The included undrained Edmonds and Woodlyn soils are used as woodland. The main limitations in the areas used for hay and pasture are the seasonal high water table, the low soil fertility, and the low available water capacity. The dominant method of drainage in the areas used for hay and pasture is open ditches. In areas where the drainage system is not maintained or in areas that do not have drainage, the water table limits the use of this unit to grasses and shallow-rooted legumes. Proper stocking rates, pasture rotation, and restricted grazing during wet periods help to keep the pasture in good condition. Grazing when the soils are wet results in compaction of the surface layer and poor tilth. The main limitations in the areas used as cropland are the seasonal high water table, the low soil fertility, and the low available water capacity. The principal crops grown are corn silage and small grain. Because of the inherent low fertility, this unit requires proportionately more fertilizer than most other soils in the survey area to produce similar yields. The hardpan can be ripped and shattered. Ripping and shattering increase the effective rooting depth and improve internal drainage. Returning all crop residue to the soil and including grasses, legumes, or grass-legume mixtures in the cropping sequence help to maintain fertility and tilth. Tile drains and field ditches should be maintained for adequate production on cropland and pasture. Maintaining artificial drainage systems permits fieldwork to be conducted earlier in the spring and increases the yields of perennial crops. Most crops common to the survey area can be grown if the drainage system is adequate. During the growing season, the water table is artificially lowered to a depth of about 3 to 5 feet. In summer, irrigation is required for maximum production.

The Edmonds soil is in capability subclass IIIw. The Woodlyn soil is in capability subclass IVw.

54 Fishtrap muck, drained, 0 to 2 percent slopes.
This very deep, very poorly drained soil is in depressions on outwash terraces. It has been artificially drained. It formed in herbaceous and woody organic deposits over glaciofluvial deposits. The native vegetation is mainly shrubs, forbs, and trees. Elevation is 50 to 300 feet. The average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F, and the average frost-free period is about 170 days.
Typically, the surface layer is very dark grayish brown muck 7 inches thick. The upper 12 inches of the underlying material is very dark brown muck. The lower part to a depth of 60 inches is dark grayish brown and dark gray, mottled sand. In some areas the surface layer is mucky silt loam. In other areas the soil has hemic material in the surface layer, is more than 51 inches deep to the lower part of the underlying material, or is loamy in the lower part of the underlying material. Included in this unit are small areas of Hale and Tromp soils, areas that are ponded, bodies of water, undrained Fishtrap soils, and Fishtrap soils that have slopes of more than 2 percent. Included areas make up about 10 percent of the total acreage. Permeability is moderate in the upper part of the Fishtrap soil and very rapid in the lower part. Available water capacity is high. The effective rooting depth is limited by a seasonal high water table, which is at a depth of 1.5 to 2.5 feet from October through May. Runoff usually is very slow, but the soil may be ponded during the winter. There is no hazard of erosion. This unit is used mainly for hay and pasture or as cropland. The included undrained Fishtrap soils are used as woodland. The main limitation in the areas used for hay and pasture is the seasonal high water table. Proper stocking rates, pasture rotation, and restricted grazing during wet periods help to keep the pasture in good condition. The wetness limits the choice of plants and the period of cutting or grazing and increases the risk of winterkill. Grazing when the soil is wet results in compaction of the surface layer and poor tilth. The main limitations in the areas used as cropland are the seasonal high water table and the soil acidity. This soil is well suited to most crops commonly grown in the survey area if adequate drainage systems are maintained. The principal crops are potatoes, blueberries, and corn silage. Tile drains and field ditches should be maintained. They permit fieldwork to be conducted earlier in the spring and increase the yields of perennial crops. During the growing season, the water table is artificially lowered to a depth of about 3 to 5 feet. Subsidence is minimized if the water table is maintained directly below the root zone during the growing season and then allowed to return to the surface during the winter. Using regulating structures in open ditches as a means of subirrigation reduces the extent of subsidence. In summer, irrigation is required for maximum production. The main limitations affecting homesite development are the seasonal high water table and the low strength. The wetness can be reduced by building the house on a pad and by installing drainage tile around footings if a suitable outlet is available. If buildings are constructed on this soil, the muck should be excavated or the buildings should be constructed on piles anchored in the mineral soil. The design of buildings and roads can offset the limited ability of the soil to support a load. In shallow excavations special retainer walls may be needed to keep cutbanks from caving. The main limitations on sites for septic tank absorption fields are the seasonal high water table and a poor filtering capacity. Installing the absorption field in fill approved by the health district helps to compensate for these limitations. This map unit is in capability subclass llw.

62-Hale silt loam, drained, 0 to 2 percent slopes.

This very deep, somewhat poorly drained soil is on outwash terraces. It has been artificially drained. It formed in an admixture of loess and volcanic ash over glacial outwash. The native vegetation is mainly trees and shrubs. Elevation is 50 to 300 feet. The average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F, and the average frost-free period is about 170 days. Typically, the surface layer is very dark grayish brown silt loam 10 inches thick. The subsoil is about 16 inches of mottled olive gray, grayish brown, dark brown, and strong brown silt loam and loam. The upper 12 inches of the substratum is dark grayish brown loamy fine sand. The lower part to a depth of 60 inches is sand. It is variegated but is dominantly dark grayish brown. The depth to sand or loamy sand ranges from 15 to 30 inches. In some areas the surface layer is loam. In other areas the soil has a substratum of sandy loam, gravelly sandy loam, gravelly sand, or very gravelly sand. Included in this unit are small areas of Birchbay, Lynden, Kickerville, Whitehorn, Everson, Labounty, Fishtrap, Edmonds, and Laxton soils,
undrained Hale soils, and soils that are similar to the Hale soil but have 18 to 35 percent clay in the subsoil or have a hardpan of dense glaciomarine drift at a depth of 40 to 60 inches. Included areas make up about 20 percent of the total acreage.
Permeability is moderate in the upper part of the Hale soil and very rapid in the substratum. Available water capacity is moderate. The effective rooting depth is limited by a seasonal high water table, which is at a depth of 1 to 4 feet from November through April. Runoff usually is very slow, but the soil may be ponded during the winter. There is no hazard of erosion. This unit is used mainly for hay and pasture or as cropland. It also is used as woodland and as a site for homes. The main limitations in the areas used for hay and pasture are the seasonal high water table and the moderate available water capacity. Proper stocking rates, pasture rotation, and restricted grazing during wet periods help to keep the pasture in good condition. Grazing when the soil is wet results in compaction of the surface layer and poor tilth. The water table limits the use of this unit to grasses unless a drainage system is installed. The wetness limits the choice of plants and the period of cutting or grazing and increases the risk of winterkill. The main limitations in the areas used as cropland are the seasonal high water table and the moderate available water capacity. The principal crops are narrow leaf corn and corn silage. This unit is well suited to most crops commonly grown in the survey area if adequate drainage systems are maintained. During the growing season, the water table is artificially lowered to a depth of about 3 to 5 feet. Tile drains and field ditches should be maintained. They permit fieldwork to be conducted earlier in the spring and increase the yields of perennial crops. In summer, irrigation is required for maximum production. The main limitation affecting homesite development is the seasonal high water table. The wetness can be reduced by building the house on a pad and by installing drainage tile around footings if a suitable outlet is available. In shallow excavations special retaining walls may be needed to keep cutbanks from caving. The main limitations on sites for septic tank absorption fields are the seasonal high water table and a poor filtering capacity in the substratum. Installing absorption lines that are longer than normal helps to overcome these limitations.
This map unit is in capability subclass 1lw,

99 Lynden sandy loam, 0 to 3 percent slopes.
This very deep, well-drained soil is on outwash terraces. It formed in loess and volcanic ash over glacial outwash. The native vegetation is mainly conifers and shrubs. Elevation is 50 to 300 feet. The average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F, and the average frost-free period is about 170 days. Typically, the surface layer is dark brown sandy loam 8 inches thick. The subsoil is dark brown sandy loam 10 inches thick. The substratum is variegated sand. The upper 12 inches is dominantly very dark grayish brown, and the lower part to a depth of 60 inches is dominantly dark grayish brown. The depth to sand ranges from 14 to 24 inches. In some areas the surface layer is loam. In other areas the soil has 15 to 25 percent pebbles in the substratum. In some places the lower part of the subsoil, the substratum, or both are weakly cemented, mottled, or both. In other places the combined thickness of the surface layer and subsoil is 24 to 36 inches or 8 to 14 inches. Included in this unit are small areas of Hale, Tromp, and Lynnwood soils and small areas of Lynden soils that have slopes of more than 3 percent. Included areas make up about 10 percent of the total acreage. Permeability is moderately rapid in the upper part of the Lynden soil and very rapid in the substratum. Available water capacity is moderate. The effective rooting depth is 60 inches. Runoff is very slow, and there is no hazard of water erosion. This unit is used mainly for hay and pasture, as cropland, or as a site for homes. It also is used as woodland. The main limitation in the areas used for hay and pasture is the moderate available water capacity. The main limitations in the areas used as cropland are the moderate available water capacity and the hazard of erosion. The principal crops are raspberries, carrots, and corn silage. Moisture retention can be improved by mulching, rotating legumes with grain, and leaving residue on slopes. Drip irrigation is the most suitable method of applying water for crop production. In summer, irrigation is required for maximum production.
Douglas fir is the main woodland species. Among the trees of limited extent are western hemlock and red alder. The common understory plants are western swordfern, salal, Oregon grape, vine maple, western brackenfern, and trailing blackberry. The use of wheeled and tracked equipment during periods when the soil is wet causes excessive rutting. Using low-pressure ground equipment can minimize damage to the soil. Unsurfaced roads are soft when moist and are subject to deep rutting during rainy periods. This unit is suited to homesite development. It has few limitations. In shallow excavations special retainer walls may be needed to keep cutbanks from caving.

This map unit is in capability subclass IIIa.

100-Lynden sandy loam, 3 to 8 percent slopes.

This very deep, well-drained soil is on outwash terraces. It formed in loess and volcanic ash over glacial outwash. The native vegetation is mainly conifers and shrubs. Elevation is 50 to 300 feet. The average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F, and the average frost-free period is about 170 days. Typically, the surface layer is dark brown sandy loam 8 inches thick. The subsoil is dark brown sandy loam 10 inches thick. The substratum is variegated sand. The upper 12 inches is dominantly very dark grayish brown, and the lower part to a depth of 60 inches is dominantly dark grayish brown. The depth to sand ranges from 14 to 24 inches. In some areas the surface layer is loam. In other areas the soil has 15 to 25 percent pebbles in the substratum. In some places the lower part of the subsoil, the substratum, or both are weakly cemented, mottled, or both. In other places the combined thickness of the surface layer and subsoil is 24 to 36 inches or 8 to 14 inches. Permeability is moderately rapid in the upper part of the Lynden soil and very rapid in the substratum. Available water capacity is moderate. The effective rooting depth is 60 inches. Runoff is slow, and the hazard of water erosion is slight. This unit is used mainly for hay and pasture, as cropland, or as woodland. It also is used as a site for homes. The main limitation in the areas used for hay and pasture is the moderate available water capacity. The main limitations in the areas used as cropland are the moderate available water capacity and the hazard of erosion. The principal crops are raspberries, carrots, and corn silage. Moisture retention can be improved by mulching, rotating legumes with grain, and leaving residue on slopes. Drip irrigation is the most suitable method of applying water for crop production. In summer, irrigation is required for maximum production. The use of wheeled and tracked equipment during periods when the soil is wet causes excessive rutting. Using low-pressure ground equipment can minimize damage to the soil. Unsurfaced roads are soft when wet and are subject to deep rutting during rainy periods. This unit is suited to homesite development. It has few limitations. In shallow excavations special retainer walls may be needed to keep cutbanks from caving. The main limitation on sites for septic tank absorption fields is a poor filtering capacity in the substratum. Installing the absorption field in fill approved by the health district helps to compensate for this limitation.

This map unit is in capability subclass IIIb.

165- Tromp loam, 0 to 2 percent slopes.

This very deep, moderately well drained soil is on outwash terraces. It formed in a mixture of loess and volcanic ash over glacial outwash. The native vegetation is mainly conifers and shrubs. Elevation is 50 to 300 feet. The average annual precipitation is about 45 inches, the average annual air temperature is about 50 degrees F, and the average frost free period is about 170 days. Typically, the surface layer is dark brown loam 11 inches thick. The upper 9 inches of the subsoil is dark brown and strong brown loam. The lower 6 inches is weakly cemented, dark yellowish brown, mottled sandy loam. The upper 20 inches of the substratum is weakly cemented, olive brown, mottled sand. The lower part to a depth of 60 inches is grayish brown and dark grayish brown, mottled sand. The depth to sand ranges from 14 to 30 inches. In some areas the surface layer is sandy loam or silt loam. In other areas the soil is not cemented. Is sandy loam in the upper part of
the substratum, has 15 to 35 percent pebbles in the substratum, has loamy glaciomarine or glacial
till at a depth of 40 to 60 inches, or is 10 to 14 inches deep to sand.
Included in this unit are small areas of Hale, Yelm, Edmonds, Lynden, Birchbay, and Whatcom
soils and small areas of Tromp soils that are subject to occasional flooding. Included areas make
up about 15 percent of the total acreage. Permeability is moderate in the upper part of the Tromp
soil and very rapid in the substratum. Available water capacity is high. The effective rooting depth
is limited by a seasonal high water table, which is at a depth of 1.5 to 2.5 feet from November
through April. Runoff is very slow, and there is no hazard of erosion. This unit is used mainly for
hay and pasture, as cropland, or as woodland. It also is used as a site for homes. The main
limitation in the areas used for hay and pasture is the seasonal high water table. Proper stocking
rates, pasture rotation, and restricted grazing during wet periods help to keep the pasture in good
condition. This unit has few limitations in the areas used for cropland. The principal crops are
raspberries, strawberries, and sweet corn. In summer, irrigation is required for maximum
production. The main limitation affecting homeste development is the seasonal high water table.
The main limitations on sites for septic tank absorption fields are the seasonal high water table and
a poor filtering capacity in the substratum. Installing the absorption field in fill approved by the
health district helps to overcome these limitations.
This map unit is in capability subclass Ilw.

Vegetation
The property is primarily vegetated with raspberry production. There is a significant portion of the
property in CREP or forested (approximately 5.12 acres). There is approximately 6.1 acres of
pasture north of the road that bisects the property and south of the South Fork of Dakota Creek.

Water Resources
The South Fork of Dakota Creek flows from the east to the west in the northern portion of the
property. A tributary stream of the South Fork of Dakota Creek flows southeast to northwest over
the very southwest corner portion of the property. Wetland areas of the property are indicated as
Priority Habitat by Washington Department of Fish and Game.

There is no well associated with the easement property. The well for the home is behind the shed
located west of the house.

Biological Resources

Fish Species of Special Concern
According to Washington Department of Fish and Game Priority Habitat and Species Report there
are the following fish species of concern utilizing the creeks on the property: Chinook, Chum,
Coast Resident Cutthroat, Coho, Steelhead Trout, and Steelhead salmonid species.

Wildlife Species of Special Concern
There are no wildlife species of concern on the property. Canadian Geese were observed flying
South during this site visit.

November 2012
CONCLUDING REMARKS:
This baseline data inventory is an accurate representation of the 38 54 acre Funk Farm at the time of the conveyance of the Conservation Easement to Whatcom Land Trust and Whatcom County and the United States of America. 

This is a business record of Whatcom Land Trust prepared by Whatcom Land Trust in its normal course of business.

DATE OF SITE VISIT: OCTOBER 10, 2012  TIME SPENT ON SITE: 2 HOURS

PERSONS PRESENT: Eric Carabba (WLT), Nick Sailing (WLT) Thomas Funk (Owner)

____________________________________
SIGNATURE OF WLT REPRESENTATIVE: Nick Saling

PRINT NAME: Nick Saling       DATE: 12/10/12

SIGNATURE OF PROPERTY OWNER:

PRINT NAME: Thomas R. Funk       DATE: 12/34/12

SIGNATURE OF PROPERTY OWNER:

PRINT NAME: R. Dana Funk       DATE: 12/34/12

ATTACHMENTS:
A. Maps
1. Vicinity Map
2. USGS Topographic Map 1:24,000
3. Parcel Map (Whatcom County Assessor)
4. Soil Map (2010 Air Photo)
5. Current Air Photo Maps (2011 NAIP)
7. Farmstead Impervious Surface (2010 Air Photo)
8. Photo Point Map (2010 Air Photo)

B. Photo Points List and Photographs
Provide photographs of specific photo points on the property that can be replicated during annual monitoring.
Funk Ag PDR
Conservation Easement

Legend

NRCS Soils

Subject Property

Township 40 North, Range 1 East, Section 24 W.M.

Data Sources:
- Soils: NRCS, 2010 Air Photo - Whatcom County
- 2012 Tax Parcels - Whatcom County Assessor
- Road Labels - MCPDS Sections and Water - DNR

October 2012 WLT
Funk Ag PDR Conservation Easement
Township 40 North, Range 1 East, Section 24 W.M.

Legend

- Subject Property
- Conservation Easement

1:12,000

Data Sources:
- 2008 Air Photo - WC
- 2012 Tax Parcels - Whatcom County Assessor
- Road Labels - WCPDS Sections and Water - DNR
- September 2012 WLT

No Warranty for Accuracy of Data. BOUNDARIES ARE APPROXIMATE!
EXHIBIT E: Water Rights Documentation

EXHIBIT E: Water Rights Documentation

CERTIFICATE OF SURFACE WATER RIGHT

This is to certify that

of

State of Washington

has made proof to the satisfaction of the State Supervisor of Water Resources of Washington, of a right to the use of the waters of

Section 26, T83 N., R. 26 E., W. M., under and subject to provisions contained in

Permit No. 5752, issued by the State Supervisor of Water Resources, and that said right to the use of said waters has been perfected in accordance with the laws of Washington, and is hereby confirmed by the State Supervisor of Water Resources of Washington and entered on record in Volume 120, at Page 4596, on the 20th day of March, 1944; that the priority date of said right is February 23, 1944; that the amount of water under said right is

The right to the use of the water specified hereby is subject to the lands or place of use herein described, except as provided in Sections 6 and 7, Chapter 126, Laws of 1929.

WITNESS the seal and signature of the State Supervisor of Water Resources.

[Signature]

[Seal]
WATER RIGHT CLAIMS REGISTRATION

WATER RIGHT CLAIM

1. NAME: Thomas R. Funk

ADDRESS: 8421 Stein Rd
Custer, Wash. 98240

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED:
   Ground Water
   (SURFACE OR GROUND WATER)
   W.R.I.A. 1
   (LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS: a well

B. IF SURFACE WATER, THE SOURCE IS:

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:
   A. QUANTITY OF WATER CLAIMED: 9.5 cu. ft./sec
      PRESENTLY USED: 9.5 cu. ft./sec
      (CUBIC FEET PER SECOND OR GALLONS PER MINUTES)
   B. ANNUAL QUANTITY CLAIMED: 2,000 acre ft.
      PRESENTLY USED: 2,000 acre ft.
      (ACRE FEET PER YEAR)
   C. IF FOR IRRIGATION, ACRES CLAIMED:
      PRESENTLY IRRIGATED:
   D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: continuously

4. DATE OF FIRST PUTTING WATER TO USE: MONTH, YEAR
   MONTH: 6
   YEAR: 1966

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL:
   FEET WEST FROM THE SOUTH EAST CORNER OF SECTION: 24
   FEET NORTH:
   BEING WITHIN NE 1/4 NW 1/4 OF SECTION: 24 T. 40 N., R. 1 E. (E.O.R.K.) W.M.
   IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT, BLOCK, OF
   (GIVE NAME OR PLAT OR ADDITION)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED:
   NE 1/4 quarter of NW 1/4 quarter of section 24,
   Township 40 N., Range 1 East, 5 W.M.
   COUNTY: Whatcom

7. PURPOSE(S) FOR WHICH WATER IS USED: Domestic Supply

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: Appropriation

DO NOT USE THIS SPACE

THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADMISSION OF ANY CLAIM TO THE RIGHT TO USE OF WATER AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES ACCEPT FOR THE FILING FEE.

DATE RETURNED: THIS HAS BEEN ASSIGNED

WATER RIGHT CLAIM APPLICATION NO.

DATE: 6/27/94

CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW:

SIGNATURE OF CLAIMANT:

E-2
EXHIBIT F: Subordination Agreement Example

When recorded return to:


Grantor: __________________________
Grantee: __________________________

Legal Description
Abbreviated form: __________________________
Additional legal at Exhibit A.

Assessor's Tax Parcel Number: ______________

Reference number(s) of related/assigned/released documents: ______________
Reference(s) to document(s) appears on page(s) _______

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. _______________ ("Subordinator") is the owner and holder of a mortgage dated ______________, which was recorded under Auditor's File No. ______________, records of ______________ County;

2. _______________ ("Easement Holder") is the holder of a conservation easement dated ______________, 20__, executed by [["Owner"] or ["Owners"] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;

F-1
3. __________, [husband and wife.] ["Owner") or ("Owners") [is the owner or are the owners] of all the real property described in the conservation easement identified above in Paragraph 2.

4. In consideration of benefits to Subordinator from ["Owner") or ("Owners")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.

5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.

6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this __________ day of __________, 20__.

SUBORDINATOR

________________________
(Name)

STATE OF WASHINGTON )

COUNTY OF __________ )

I certify that I know or have satisfactory evidence that __________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the __________ of __________, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: ________________

SUBORDINATOR

________________________
(Name)

F-2
Notary Public
Print Name
My commission expires

(Use this space for notarial stamp/seal)
Supplemental Budget Request

Administrative Services

<table>
<thead>
<tr>
<th>SuppID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
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<tbody>
<tr>
<td>1951</td>
<td>326</td>
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<td>Michael Russell</td>
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Expenditure Type: One-Time
Year 1 2013
Add'l FTE □ Add'l Space □ Priority 1

Name of Request: Security Improvements for Central Plaza Bldg

\[ X \] Department Head Signature (Required on Hard Copy Submission) Date

7/11/13

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tr>
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<td>Fund Balance</td>
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<tr>
<td>7350</td>
<td>Buildings &amp; Structures</td>
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<td>Request Total</td>
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1a. Description of request:
This request is for security improvement for the Public Defender's reception area. The addition of a bullet proof wall, door, bullet proof glass pass-through window and prox-doors will improve the security within the reception area.

1b. Primary customers:
Public Defender Staff

2. Problem to be solved:
There are presently no restrictions or barriers to protect the occupants of this building. These improvements will create a safety zone for the receptionist and utilize the prox system to access the rest of the building. This restricted access will allow the receptionist to buzz clients into the office area and at the same time allow employees to access the office freely with their prox-badges.

3a. Options / Advantages:
There are no other options to make this area more secure. The advantage of this proposed work is to provide a safer working environment for the Public Defender's Office and its clients.

3b. Cost savings:
There are no alternatives for this work, therefore there are no cost savings associated with this work.

4a. Outcomes:
When completed these improvements will provide a safer work environment for the Public Defender's Office and its clients.

4b. Measures:
When this work is complete it will provide a safer working environment for the Public Defender's Office and its clients.

5a. Other Departments/Agencies:
Facilities will work with the Public Defender's office to complete this project

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

6. Funding Source:
REET 1
MEMORANDUM

To: Whatcom County Council Members
From: Jack Louws, County Executive
Subject: Budget Supplemental for EDI Program funding
Date: July 10, 2013

At the July 9th Council meeting, County Council approved the EDI Board’s recommendation to fund a grant and loan from the EDI Program for the City of Nooksack’s Water Treatment Plant upgrade. Accordingly, we are submitting a budget supplemental to accommodate this request.

The $780,000 will be provided from the Public Utilities Improvement Fund, through an Interlocal Loan and Grant agreement with the City of Nooksack, as follows: $260,000 as a grant, and $520,000 as a 20-year term loan.

Upon your approval of this request, we will submit for your approval the Interlocal Loan and Grant Agreement with the City of Nooksack.

If you have any questions on this matter, please feel free to contact me at 676-6717.
Supplemental Budget Request

Executive

Supp # 1583  Fund 332  Cost Center 332226  Originator: Suzanne Mildner

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

Name of Request: Nooksack Water Treatment Upgrade EDI

X

Department Head Signature (Required on Hard Copy Submission)  Date 7/11/13

Costs:

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<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<td>$780,000</td>
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Request Total  $0

1a. Description of request:
Supplemental budget for an EDI Program grant and loan agreement with the City of Nooksack in support of the Water Treatment Plant upgrade.

1b. Primary customers:
Residents of Cities of Nooksack and Everson

2. Problem to be solved:
The current wastewater treatment plant in Nooksack has reached its capacity. This proposed WWTP upgrade will make additional capacity available to new commercial and industrial businesses wanting to locate within Nooksack; it will also support expansion of existing businesses. The EDI Board made a recommendation to fund this project, and the Council has approved the recommendation. This request provides the loan and grant funding to City of Nooksack.

3a. Options / Advantages:
N/A

3b. Cost savings:
N/A

4a. Outcomes:
Increased capacity for the WWTP which will result in an updated NPDES permit issued by the Department of Ecology once the project has been completed. Completion of the project is estimated to be Fall of 2014.

4b. Measures:
Written report from the City of Nooksack on project completion

5a. Other Departments/Agencies:
None

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

6. Funding Source:
Public Utilities Improvement Fund

Wednesday, July 10, 2013
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

K. Olson
Originator:

Initial: 40
Date: 7/24/13

Date Received in Council Office
8/6/13

K. Christensen
Division Head:

Initial: 88
Date: 7/25/13

Agenda Date
8/6/13

D. Gibson
Prosecutor:

Initial: dig
Date: 7/15/13

Assigned to:
Finance

F. Abart
Dept. Head:

Initial: 224
Date: 7/25/13

FCZD Board of Supervisors

B. Bennett
Purchasing/Budget:

Initial: 08
Date: 7/25/13

J. Louws
Executive:

Initial: 301
Date: 7/30/13

TITLE OF DOCUMENT:

National Estuary Program Grant: Birch Bay Priority Stormwater Retrofit Projects Pre-Design

ATTACHMENTS:
1. Memo
2. Contract information sheet
3. Grant agreement and related exhibits

SEPA review required? ( ) Yes ( x ) 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.)

The National Estuary Program grant will provide engineering pre-design analysis for four priority stormwater retrofit areas included in the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District 6-year capital plan. These areas were identified through previous planning efforts due to localized flooding, poor water quality results or for causing serious erosion problems.

Each of the four projects will be surveyed and a base map suitable for engineering design will be produced. Two alternatives will be evaluated and a preliminary design report with cost estimates will be developed for each project. This project will assist BBWARM District with future budgeting and grant funding applications.

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: The Honorable Jack Louws, County Executive, and Honorable Members of Board of Supervisors of the Flood Control Zone District

FROM: Chris Brueske, P.E., Assistant Director
Kirk Christensen, P.E., Stormwater Manager

THROUGH: Frank Abart, Public Works Director

RE: National Estuary Program Grant for Birch Bay Priority Stormwater Retrofit Projects Pre-Design

DATE: July 16, 2013

Enclosed for your review and signature are two (2) originals of a National Estuary Program (NEP) grant between State of Washington Dept. of Ecology (DOE) and Whatcom County Flood Control Zone District for Birch Bay Priority Stormwater Retrofit Projects Pre-Design.

- **Background and Purpose**
  This National Estuary Program grant will provide engineering pre-design analysis for four priority stormwater retrofit areas included in the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District 6-year capital plan. These areas in the Birch Bay watershed include older residential development and aging, undersized stormwater infrastructure. Stormwater runoff from existing development in these priority areas carries pollutants into Birch Bay, threatening critical marine habitat, public health, and popular shellfish harvest areas.

  The proposed pre-design analyses will capitalize on extensive planning and outreach efforts completed in the Birch Bay watershed to date and will identify opportunities to incorporate stormwater treatment facilities in areas identified for stormwater retrofits by these previous efforts. Pre-design reports will provide the needed information to incorporate water quality treatment in the final design. Construction of projects will then result in improved water quality and reduction in fecal coliform levels from stormwater outfalls into Birch Bay.

- **Funding Amount and Source**
  This project’s total cost is $112,750. A grant in the amount of $94,750 provides for in reimbursement of project costs by DOE with an additional $18,740 provided through Public Works Stormwater staff time, which is partially funded by fees collected through BBWARM (cost center 169250).

Please contact Kraig Olason at extension 50782 if you have any questions regarding this agreement.

Enclosures
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Public Works – Stormwater

Contract or Grant Administrator: Kraig Olson, Senior Planner

Contractor's / Agency Name: State of Washington Dept. of Ecology

Is this a New Contract? Yes _X_ No ___
If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ___
If Amendment or Renewal, Original Contract # __________
Does contract require Council Approval? Yes ___ No ___

Is this a grant agreement? Yes _X_ No _X_
If yes, grantor agency contract number(s) G1400023 CFDA # 66.123

Is this contract grant funded? Yes ___ No ___
If yes, associated Whatcom County grant contract number(s) __________

Is this contract the result of a RFP or Bid process? Yes ___ No ___
If yes, RFP and Bid number(s) Direct letter invite _______ Cost Center: 169250

Is this agreement excluded from E-Verify? No ___ Yes _X_ If no, include Attachment D Contractor Declaration form

If yes, indicate exclusion(s) below:
☐ Professional services agreement for certified/licensed professional
☐ Contract less than $100,000.
☐ Contract work is all performed outside U.S. or interstate.
☐ Interlocal Agreement (between Gov’ts)
☐ Public Works - Local Agency/Federally Funded FHWA

Contract Amount:(sum of original contract amount and any prior amendments)
$ 94,750
This Amendment Amount:
$ __________
Total Amended Amount:
$ __________

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $40,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope:
This grant will provide engineering pre-design analysis for four priority stormwater retrofit areas included in the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District 6-year capital plan. Project designs will include improved conveyance and water quality treatment.

Term of Contract:
[sign or initial] [indicate date transmitted]
1. Prepared by: R. McConnell Date 7/16/13 [electronic]
2. Attorney reviewed: Daniel L. Gibson Date 07/22/13 [electronic]
3. AS Finance reviewed: bbennett [electronic]
4. IT reviewed if IT related Date 7/18/13 [electronic]
5. Corrections made: Date 07/25/13 [electronic] hard copy printed
6. Attorney signoff: Daniel L. Gibson Date 07/22/13
7. Contractor signed: Date 7-25-13 [summary via electronic; hardcopies]
8. Submitted to Exec Office Date
9. Reviewed by DCA Date
10. Council approved (if necessary) Date
11. Executive signed: Date
12. Contractor Original Returned to dept; Date
13. County Original to Council Date

Expiration Date: 10/31/2014
**SIGNATURE AUTHORIZATION FORM FOR GRANT/LOAN RECIPIENTS**

**Department of Ecology**  
Water Quality Program  
PO Box 47600  
Olympia, WA 98504-7600  
Phone: (360) 407-6600  
FAX: (360) 407-7151

<table>
<thead>
<tr>
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<tr>
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<tr>
<th>Project Title</th>
<th>Agreement Number</th>
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<tbody>
<tr>
<td>Birch Bay Priority Stormwater Retrofit Projects Pre-Design</td>
<td>G1400023</td>
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**AUTHORIZING SIGNATORY**

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<th>Signature</th>
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<th>Title/Term of Office</th>
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<tbody>
<tr>
<td>Jack Louws</td>
<td></td>
<td>County Executive/Signatory for Flood Control Zone District Board of Supervisors</td>
</tr>
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</table>

**AUTHORIZED TO SIGN AGREEMENT AMENDMENTS**

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<tr>
<td>Jack Louws</td>
<td></td>
<td>County Executive/Signatory for Flood Control Zone District Board of Supervisors</td>
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**AUTHORIZED TO SIGN REQUEST FOR REIMBURSEMENT**

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<tr>
<td>Frank M. Abart</td>
<td></td>
<td>Public Works Director</td>
</tr>
<tr>
<td>Kirk N. Christensen</td>
<td></td>
<td>Stormwater Manager</td>
</tr>
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ECY 070-206 (Rev. 01/2006)  
Ecology is an equal opportunity agency.
Federal Funding Accountability and Transparency Act (FFATA)
Data Collection Form

Federal funds that require compliance with the Federal Funding Accountability and Transparency Act support this agreement between The Department of Ecology (ECY) and your organization. The purpose of the Transparency Act is to make information available online so the public can see how recipients spend federal funds.

Your organization must have a Data Universal Numbering System (DUNS®) number to comply with the act and be eligible to enter into this agreement. If you do not already have one, you may get a DUNS number free of charge by contacting Dun and Bradstreet at www.dnb.com. ECY also encourages registration with the Central Contractor Registration (CCR) to reduce data entry by both ECY and your organization. You may register with CCR free of charge at www.ccr.gov. ECY will report information about your organization and this agreement to the federal government as required by Title 2 CFR, Part 25. The public can view this information on the federal government website www.USAspending.gov.

ECOLOGY AGREEMENT # __________________________

Recipient Information – For Recipient Use Only

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<th>2. DUNS Number</th>
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<table>
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<th>3. Principal Place of Performance</th>
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<tbody>
<tr>
<td>322 N. Commercial St., Suite 210</td>
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<table>
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<th>3b. State</th>
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<tr>
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</table>


5. In the preceding fiscal year did your organization:
   a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and
   b. $25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and
   c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330.

☐ NO. Skip to signature block. Sign, date and return.

☐ YES. You must report the following information for the five (5) most highly compensated executives in your organization. Sign, date and return.

<table>
<thead>
<tr>
<th>Name Of Official</th>
<th>Position Title</th>
<th>Total Compensation Amount*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<td>2.</td>
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<td>4.</td>
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<td>5.</td>
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</table>

*Note: “Total compensation” means the cash and noncash dollar value earned by the executive during the subrecipient’s past fiscal year. (For more information, see 17 CFR 229.402 (C)(2)).

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

Signature of Authorized Representative

Print Name

Date 7/14/13

Please sign and return this document with the signed agreement. The Department of Ecology will not pay any invoices until it receives this completed and signed form.

If you need this document in a format for the visually impaired, call Leann Ryser at (360) 407-7054. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

ECY 070-395 (3/11) Page 1 of 2
Federal Funding Accountability and Transparency Act (FFATA) 
Data Collection Form

For Department of Ecology Use Only

<table>
<thead>
<tr>
<th>EYC Agreement Number</th>
</tr>
</thead>
</table>

Subaward Project Description (see instructions and example below)

Instructions for Subaward Project Description:

In the first line of the description, provide a title for the subaward that captures the main purpose of the subrecipient’s work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the subaward, how the funds will be used, and what will be accomplished.

Example of a Subaward Project Description:

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

**ECOLOGY**

State of Washington

**NATIONAL ESTUARY PROGRAM (NEP)**

**WATERSHED PROTECTION AND RESTORATION**

**GRANT FUNDING AGREEMENT BETWEEN**

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND THE

**WHATCOM COUNTY PUBLIC WORKS DEPARTMENT**

**GRANT AGREEMENT NUMBER**

G1400023

**BIRCH BAY PRIORITY STORMWATER RETROFIT PROJECTS PRE-DESIGN**

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National Estuary Program (NEP)  
Watershed Protection and Restoration  
Grant Funding Agreement Between  
The State of Washington Department of Ecology  
and the  
Whatcom County Public Works

This is a binding agreement between the state of Washington Department of Ecology [ECOLOGY] and Whatcom County Public Works [RECIPIENT]. The purpose of this agreement is to provide funds to the RECIPIENT, who will carry out the requirements described in this agreement.

PART I. GENERAL INFORMATION

Project Title: Birch Bay Priority Stormwater Retrofit Projects Pre-Design
Grant Number: G1400023
State Fiscal Year: 2014
Total Project Cost: $112,750
Total Eligible Cost: $94,000
ECOLOGY Share: $94,000
ECOLOGY Maximum Percentage: 100%
EFFECTIVE DATE: July 1, 2013
EXPIRATION DATE: October 31, 2014

RECIPIENT INFORMATION

RECIPIENT Name: Whatcom County Public Works
Mailing Address: 322 N. Commercial Street, Suite 301
Bellingham, WA 98225
Fax Number: (360) 715-7451
Federal Taxpayer ID Number: 91-6001383
PROJECT Manager: Kraig Olason
Email Address: Kolason@co.whatcom.wa.us
Phone Number: (360) 715-7450
Ecology Watershed Protection and Restoration Grant Agreement No.G1400023
Birch Bay Priority Stormwater Retrofit Projects Pre-Design

**PROJECT Financial Officer:**

Remy McConnell  
Email Address: rmconn@co.whatcom.wa.us  
Phone Number: (360) 715-7450 x50691

**ECOLOGY CONTACT INFORMATION**

**Project Manager:**

Kim Harper  
Email Address: kim.harper@ecy.wa.gov  
Phone Number: (425) 649-4451  
Fax Number: (425) 649-7098  
Mailing Address: WA State Department of Ecology  
Northwest Regional Office  
3190 160th Ave SE  
Bellevue, WA 98008-5452

**Project Financial Officer:**

Kirsten Weinmeister  
Email Address: kirsten.weinmeister@ecy.wa.gov  
Phone Number: (360) 407-6514  
Fax Number: (360) 407-7151  
Mailing Address: WA State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**CHECK ALL THAT APPLY:**

- NEP Funds: (Catalog of Federal Domestic Assistance No. 66.123) Amount: **$94,000**  
  ✔ Yes ☐ No

- Increased Oversight?  ✔ Yes ☐ No

**PART II. NEP FUNDING BACKGROUND**

In October 2010, the Environmental Protection Agency (EPA) solicited a Request for Proposals to implement priority work consistent with the 2009 Action Agenda for the protection and restoration of Puget Sound. EPA solicited proposals from applicants that would serve as a Lead Organization (LO) for one of four areas of emphasis. In January 2011, Washington State agencies were selected as LOs, to coordinate six-year efforts to develop and implement strategies in four areas of emphasis:

- Watershed protection and restoration (LOs – Departments of Ecology and Commerce)
- Marine and nearshore protection and restoration (LOs – Departments of Fish & Wildlife and Natural Resources)
- Toxics and nutrients prevention, reduction and control (LO – Department of Ecology)
- Pathogen prevention, reduction, and control (LOs – Departments of Health and Ecology).
For the Watershed grant, EPA allocated just over $14 million for the first three years of the grant. Subsequent funding is in part dependent on demonstration by the selected LOs to EPA and Congress that funds can be expeditiously and appropriately expended with significant measureable results. The LO work is being coordinated with EPA and PSP and is an important part of the Action Agenda update process.

PART III. PROJECT OVERVIEW

The Birch Bay Priority Stormwater Retrofit Pre-Design project will provide engineering pre-design analysis for four priority stormwater retrofit areas included in the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District 6-year capital plan. The proposed pre-design analyses will capitalize on extensive planning and outreach efforts completed in the Birch Bay watershed to date and will identify opportunities to incorporate stormwater treatment facilities in areas identified for stormwater retrofits by these previous efforts. These pre-design reports will provide the information necessary to incorporate water quality treatment in the final design. Future construction of these projects will result in improved water quality and reduction in fecal coliform levels from stormwater outfalls into Birch Bay.

PART IV. SCOPE OF WORK

Task 1- Project Administration/Management:

A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required deliverables.

B. The RECIPIENT will manage the project. Efforts will include conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; grant managers at Ecology; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement.

C. The RECIPIENT will ensure this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project-related work.

Deliverables:

1. Quality Assurance Project Plan (QAPP) Waiver Form and, if necessary, QAPP
2. Quarterly progress reports and financial vouchers
3. Semi-annual FEATS status reports
4. Final project summary report
Task 2 - Select Engineering Consultant

A. The RECIPIENT will select a consultant utilizing an RFP process. The selected consulting firm or firms will be invited to develop a scope of work with the RECIPIENT that matches the scope outlined in the final grant scope and will be required to meet specific budgetary and timeline stipulations included in their negotiated contract. Emphasis will be placed on timeliness to ensure achievement of the completed project ahead of the deadline identified in this grant offering. Services sought include expertise in environmental engineering, archaeology, water quality improvement and community involvement.

Deliverables:
1. Complete consultant contract(s)

Task 3 - Compile Existing Data

1. The RECIPIENT will compile background information that will be needed to develop pre-design reports for four projects identified in the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District 6-year capital plan. Information collected and included in the original Birch Bay Comprehensive Stormwater Plan as well as new information compiled in the draft Central North Subwatershed Master Plan will be compiled and used in developing the pre-design reports.

Deliverables:
1. Background information collected to date including flow modeling data, system inspection and evaluation data, survey data, and water quality monitoring data.

Task 4 - Identify preliminary solutions

A. The RECIPIENT will evaluate design options for each of the four project areas. Special emphasis on incorporating water quality treatment in all options evaluated for failing stormwater infrastructure and hydrologic impairments systems retrofits will be a requirement for any preliminary solutions. All preliminary solutions will evaluate at least two different options and consider both existing and planned development.

B. The RECIPIENT will hold public stakeholder meetings to review the preliminary solutions and to solicit public comment and additional information of special site features and other specialized public knowledge. An initial meeting will be held early in the project to provide the public with an overview of the project’s purpose and to initiate public participation. A second meeting will be held to review the Preliminary Solutions Report.

C. The RECIPIENT will solicit technical review of the Preliminary Solutions Report by at least two subject matter specialists and incorporate their feedback into the final pre-design reports.
Ecology Watershed Protection and Restoration Grant Agreement No.G1400023
Birch Bay Priority Stormwater Retrofit Projects Pre-Design

Deliverables:
1. Preliminary Solutions Report—This report will provide supporting rationale for selecting the projects and summarize the issues identified and addressed in the process of developing the options for each project.
2. Public Meeting #1.
3. Public Meeting #2.
4. Memo summarizing public comments from meetings.
5. Comments from subject matter specialists on Preliminary Solutions Report.

Task 5 - Develop Pre-Design Reports

A. The RECIPIENT will produce a pre-design report for each project. This report will be consistent with the pre-design report guidelines provided by Ecology in the 2013 Grant Solicitation for Proposals to Conduct Stormwater Retrofit and Pre-design.

B. The RECIPIENT will arrange to post the final pre-design reports on the Puget Sound Partnership’s My Puget Sound resources page and the BBWARM website.

C. The RECIPIENT will hold a public meeting to present findings from the Pre-Design Report.

Deliverables:
1. Four pre-design reports
2. Public Meeting #3
3. Pre-design reports posted to websites

<table>
<thead>
<tr>
<th>Task Number</th>
<th>Deliverable Description</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>QAPP waiver/QAPP if needed</td>
<td>10/31/2013</td>
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<tr>
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<td>Quarterly Progress Reports</td>
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<td></td>
<td>FEATS status reports</td>
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<td></td>
<td>Final Summary Report</td>
<td>9/30/2014</td>
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<tr>
<td>2</td>
<td>Completed Consultant Contract</td>
<td>9/1/2013</td>
</tr>
<tr>
<td>3</td>
<td>Background Materials</td>
<td>10/31/2013</td>
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<tr>
<td>4</td>
<td>Public Meeting #1</td>
<td>11/30/2013</td>
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<td></td>
<td>Preliminary Solutions Report – 4 identified project areas</td>
<td>3/15/2014</td>
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<tr>
<td></td>
<td>Public Meeting #2</td>
<td>3/31/2014</td>
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<td></td>
<td>Memo Summarizing Public Comments</td>
<td>5/15/2014</td>
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<tr>
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<td>Comments on Preliminary Solutions Report from Subject Matter Experts</td>
<td>6/30/2014</td>
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<td>5</td>
<td>Pre-Design Reports</td>
<td>9/1/2014</td>
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<tr>
<td></td>
<td>Public Meeting #3</td>
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<td>Pre-design Reports Posted on Website(s)</td>
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PART V. BUDGET

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<tr>
<th>BIRCH BAY PRIORITY STORMWATER RETROFIT PROJECTS PRE-DESIGN</th>
<th>TOTAL PROJECT COST</th>
<th>TOTAL ELIGIBLE COST</th>
</tr>
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<tr>
<td>Task 1. Project Administration/Management</td>
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<td>Task 2. Select Engineering Consultant</td>
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<td>Task 3. Compile Existing Data</td>
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<td>Task 4. Identify Preliminary Solutions</td>
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<td>Task 5. Develop Pre-Design Reports</td>
<td>$25,875</td>
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<td>TOTAL</td>
<td>$112,740</td>
<td>$94,000</td>
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</table>

Ecology's Fiscal Office will track to the Total Eligible Cost.

PART VI. SPECIAL TERMS AND CONDITIONS

A. **Failure to Commence Work.** In the event the RECIPIENT fails to commence work on the project within four months of the signatory date, ECOLOGY reserves the right to terminate this agreement.

B. **The EFFECTIVE DATE of this agreement is the project start date.** Any work performed prior to the EFFECTIVE DATE of this agreement, will be at the sole expense and risk of the RECIPIENT. Reimbursement for eligible costs incurred will not be released by ECOLOGY until the agreement is signed.

PART VII. ALL WRITINGS CONTAINED HEREIN

The following contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein:

- This agreement
- Attachment I: General Project Management Requirements for the National Estuary Program
- Attachment III: General Terms and Conditions
- The effective edition, at the signing of this agreement, of ECOLOGY’s “Administrative Requirements for Ecology Grants and Loans” (Yellow Book)
- The associated funding guidelines that correspond to the fiscal year in which the project is funded

Page 8 of 30
The applicable statutes and regulations

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

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

IN WITNESS WHEREOF, the parties hereby execute this agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

WHATCOM COUNTY

GORDON WHITE
SHORELANDS AND ENVIRONMENTAL ASSISTANCE, PROGRAM MANAGER

SEE ATTACHED SIGNATURE PAGE

JACK LOUWS
COUNTY EXECUTIVE

DATE
DATE

Page 9 of 30
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 7/25/2013
Frank M. Abart  Date
Public Works Director

Approved as to form:

[Signature] 7/25/13
Daniel L. Gibson  Date
Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County Flood Control Zone District:

By: ______________________
Jack Louws, Whatcom County Executive/
Signatory for Flood Control Zone District Board of Supervisors

STATE OF WASHINGTON  )
                      ) ss
COUNTY OF WHATCOM  )

On this _____ day of __________, 20____, before me personally appeared Jack Louws, to me known to be the Executive of
Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at
_____________________. My commission expires ______________.
ATTACHMENT I: GENERAL PROJECT MANAGEMENT REQUIREMENTS FOR THE NATIONAL ESTUARY PROGRAM

CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION

1. The RECIPIENT, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.

2. The RECIPIENT shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.

4. The RECIPIENT agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

5. The RECIPIENT further agrees by signing this agreement, that it will include this clause titled “CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. Pursuant to 2 CFR 180.330, the RECIPIENT is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

7. RECIPIENT acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY upon request before requests for reimbursements will be approved for payment. The RECIPIENT must run a search in www.sam.gov and print a copy of completed searches to document proof of compliance.

CULTURAL AND HISTORIC RESOURCES PROTECTION

The RECIPIENT must comply with all requirements listed in Section 106 of the National Historic Preservation Act prior to implementing any project that involves soil disturbing activity.
Ecology Watershed Protection and Restoration Grant Agreement No.G1400023  
Birch Bay Priority Stormwater Retrofit Projects Pre-Design

The RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to ECOLOGY’s project manager prior to any soil disturbing activities. ECOLOGY will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to fulfill Section 106 requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Any soil disturbing activities that occur prior to the completion of the Section 106 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

The Department of Archaeology and Historic Preservation has provided guidance that can be accessed online at: http://www.dahp.wa.gov/section-106  
http://www.dahp.wa.gov/sites/default/files/External%20FINAL.pdf

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

General Compliance, 40 CFR, Part 33  
The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

Fair Share Objectives, 40 CFR, Part 33, Subpart D  
A recipient must negotiate with the appropriate EPA award official or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient  
The dollar amount of this assistance agreement is over $250,000; or the total dollar amount of all of the recipient’s non-Technical Assistance Grant assistance agreements from EPA in the current fiscal year is over $250,000. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the Washington Office of Minority and Women's Business Enterprises as follows:

MBE: PURCHASED GOODS 8%; PURCHASED SERVICES 10%; PROFESSIONAL SERVICES 10%  
WBE: PURCHASED GOODS 4%; PURCHASED SERVICES 4%; PROFESSIONAL SERVICES 4%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Washington Office of Minority and Women's Business Enterprises.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts when procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

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

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of ECOLOGY of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.


EDUCATION AND OUTREACH

The RECIPIENT must do a regional search for existing materials before producing any new educational flyers or pamphlets. The RECIPIENT must request the use of those materials before time and resources are invested to duplicate materials that are already available.

The RECIPIENT must also check the Washington Waters website http://www.ecy.wa.gov/washington_waters/index.html for useful educational materials. These materials are available for public use and can be downloaded directly from the website.

The RECIPIENT must provide ECOLOGY up to two paper copies and an electronic copy of any tangible educational products developed under this grant, such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements or gadgets, such as a refrigerator magnet with a message. If this is not practical, the RECIPIENT must provide a
complete description including photographs or printouts of the product. The RECIPIENT must also supply ECOLOGY with the names and contact information of local project leads.

If there are a significant number of people in the community that speak languages other than English, the RECIPIENT must produce all pamphlets, fliers, meeting notices, reports, and other educational and public outreach materials in English and in the other prevalent language.

**FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:**

In order to comply with the FFATA, the recipient must complete the FFATA Data Collection Form and return it to ECOLOGY. ECOLOGY will report basic agreement information, including the required DUNS number, for all federally-funded agreements at [www.fsrs.gov](http://www.fsrs.gov). This information will be made available to the public at [www.usaspending.gov](http://www.usaspending.gov). Recipients who do not have a DUNS number can find guidance at [www.grants.gov](http://www.grants.gov). Please note that Ecology will not pay any invoices until it has received the completed FFATA Data Collection Form.

Any recipient that meets each of the criteria below must also report compensation for its five top executives, using Ecology’s Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form.

- Receives more than $25,000 in federal funds under this award; and
- Receives more than 80 percent of its annual gross revenues from federal funds; and
- Receives more than $25,000,000 in annual federal funds

See [www.fsrs.gov](http://www.fsrs.gov) for details of this requirement. If your organization falls into this category, you must report the required information to Ecology.

**FUNDING RECOGNITION**

The RECIPIENT must inform the public about ECOLOGY or EPA funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY upon request.

**INCREASED OVERSIGHT**

At ECOLOGY’S request, the RECIPIENT agrees to submit all backup documentation with each payment request submittal. In addition, ECOLOGY’s Project Manager must establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

**INDIRECT RATE**

To acknowledge overhead costs, the RECIPIENT may charge an indirect rate of up to 25 percent based on employees’ direct salary and benefit costs incurred while conducting project-related work. ECOLOGY’s Financial Manager may require a list of items included in the indirect rate at any time.
LIGHT REFRESHMENTS

The RECIPIENT may spend up to $100 per meeting for light refreshments associated with this project. The total amount spent for light refreshments under this agreement cannot exceed $300.

MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

a) Include qualified minority and women's businesses on solicitation lists.

b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.

c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.

e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT must report to ECOLOGY at the time of submitting each invoice, on forms provided by ECOLOGY, payments made to qualified firms. Please include the following information:

a) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.

b) The total dollar amount paid to qualified firms under this invoice.

PAYMENT REQUEST SUBMITTALS

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by ECOLOGY’s Financial Manager. ECOLOGY’s Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.
Supporting Documentation: The RECIPIENT must submit all payment request vouchers and supportive documentation to ECOLOGY’s Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Required Forms:

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<thead>
<tr>
<th>Any Match Combination</th>
<th>Cash Only</th>
<th>Where Applicable</th>
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<tr>
<td>Form A19-1A (original signature)</td>
<td>Form A19-1A (original signature)</td>
<td>Form E (ECY 060-12)</td>
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<tr>
<td>Form B1 (ECY 060-3)</td>
<td>Form B2 (ECY 060-7)</td>
<td>Form F (ECY 060-13)</td>
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<td>Form C1 (ECY 060-8)</td>
<td>Form C2 (ECY 060-9)</td>
<td>Form H (F-21)</td>
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<td>Form D (ECY 060-11)</td>
<td>Form D (ECY 060-11)</td>
<td>Form I (ECY 060-15)</td>
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Reporting eligible costs: The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Cost Reimbursable Basis: Payments to the RECIPIENT will be made on a “reimbursable basis” no more often than once per month unless allowed by ECOLOGY’s Financial Manager. ECOLOGY’s Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

PROCUREMENT

The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services.

PROGRESS REPORTS

The RECIPIENT must submit electronic quarterly progress reports to ECOLOGY’s Financial Manager and Project Manager. Payment requests will not be processed unless all progress reports have been submitted to ECOLOGY.

Reporting Periods:
- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

Reporting Due Date: Quarterly reports are due 15 days following the end of the quarter being reported. Payment requests will not be processed without a current Progress Report. A progress report must be submitted even if no progress has occurred.

Report Content. At a minimum, all progress reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement. The recipient must also attach all landowner agreements signed during the respective quarter to each progress report.
REQUIRED DOCUMENT SUBMITTALS

The RECIPIENT must submit the following documents to ECOLOGY as requested by ECOLOGY’s Project Manager or Financial Manager:

- Electronic copy of draft project completion report
- Electronic copy of final project completion report
- Educational products developed under this agreement – up to 2 copies
- Documents that require ECOLOGY Approval – 2 copies (one for ECOLOGY and one for the RECIPIENT)
- Interlocal agreements – 1 copy for ECOLOGY’s Financial Manager
- Professional services procurement agreements – 1 copy to ECOLOGY’s Financial Manager


- Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form – 1 signed original copy submitted to ECOLOGY’s Financial Manager with the first payment reimbursement request

VOLUNTEER TIME DOCUMENTATION

The RECIPIENT must report to ECOLOGY the total number of volunteer (unpaid) hours contributed to the restoration or monitoring project, including time not being credited for matching purposes. This information will be conveyed to the Governor of the State of Washington in fulfillment of a request for state agencies to collect information about volunteers working for clean water.

QUALITY ASSURANCE

Quality Assurance Project Plan (QAPP). Prior to initiating project activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP) Waiver Form. If ECOLOGY’s Quality Control Manager determines that a QAPP is needed, the RECIPIENT must prepare a QAPP. The QAPP must follow Ecology’s Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (Guidelines), July 2004 (Ecology Publication No. 04-03-030). The applicant may also reference the Technical Guidance for Assessing the Quality of Aquatic Environments, revised February 1994 (Ecology Publication No. 91-78) or more current revision, in developing the QAPP.

The RECIPIENT must submit the QAPP to Ecology’s project manager for review, comment, and must be approved before starting the environmental activities covered by the QAPP. For more information, visit:


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Ecology Watershed Protection and Restoration Grant Agreement No.G1400023
Birch Bay Priority Stormwater Retrofit Projects Pre-Design

The RECIPIENT must use an environmental laboratory accredited by Ecology to analyze water samples for all parameters to be analyzed that require bench testing. Information on currently accredited laboratories and the accreditation process is provided on ECOLOGY of Ecology’s Environmental Assessment Program’s website, available at:

http://www.ecy.wa.gov/apps/eap/acclabs/labquery.asp

The RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the “ten-year rule.” The ten-year rule means that data documentation is sufficient to allow an individual not directly familiar with the specific monitoring effort to understand the purpose of the data set, methods used, results obtained, and quality assurance measures taken ten years after data are collected.

Monitoring Data Submittal / Environmental Information Management System. Funding recipients that collect water quality monitoring data must submit all data to Ecology through the Environmental Information Management System (EIM). Data must be submitted by following instructions on the EIM website, currently available at:

http://www.ecy.wa.gov/eim

The data submittal portion of the EIM website provides information and help on formats and requirements for submitting tabular data. Specific questions about data submittal can be directed to the EIM Data Coordinator, currently available at:

eim_data_coordinator@ecy.wa.gov

If GIS data is collected, Ecology data standards are encouraged. Common standards must be used for infrastructure details, such as geographic names, Geographic Information System (GIS) coverage, list of methods, and reference tables. More information is available at:

http://www.ecy.wa.gov/services/gis/data/standards/standards.htm
ATTACHMENT II: FEDERAL PROVISIONS

The Sub-Recipients shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

ADMINISTRATIVE CONDITIONS

1. Cost Principles
   Sub-Recipient agrees to comply with the cost principles of the below listed federal regulations are applicable as appropriate to this award.
   
   2 CFR 225 (A-87) for State, Local, and Indian Tribal Governments
   2 CFR 220 (A-21) for Educational Institutions
   2 CFR 230 (A-122) Nonprofit Organizations
   FAR 31.2 for Commercial Organizations

   An electronic copy of all the Circulars and applicable CFR’s may be obtained via the OMB Home Web page at http://www.whitehouse.gov/omb/circulars_default. Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.

2. Audit Requirements
   The Sub-Recipient shall fully comply with requirements of OMB Circular A-133, ‘Audits of States, Local Governments, and Non-Profit Organizations, if applicable.

3. Hotel-Motel Fire Safety Act
   Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, Sub-Recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended. Sub-Recipient may search the Hotel-Motel National Master List at: http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

4. Recycled Paper

   Institutions of Higher Education Hospitals and Non-Profit Organizations

   In accordance with 40 CFR 30.16, Sub-Recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

   State Agencies and Political Subdivisions

   In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the
Ecology Watershed Protection and Restoration Grant Agreement No.G1400023
Birch Bay Priority Stormwater Retrofit Projects Pre-Design

The preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

**State and Local Institutions of Higher Education and Non-Profit Organizations**

In accordance with 40 CRF 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA’s guidelines.

**State Tribal and Local Government Recipients**

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub-Recipient agrees to use recycled paper and double sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

5. **Lobbying**

Sub-Recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. Sub-Recipient shall include the language of this provision in award documents for all sub-awards exceeding $100,000, and require that sub-awardees submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure.

**Part 30 Recipients**

All contracts awarded by Sub-Recipient shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30. Pursuant to Section 18 of the Lobbying Disclosure Act, Sub-Recipient affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

**Lobbying and Litigation**

Sub-Recipient’s chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Sub-Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

6. **Suspension and Debarment**

Sub-Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled ‘Responsibilities of Participants Regarding Transaction (Doing Business with Other Persons)’. Sub-Recipient is responsible for ensuring that any lower tier covered transaction
as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled ‘Covered Transactions’, includes a term or condition requiring compliance with Subpart C. Sub-Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Sub-Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Sub-Recipient may access the Excluded Parties List System at: http://www.sam.gov. This term and condition supersedes EPA Form 5700-49, ‘Certification Regarding Debarment, Suspension, and Other Responsibility Matters’.

7. Drug-Free Workplace Certification
Sub-Recipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230. Additionally, in accordance with these regulations, Sub-Recipient organization must identify all known workplaces under its federal award; and keep this information on file during the performance of the award. Sub-Recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300. The consequences for violating this condition are detailed under Title 40 CFR 36.510. Sub-Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at: http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html

8. Management Fees
Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. Reimbursement Limitation
If Sub-Recipient expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government is not legally obligated to reimburse Sub-Recipient for costs incurred in excess of the approved budget.

10. Trafficking in Persons
The following prohibition statement applies to Sub-Recipient, and all sub-awardees of Sub-Recipient. Sub-Recipient must include this statement in all sub-awards made to any private entity under this Agreement.

“YOU AS THE SUB-RECIPIENT; YOUR EMPLOYEES, SUB-AWARDEES UNDER THIS AWARD, AND SUB-AWARDEES’ EMPLOYEES MAY NOT ENGAGE IN SEVERE FORMS OF TRAFFICKING IN PERSONS DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; PROCURE A COMMERCIAL SEX ACT DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; OR USE FORCED LABOR IN THE PERFORMANCE OF THE AWARD OR SUB-AWARDS UNDER THIS AWARD.”
11. DUNS and CCR Requirements
Unless otherwise exempted from this requirement under 2 CFR 25.110, Sub-Recipient must maintain the currency of its information in the CCR until submission of its final financial report required under this Award or receive the final payment, whichever is later. Sub-Recipient may not make a sub-award to any entity unless the entity has provided its DUNS number to Sub-Recipient.

12. FY2011 ACORN Funding Restriction
No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

13. Disadvantaged Business Enterprise Requirements, General Compliance
Sub-Recipient agrees to comply with the requirements of EPA’s Program for Utilization of Small, Minority and Women’s Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

14. Sub-Awards
If Sub-Recipient makes sub-awards under this Agreement, Sub-Recipient is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. Sub-Recipient agrees to:
1. Establish all sub-award agreements in writing;
2. Maintain primary responsibility for ensuring successful completion of the approved project (SUB-RECIPIENT CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUB-Awardee).
3. Ensure that any sub-awards comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the sub-awardee.
4. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
5. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
6. Obtain Ecology’s consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
7. Obtain approval from Ecology for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

15. FY12 APPR ACT: Unpaid Federal Tax Liabilities and Federal Felony Convictions
This award is subject to the provisions contained in ECOLOGY of Interior, Environment, and Related Agencies Appropriations Act, 2012, HR 2055, Division E, Sections 433 and 434 (sections 433 and 434) regarding unpaid federal tax liabilities and federal felony convictions. Accordingly, by accepting this award the recipient acknowledges that it: (1) is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under any Federal law.
within 24 months preceding the award, unless EPA has considered suspension or
debarment of the corporation, or such officer or agent, based on these tax liabilities or
c oncisions and determined that such action is not necessary to protect the Government's
interests. If the recipient fails to comply with these provisions, EPA will annul this
agreement and may recover any funds the recipient has expended in violation of sections
433 and 434.

PROGRAMMATIC CONDITIONS

1. Semi-Annual Performance Reports
Consistent with 40 CFR §35.115 and EPA Order 5700.7, the sub-recipient will submit
performance reports using the Financial and Ecosystem Accounting Tracking System
(FEATS) form every six (6) months during the life of the project. The FEATS form will be
provided to the sub-recipient by the Ecology Project Manager. The reporting periods shall
end March 31st and September 30th of each calendar year. Reports shall be submitted on or
before April 15th and October 15th of each calendar year to the Ecology Project Manager. It
is preferred that reports be submitted by electronic mail. In accordance with 40 CFR Part
30.51(d) and 40 CFR Part 31.40, as appropriate, the sub-recipient agrees to submit
performance reports that include brief information on each of the following areas:

(a) A comparison of actual accomplishments to the outputs/outcomes established in
the assistance agreement work plan and sub-awards for the period.

(b) The reasons for slippages if established outputs/outcomes were not met.

(c) Additional pertinent information, including when appropriate, analysis and
information of cost overruns or high unit costs.

In addition to the semi-annual performance reports, the sub-recipient shall immediately
notify Ecology Project Manager of developments that have a significant impact on the
award-supported activities. In accordance with 40 CFR Part 30.51(f) and 40 CFR Part
31.40(d), as appropriate, the sub-recipient agrees to inform the Ecology Project Manager as
soon as problems, delays or adverse conditions become known which will materially impair
the ability to meet the outputs/outcomes specified in the assistance agreement work plan.
This notification shall include a statement of the action taken or contemplated, and any
assistance needed to resolve the situation.

2. Recognition of EPA Funding
Reports, documents, signage, videos, or other media, developed as part of projects funded by
this Agreement shall contain the following statement:

"THIS PROJECT HAS BEEN FUNDED WHOLLY OR IN PART BY THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY UNDER PUGET SOUND ECOSYSTEM RESTORATION
AND PROTECTION COOPERATIVE AGREEMENT GRANT PC-00J20101 WITH WASHINGTON
STATE DEPARTMENT OF ECOLOGY. THE CONTENTS OF THIS DOCUMENT DO NOT
NECESSARILY REFLECT THE VIEWS AND POLICIES OF THE ENVIRONMENTAL PROTECTION
AGENCY, NOR DOES MENTION OF TRADE NAMES OR COMMERCIAL PRODUCTS CONSTITUTE
ENDORSEMENT OR RECOMMENDATION FOR USE."

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3. **Copyrighted Material**

EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes. Ecology acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this Agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.

4. **Peer Review**

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Ecology Project Manager prior to releasing any final reports or products resulting from the funded study.

5. **Quality Assurance.**

The RECIPIENT must first complete a Quality Assurance Project Plan (QAPP) waiver form (see [http://www.ecy.wa.gov/programs/epa/qa/docs/NEPQAPP/index.html](http://www.ecy.wa.gov/programs/epa/qa/docs/NEPQAPP/index.html)). Completing the waiver form may indicate that a detailed QAPP is required. *Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies* can be found at [http://www.ecy.wa.gov/biblio/0403030.html](http://www.ecy.wa.gov/biblio/0403030.html). The RECIPIENT must submit a waiver or QAPP to Ecology’s QA Officer for review, comment, and final approval prior to conducting any work on the project (e.g., field measurements, sample collections, laboratory analyses, analysis of existing data, modeling). All relevant environmental data must be submitted to Ecology in EIM format (see [http://www.ecy.wa.gov/eim](http://www.ecy.wa.gov/eim)) unless specified otherwise by the QA Officer.
ATTACHMENT III: ECOLOGY'S GENERAL TERMS AND CONDITIONS

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by ECOLOGY.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits. Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to ECOLOGY that all approvals and permits have been secured, and make copies available to ECOLOGY upon request.

2. Discrimination. ECOLOGY and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to ECOLOGY the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. **Industrial Insurance.** The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, ECOLOGY shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

**G. KICKBACKS**

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

**H. AUDITS AND INSPECTIONS**

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

   Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by ECOLOGY or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. **RECIPIENT** shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends $500,000 or more in a year in Federal funds. The $500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT's response and the final corrective action plan to ECOLOGY within ninety (90) days of the date of the audit report.

**I. PERFORMANCE REPORTING**

The RECIPIENT shall submit progress reports to ECOLOGY with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to ECOLOGY any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from ECOLOGY to resolve the situation. Payments may be withheld if required progress reports are not submitted.
Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within 15 days following the end of the quarter being reported, and no later than thirty (30) days.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by ECOLOGY along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer. The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work.

Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by ECOLOGY. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by ECOLOGY, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to ECOLOGY and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. ECOLOGY may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by ECOLOGY may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in ECOLOGY's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5 herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by ECOLOGY and any unauthorized expenditure(s) charged to this grant shall be refunded to ECOLOGY by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.
K. TERMINATION

1. For Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this agreement, ECOLOGY may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of ECOLOGY, shall become ECOLOGY property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the State of Washington because of any breach of agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of ECOLOGY to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of ECOLOGY is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT’s fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT’s governing body; provided, however, that nothing contained herein shall preclude ECOLOGY from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, ECOLOGY reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of ECOLOGY.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but
ECOLOGY retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of ECOLOGY; present papers, lectures, or seminars involving information supplied by ECOLOGY; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

3. Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen or damaged while in the RECIPIENT's possession, ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:

   a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

   b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see http://www.ecy.wa.gov/sustainability/.
O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at ECOLOGY’s sole discretion, be required to repay to ECOLOGY all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of ECOLOGY by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds. If payments have been discontinued by ECOLOGY due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of ECOLOGY, may become ECOLOGY’S property and the RECIPIENT’S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of ECOLOGY through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of ECOLOGY a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director’s determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.
R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. ECOLOGY shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

SS-010 Rev. 04/04
ATTACHMENTS:
Interagency Agreement between Whatcom County and State of Washington Department of Commerce

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 Sheriff’s Office was awarded a grant from the State of Washington Department of Commerce. Total grant is $118,596 (indirect federal funds of $87,665.00 from the U.S. Department of Justice, Edward Byrne Memorial Justice Assistance Grant (JAG) Program, CFDA No 16.738 and state funds of $30,931 from Department of Commerce) to interdict criminal gangs and drugs through multi-jurisdictional efforts of law enforcement and prosecution. The funds support positions in the Sheriff’s Office and the Prosecuting Attorney’s Office as well as operational costs for the Drug Task Force for the period July 1, 2013 through June 30, 2014.
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Bill Elfo, Sheriff
DATE: July 10, 2013
RE: Department of Commerce
Byrne Justice Assistance Grant Fiscal Year July 2013 – June 2014
Multi-Jurisdictional Drug-Gang Task Forces

Enclosed for your review and signature are two (2) original contracts between Whatcom County and the State of Washington Department of Commerce.

• Background and Purpose
Interagency agreement for federal and state funding to help support positions in the Sheriff's Office and W.C. Prosecuting Attorney's Office and operational costs for the Drug Task Force.

• Funding Amount and Source
Total grant in the amount of $118,596 is from State of Washington Department of Commerce ($87,655 indirect federal funds from the U.S. Department of Justice, Edward Byrne Memorial Justice Assistance Grant Program, CFDA No. 16.738 plus additional $30,931 state funds from Department of Commerce).

• Differences from Previous Contract
A decrease in funding of $88,604 from last year's grant.

Please contact Undersheriff Jeff Parks at extension 50418 if you have any questions regarding the terms of this agreement.

Enclosures
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Whatcom County Sheriff’s Office
Contract Administrator: Jeff Parks, Undersheriff
Contractor’s / Agency Name: State of Washington Department of Commerce

Is this a New Contract? Yes __X__ No ____ If not, is this an Amendment or Renewal to an Existing Contract?
Yes ____ No ____ If yes, previous number(s): ______________

Is this a grant agreement? Yes __X__ No ____ If yes, grantor agency contract number(s) _M13-31440-017_ CFDA # _16.738_

Is this contract grant funded? Yes ____ No ____ If yes, associated Whatcom County grant contract number(s) ______________

Is this contract the result of a RFP or Bid process? Yes ____ No __X__ If yes, RFP and Bid number(s) ______________ Cost Center: _1003513004_

Is this contract excluded from E-Verify? No ____ Yes ____ If no, include Attachment D Contractor Declaration Form
If yes, indicate qualified exclusion(s) below:
   ___ Contract less than $100,000.
   ___ Work is for less than 120 days
   ___ Interlocal Agreement (between Govt.)

Professional services agreement for certified/licensed professional
Contract for Commercial off the shelf items (COTS)
Public Works Dept. - Local Agency/Federally Funded FHWA

Contract Amount:(sum of orig contract amt and any prior amendments)
$ 118,596.00
This Amendment Amount:

$ ______________
Total Amended Amount:
$ 118,596.00

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]
This grant provides indirect federal funds of $87,665 from the U.S. Department of Justice, Byrne JAG Program and state funds of $30,931 from Department of Commerce to interdict gang and drugs through the multi-jurisdictional efforts of law enforcement and prosecution. The funds will help support positions in the Sheriff’s Office and Prosecuting Attorney’s Office and operational costs for the Drug Task Force.

Term of Contract: 07/01/13 Expiration Date: 06/30/14

Contract Routing Steps & Signoff: [sign or initial] [indicate date transmitted]
1. Prepared by DMP
2. Attorney reviewed __________
3. AS Finance reviewed __________
4. IT reviewed if IT related __________
5. Corrections made __________
6. Attorney signoff __________
7. Contractor signed __________
8. Submitted to Exec Office __________
9. Reviewed by DCA __________
10. Council approved (if necessary) __________
11. Executive signed __________
12. Contractor Original Returned to dept. __________
13. County Original to Council __________

Last Revised 6/9/11
Grant to

Whatcom County

through

Justice Assistance Grant

For

Regional Justice Assistance Grant
Multi-Jurisdictional Drug-Gang Task Forces

Start date: July 1, 2013
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**FACE SHEET**

Grant Number: M13-31440-017

**Washington State Department of Commerce**  
**Community Services and Housing Division**  
**Office of Crime Victims Advocacy**  
**Multi-Jurisdictional Drug-Gang Task Forces**

<table>
<thead>
<tr>
<th>1. Grantee</th>
<th>2. Grantee Doing Business As (optional)</th>
</tr>
</thead>
</table>
| Whatcom County  
Whatcom County Sheriff’s Office  
311 Grand Avenue  
Bellingham, WA 98225 | Northwest Regional Drug Task Force |

<table>
<thead>
<tr>
<th>3. Grantee Representative</th>
<th>4. COMMERCE Representative</th>
</tr>
</thead>
</table>
| Jeffery Parks  
Undersheriff  
Tel: 360-676-6650  
jparks@co.whatcom.wa.us | William Johnston  
Program Manager  
1011 Plum Street SE  
Olympia, WA 98504-2525  
360-725-3030  
Bill.johnston@commerce.wa.gov |

<table>
<thead>
<tr>
<th>5. Grant Amount</th>
<th>6. Funding Source</th>
<th>7. Start Date</th>
<th>8. End Date</th>
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<tr>
<td>$ 118,596</td>
<td>Federal: ☒ State: ☒ Other: ☐ N/A: ☐</td>
<td>July 1, 2013</td>
<td>June 30, 2014</td>
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<th>9. Federal Funds (as applicable)</th>
<th>10. Tax ID #</th>
<th>11. SWV #</th>
<th>12. UBI #</th>
<th>13. DUNS #</th>
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<td>$ 87,665</td>
<td>91-6001383</td>
<td>0002425-02</td>
<td>371010246</td>
<td>060044641</td>
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</table>

<table>
<thead>
<tr>
<th>14. Grant Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide local governments with U.S. Department of Justice, Bureau of Justice Assistance funds for the investigation, disruption, and prosecution of drug and gang organizations operating at levels above the normal capacity of local jurisdictions to pursue.</td>
</tr>
</tbody>
</table>

**COMMERCE,** defined as the Department of Commerce, and the Grantee (Contractor), as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Budget, Attachment “C” – Activity Reporting, Grantee’s Application for Funding under this program as amended, the Grantee’s Certifications and Assurances required by COMMERCE as pre-requisites for execution of this Agreement, and ‘Criminal Justice Grants - Policies and Procedures Guide’ published by COMMERCE, as amended.

**FOR GRANTEE**

See Page 1a

Name  
Title  
Date

**FOR COMMERCE**

Diane Klontz, Assistant Director  
Date

APPROVED AS TO FORM ONLY

Sandra Adix, Assistant Attorney General  
Date
WHATCOM COUNTY:
Recommended for Approval:

[Signature] 7/10/2013
Sheriff  Date

Approved as to form:

[Signature] 7/10/13
Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County:

By: ____________________________  ____________________________
Jack Louws, Whatcom County Executive  Date

STATE OF WASHINGTON  
)  
) ss
COUNTY OF WHATCOM  

On this ______ day of ____________________, 20____, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

____________________________________________________________________

NOTARY PUBLIC in and for the State of Washington, residing at _________________.
My commission expires _________________.

13
1. **ACKNOWLEDGEMENT OF FEDERAL FUNDING**

   The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

   "This project was supported by a grant awarded by United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the United States Department of Justice. Grant funds are administered by the Office of Crime Victims Advocacy, Community Services and Housing Division, Washington State Department of Commerce."

2. **GRANT MANAGEMENT**

   The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

   The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

   The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

3. **COMPENSATION**

   COMMERCE shall pay an amount not to exceed that specified in Block 5 of this Agreement's Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Statement of Work.

4. **BILLING PROCEDURES AND PAYMENT**

   COMMERCE will pay the Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE, not more often than monthly.

   Invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Agreement reference number specified on the upper-right corner of each page of this Agreement.

   Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

   COMMERCE may, in its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement.

   No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

   **Duplication of Billed Costs**

   The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

   **Disallowed Costs**

   The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

   **Withholding Payment**

   Payment for otherwise allowable costs incurred in July 2013 and subsequent months will be withheld unless and until a valid Equal Employment Opportunity Plan (EEOP) is on file and COMMERCE has been provided the EEOP’s Face Sheet and Signature Page(s), or equivalent documentation. EEOPs are valid for a period of two years following their effective date.
5. **INSURANCE**

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

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal, or modification.

The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Agreement, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than $1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

**Automobile Liability.** In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subgrantee, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than $1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under Grant to the Grantee. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

A. The amount of fidelity coverage secured pursuant to this Grant shall be $100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Grantor as beneficiary.

B. Subgrantees that receive $10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the Grantee as beneficiary.

C. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.
Additional Provisions:

Above insurance policy shall include the following provisions:

1. Additional Insured. The state of Washington, COMMERCE, its elected and appointed officials, agents, and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

2. Identification. The policy must reference COMMERCE’s Agreement number and the State agency name.

3. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by COMMERCE’s Risk Manager, or the Risk Manager for the state of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

4. Excess Coverage. By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect the Contractor, and such coverage and limits shall not limit the Contractor’s liability under the indemnities and reimbursements granted to COMMERCE in this Agreement.

Local Government Contractors that Participate in a Self-Insurance Program

Self-Insured/Liability Pool or Self-Insured Risk Management Program—The Contractor may provide the coverage above under a self-insured/liability pool or self-insured risk management program if it complies with the following standards:

Generally Accepted Accounting procedures (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor’s annual instructions for financial reporting. Contractor’s participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and its employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

6. LIMITED ENGLISH PROFICIENCY

To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, grant recipients must take reasonable steps to ensure that Persons with Limited English Proficiency have meaningful access to services and legal protections. Meaningful access may entail providing language assistance services, including oral and written translation where necessary. Assistance in understanding grant recipient’s obligations under the law may be found in the Department of Justice’s Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons (LEP Guidance), which can be found at 67 Fed. Reg. 41455 (June 18, 2002). Additional assistance regarding LEP obligations and information may be found at www.lep.gov.
The Contractor is required to ensure compliance with this requirement by any Subcontractor receiving funding from a grant supported with U.S Department of Justice funds.

7. **FEDERAL NON-DISCRIMINATION REQUIREMENTS**
   The Contractor will comply with any applicable federal nondiscrimination requirements, which may include:
   - the Omnibus Crime Control Act and Safe Streets Act of 1968 (42 U.S.C. § 3789d);
   - the Victims of Crime Act (42 U.S.C. § 10604(e));
   - the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b));
   - the Civil Rights Act of 1964 (42 U.S.C. § 2000(d));
   - the Rehabilitation Act of 1973 (29 U.S.C. § 794);
   - the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34);
   - the Education Amendments of 1972 (20 U.S.C. §§ 1681,1683,1685-86);
   - the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07);
   - 28 C.F.R. Part 42 (U.S. Department of Justice Regulations – Nondiscrimination, Equal Employment Opportunity, Policies and Procedures);
   - Executive Order 13279 (equal protection of the law for faith-based and community organizations); and

The Contractor shall further comply with Federal law prohibiting grant recipients from retaliating against individuals taking action or participating in action to secure rights protected by federal law.

The Contractor is required to ensure compliance with this requirement by any Subcontractor receiving funding from a grant supported with U.S Department of Justice funds.

8. **NOTIFICATION OF FINDINGS OF DISCRIMINATION OR NON-COMPLIANCE**
   In the event a state or federal court or a state or federal administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, age, disability, or sex against the Contractor or a Subcontractor receiving grant funds, the Contractor will forward a copy of the finding to the U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights (OCR), and COMMERCE.

   The Contractor shall include a statement clearly stating whether or not the finding is related to any grant activity supported with a grant in which U.S. Department of Justice Funds are involved, and identify all open grants utilizing U.S. Department of Justice funding, by Contract number and program title.

   The Contractor is required to ensure compliance with this requirement by any Subcontractor receiving funding from a grant supported with U.S. Department of Justice funds.

9. **EQUAL EMPLOYMENT OPPORTUNITY PROGRAM (EEO)**
   The Contractor will determine whether it is required to formulate an Equal Employment Opportunity Program (EEOP), in accordance with 28 C.F.R. 42.301 et. seq. If the Contractor is not required to formulate an EEOP, it will submit a certificate form to the U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights (OCR), and COMMERCE indicating that it is not required to develop an EEOP. If the applicant is required to develop an EEOP, but is not required to submit the EEOP to the OCR, the applicant will submit a certification to the OCR and COMMERCE certifying that it has an EEO on file which meets the applicable requirements. If the Contractor is awarded a grant of $500,000 or more and has 50 or more employees, it will submit a copy of its EEOP to the OCR and COMMERCE. Non-profit organizations, federally recognized Indian Tribes, and medical and
educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. A copy of the certification form will also be submitted to COMMERCE. Information about civil rights obligations of grantees can be found at http://www.ojp.usdoj.gov/about/ocr/eeop_comply.htm.

The Contractor is required to ensure compliance with this requirement by any sub-grantee receiving funding from a grant supported with U.S Department of Justice funds.

10. PROGRAM FIDELITY

In the event the Contractor does not maintain agency participation and personnel dedication as described in Appendix A – Scope of Work and Form 5 of their Application for Funding under this program, funding shall be reduced or terminated in accordance with the 'TASK FORCE MODEL COMPLIANCE FUNDING REDUCTIONS' section (Page 2) of the 'Application Package for Regional Justice Assistance Grant Multi-Jurisdictional Drug-Gang Task Forces'.

11. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations.
- Special Terms and Conditions.
- General Terms and Conditions.
- Attachment A – Statement of Work.
- Attachment B – Budget.
- Attachment C – Activity Report.
1. DEFINITIONS
   As used throughout this Grant, the following terms shall have the meaning set forth below:
   A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to
      act on the Director's behalf.
   B. "Cognizant State Agency" shall mean the state agency from which the sub-recipient receives
      federal financial assistance. If funds are received from more than one state agency, the cognizant
      state agency shall be the agency that contributes the largest portion of federal financial
      assistance to the sub-recipient.
   C. "COMMERCE" shall mean the Department of Commerce.
   D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this
      Grant, and shall include all employees and agents of the Grantee.
   E. "Personal Information" shall mean information identifiable to any person, including, but not limited
      to, information that relates to a person's name, health, finances, education, business, use or
      receipt of governmental services or other activities, addresses, telephone numbers, social
      security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
   F. "State" shall mean the state of Washington.
   G. "Subgrantee" shall mean one not an employee of the Grantee, who is performing all or part of
      those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee" and
      "subgrantees" means subgrantee(s) in any tier.
   H. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-
      through entity to carry out a federal program, but does not include an individual that is a
      beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for
      goods and/or services in the course of normal trade or commerce.
   I. "Vendor" is an entity that agrees to provide the amount and kind of services requested by
      COMMERCE; provides services under the grant only to those beneficiaries individually
      determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit
      basis with contractual penalties if the entity fails to meet program performance standards.

2. ALL WRITINGS CONTAINED HEREFIN
   This Grant contains all the terms and conditions agreed upon by the parties. No other
   understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist
   or to bind any of the parties hereto.

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

4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to
   as the “ADA” 28 CFR Part 35
   The Grantee must comply with the ADA, which provides comprehensive civil rights protection to
   individuals with disabilities in the areas of employment, public accommodations, state and local
   government services, and telecommunications.

5. APPROVAL
   This Grant shall be subject to the written approval of COMMERCE's Authorized Representative and
   shall not be binding until so approved. The Grant may be altered, amended, or waived only by a
   written amendment executed by both parties.
6. **ASSIGNMENT**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

7. **ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

8. **AUDIT**

   **A. General Requirements**

   Grantee's are to procure audit services based on the following guidelines.

   The Grantee shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subgrantees also maintain auditable records.

   The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Subgrantees.

   COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

   As applicable, Grantee's required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

   Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

   **B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

   Grantees expending $500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations.” Revised OMB A-133 requires the Grantees to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

   - Grantor agency name
   - Federal agency
   - Federal program name
   - Other identifying contract numbers
   - Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
   - Grantor contract number
   - Total award amount including amendments (total grant award)
   - Current year expenditures
GENERAL TERMS AND CONDITIONS

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Grantee shall include the above audit requirements in any subgrants.

In any case, the Grantee’s financial records must be available for review by COMMERCE.

C. Documentation Requirements

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee’s fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

2. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and

4. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, state, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.

C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

a) The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

b) Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such Grantee shall attach an explanation to this Grant.

E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the COMMERCE for assistance in obtaining a copy of these regulations.

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;

2. All material produced by the Grantee that is designated as "confidential" by COMMERCE;

3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. CONFORMANCE

If any provision of this Grant violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.
12. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

13. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subgrantees.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with COMMERCE’s Director, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee’s name, address, and Grant number; and
- be mailed to the Director and the other party’s (respondent’s) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor’s statement to both the Director or the Director’s designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.
The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this Grant does not duplicate any work to be charged against any other Grant, subgrant, or other source.

16. ETHICS/CONFLICTS OF INTEREST

In performing under this Grant, the Grantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

17. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

18. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Grantee’s performance or failure to perform the Grant. The Grantee’s obligation to indemnify, defend, and hold harmless includes any claim by the Grantee’s agents, employees, representatives, or any Subgrantee or its agents, employees, or representatives.

The Grantee’s obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subgrants shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

19. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

20. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I’s rights to collect from the Grantee.
21. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

A. Audits

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

B. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.


C. Laws against Discrimination


Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.


Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).


Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.


Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

D. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Grantee is a nonprofit organization).
Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Grantee is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

E. Other


Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

F. Privacy


Washington State Laws and Regulations

A. Affirmative action, RCW 41.06.020 (1).

B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

D. Discrimination-human rights commission. Chapter 49.60 RCW.

E. Ethics in public service, Chapter 42.52 RCW.

F. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.

G. Open public meetings act. Chapter 42.30 RCW.

H. Public records act, Chapter 42.56 RCW.

I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

22. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

23. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative’s designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.
24. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Grantee shall participate in local public transportation forums and implement strategies designed to ensure access to services.

25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with the state. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

26. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used under this Grant for working for or against ballot measures or for or against the candidacy of any person for public office.

27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Grant.

The Grantee's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of Grants using federal funds.

2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

3. Minimum procedural requirements, as follows:
   a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
   b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
   c. Positive efforts shall be made to use small and minority-owned businesses.
   d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
   e. Subgrants shall be made only with reasonable Subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
   f. Some form of price or cost analysis should be performed in connection with every procurement action.
g. Procurement records and files for purchases shall include all of the following:
   1) Grantees selection or rejection.
   2) The basis for the cost or price.
   3) Justification for lack of competitive bids if offers are not obtained.

h. A system for Grant administration to ensure Grantee conformance with terms, conditions, and specifications of this Grant, and to ensure adequate and timely follow-up of all purchases.

4. Grantee and Subgrantees must receive prior approval from COMMERCE for using funds from this Grant to enter into a sole source Grant or a Grant where only one bid or proposal is received when value of this Grant is expected to exceed $5,000.

Prior approval requests shall include a copy of proposed Grants and any related procurement documents and justification for non-competitive procurement, if applicable.

28. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

29. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

30. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

31. RECORDS MAINTENANCE

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant. Grantee shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

32. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.
33. **RIGHT OF INSPECTION**

At no additional cost all records relating to the Grantee’s performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

34. **SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

35. **SEVERABILITY**

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

36. **SUBGRANTING**

The Grantee may only subgrant work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subgranting, the Grantee shall maintain written procedures related to subgranting, as well as copies of all subgrants and records related to subgrants. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subgranting procedures as they relate to this Grant; (b) prohibit the Grantee from subgranting with a particular person or entity; or (c) require the Grantee to rescind or amend a subgrant.

Every subgrant shall bind the Subgrantee to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subgrantee fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this Grant. In no event shall the existence of a subgrant operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee’s duties.

Every subgrant shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee’s performance of the subgrant.

37. **SURVIVAL**

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

38. **TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee’s income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

39. **TERMINATION FOR CAUSE / SUSPENSION**

In event COMMERCE determines that the Grantee failed to comply with any term or condition of this Grant, COMMERCE may terminate the Grant in whole or in part upon written notice to the Grantee.
Such termination shall be deemed “for cause.” Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE upon written notice may allow the Grantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Grantee in whole or in part, or may restrict the Grantee’s right to perform duties under this Grant. Failure by the Grantee to take timely corrective action shall allow COMMERCE to terminate the Grant upon written notice to the Grantee.

“Termination for Cause” shall be deemed a “Termination for Convenience” when COMMERCE determines that the Grantee did not fail to comply with the terms of the Grant or when COMMERCE determines the failure was not caused by the Grantee’s actions or negligence.

If the Grant is terminated for cause, the Grantee shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Grant and the replacement Grant, as well as all costs associated with entering into the replacement Grant (i.e., competitive bidding, mailing, advertising, and staff time).

40. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, the Grantor shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

41. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Grantee shall:

A. Stop work under the Grant on the date, and to the extent specified, in the notice;

B. Place no further orders or subgrants for materials, services, or facilities related to the Grant;

C. Assign to COMMERCE all of the rights, title, and interest of the Grantee under the orders and subgrants so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants. Any attempt by the Grantee to settle such claims must have the prior written approval of COMMERCE; and

D. Preserve and transfer any materials, Grant deliverables and/or COMMERCE property in the Grantee’s possession as directed by COMMERCE.

Upon termination of the Grant, COMMERCE shall pay the Grantee for any service provided by the Grantee under the Grant prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Grantee if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Grant or otherwise provided under law.

42. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.
SCOPE OF WORK

OUTCOME:

Work performed by the Multi-jurisdictional Drug-Gang Task Force shall have the outcome specified in the Contractor's Application for funding and this Agreement. To reach this outcome, COMMERCE will provide funding and external evaluation of the task force; and the Contractor will provide for the task force's organization, oversight, administration, supervision and mission, staffing and support, and other items necessary to carry out this Agreement.

To reach this goal, the Contractor shall provide or perform the following:

INTERIM OUTCOMES AND PERFORMANCE MEASURES:

1. The Regional Task Force continuously meets/exceeds Byrne JAG Gang-Drug Task Force Program Model Personnel staffing, as measured by:
   - Minimum of four (4) commissioned officers dedicated to the project (full time), or three (3) commissioned officers at a reduced funding level.
   - Support staff (minimum of half-time).
   - Prosecutorial support of one (1) dedicated prosecutor/deputy prosecutor, or sufficient prosecutorial support such that no case submitted by the task force is rejected due to lack of staffing;
   - Gang Liaison (may be another member of the local task force).
   - Analyst (Optional).

2. Participation—the Task Force shall organize and govern participating partners, as measured by:
   - Contribution of least one (1) dedicated law enforcement officer by a minimum of three (3) local law enforcement agencies in the service area, or two (2) local law enforcement agencies if funded at a reduced funding level.
     - Local law enforcement agencies for this purpose includes city, county and tribal agencies.
     - Aggregated cash contributions from jurisdictions not large enough to fully dedicate individual officers, sufficient to support 90% of the full cost of a dedicated officer, may count as participation by local law enforcement agency for each officer so supported.
     - The Washington State Patrol may substitute for one of the local law enforcement agencies in rural task forces.

3. Task Force Mission—The Governance Board shall determine the Task Force Mission and set the priorities for work to be accomplished, as measured by:
   - A primary focus on cooperative, investigative work to identify, interdict, dismantle, and prosecute mid- to upper-level criminal organizations engaged in illicit gang, gun, and drug activities.

4. JAG Task Force Peer Review Participation—Task Force Governance Boards shall assure that JAG Grant compliance is achieved, as measured by:
   - Task Force will agree to an audit of its performance, a minimum of once per biennium, as described in COMMERCE's Byrne JAG Task Force Peer Review Program Guide; and to participate in a follow-up of the Peer Review within the following year.
   - Task Force will participate in support of the Peer Review process by allowing assigned staff to volunteer as members of Peer Review Teams during audits in other jurisdictions.
5. **Peer Review, Grant Compliance Monitoring, and State and Federal Audit Results—Task Force management and staff will review COMMERCE's Policies and Procedures and Task Force internal rules and policies, as well as requirements and policies of the Contract fiscal agent to assure JAG Grant compliance, as measured by:**
   - No repeat findings or discrepancies.
   - No recommendations requiring a reply by endorsement, or restructuring task force management.
   - No findings or discrepancies indicative of failure to maintain sound financial management.
   - No finding of non-compliance with grant requirements.

6. **Other Fiscal and Administrative requirements, as measured by:**
   - "FIFO" or First-In/First-Out tracking and quarterly reporting of Program Income funds (Forfeitures).
   - Timely submission of Contractor's A-19 (Reimbursement Requests/Vouchers) by the 15th of the month following the reported quarter (as per COMMERCE's Policy and Procedures Guide).
   - Compliance with all policies and procedures included in the current version of the Public Safety Unit's Criminal Justice Policy and Procedures Guide.

7. **Commander's Conference (Semi-Annual) Training Attendance—Task Force Governance Boards shall establish policy to assure that key supervisory/management staff achieve JAG grant compliance, as measured by:**
   - Attendance by key personnel as mandatory unless waiver is granted by COMMERCE

**PERFORMANCE MEASURES AND DELIVERABLES:**

1. **Quarterly Performance Measures—Task Force Governance Boards will set measures to assure Task Force success by achievement of the critical performance measures reported in the Periodic Activity Report (PAR), as measured by a:**
   - Minimum of 40 percent of Task Force arrests will be for multiple arrests cases.
   - Prosecutorial success rate of 80 percent of case results received with outcomes of "guilty," "pled," and/or "verdict" received.
   - Forfeiture success rate of 90 percent.
   - Minimum of 40 percent of task force cases disrupted/dismantled which consist of five (5) or more individuals where investigations have demonstrated an involvement in the criminal enterprise, and that enterprise shall be called a DTO (Drug Trafficking Organization) for drug nexus, or GIO (Gang Involved Organization) for gang nexus.

2. **Quarterly Program Performance Activity Report (INTERIM OUTCOMES AND PERFORMANCE MEASURES 1 AND 2)—Task Force management will plan for, collect, and report program performance data, as measured by:**
   - Timely submission per published scheduled Due Dates (See COMMERCE Task Force Application Report Schedule).
   - Entry of all applicable data as prescribed by the PAR Form User's Guide.

3. **Active cooperation and response to Evaluation Findings and Discrepancies (INTERIM OUTCOMES AND PERFORMANCE MEASURES 3 THROUGH 6)—administrative and compliance monitoring, and Peer Review Evaluations, as measured by:**
GENERAL:

The total budget awarded under this Agreement shall be the amount specified in Block 5 of this Agreement’s Face Sheet.

The total Federal funds awarded under this Agreement shall be the amount specified in Block 9 of this Agreement’s Face Sheet. The CFDA number of the federal funds is 16.738.

Allocation of funds between categories of expense shall be as specified in the Contractor’s application for funding, except that the Contractor may vary from the application’s funding plan by shifting up to ten percent (10%) of the total awarded funds between categories of expense. This authority to shift funds is limited by the following: grant funds may not be shifted into zero budgeted categories of expense, and any shifts made may not constitute a significant change to the Scope of Work (Attachment A).

PERFORMANCE BASED INCENTIVES AND CONSEQUENCES:

1. Delay and Disallowance of Reimbursement Requests Due to Late Performance Reporting

   Past due performance reports will result in withholding of requested reimbursements until the reports are received. Should a report be received after the due date, but not in sufficient time for enclosure in the corresponding federal quarterly report, the report will be rejected and no payment will be authorized for the missed quarter. For the first three quarters of this award cycle, missed data and the corresponding expenditures may be submitted during the following quarter. However, lack of timely submission of the fourth quarter’s activity report will result in loss of all funds not previously reimbursed; and if disbursement of funds to reimburse expenditures incurred during the unreported quarter has been made, repayment shall be required.

2. Delay and Disallowance of Reimbursement Requests Due to Non-Compliance with Federal Pre-Requisites to Receive Funding

   During any period in which the Contractor is non-compliant with essential federal pre-requisites to receive federal funds, all expenditures will be disallowed. Eligibility of expenditures for reimbursement will resume on the date that the Contractor is deemed to be fully compliant with the essential federal pre-requisites as specified below:

   • DUNS (Data Universal Numbering System) number is registered in the Central Contract Registry portion of Grants.Gov (www.grants.gov); and the registration is current.

   • The Contractor has submitted an Equal Employment Opportunity Plan to the Office of Civil Rights, U.S. Department of Justice, with a submission and approval dates within the last two years.

   • All personnel dedicated to the task force as investigative personnel, acting in supervisory and/or executive management, administrative, analytical or prosecutorial support of the task force, must annually complete the appropriate on-line training through the Center of Task Force Leadership and Integrity Training website (www.ctfl.org). Newly assigned individuals must complete the appropriate training modules no later than 90 days from assuming their relationship with the task force. Individuals in a continuing relation with the task force must renew their certification within 30 days after their prior certification expires (the CTFLI system does not allow recertification more frequently than annually, so this requires specific scheduling controls.)

3. Reduction in the Quarterly Reimbursable Funds Due to Non-Compliance with the Task Force Staffing and Participation Model:

   Reporting staffing and/or "local" agency participation below that specified in the Contractor’s application on any Periodic Activity Report (quarterly activity report) shall cause the maximum amount that may be reimbursed for that quarter to be reduced in accordance with the table published on Page 2 of the Byrne Justice Assistance Grant, SFY 2013 Multi-Jurisdictional, Drug-Gang Task Force Program Application Package. For this purpose, the reimbursable amount authorized for the reported quarter shall be one-
fourth of the total award as specified in Block 5 of this Agreement's Face Sheet, multiplied by the 'percent of allocation' corresponding to the reported compliance level.

The difference between one-fourth of the total award (as specified in Block 5 of this Agreement’s Face Sheet) and the reimbursable amount authorized for the corresponding quarter is non-reimbursable, and is lost to the Contractor during the balance of this Agreement's duration.

In the event that the Contractor has already been reimbursed beyond the reimbursable amount authorized for the quarter as calculated above, the corresponding expenditure is disallowed. Any funds so disallowed may be applied against authorized expenditures of the next quarter; if the quarter for which the disallowance is made is not the last calendar quarter of this Agreement, Should any funds be disallowed for the last calendar quarter of this Agreement, disallowed funds must be returned to COMMERCE.

COMMERCE reserves the right to waive this reduction/disallowance in event the reported non-compliance is considered a brief and minor anomaly not materially affecting task force operations or safety. Such a waiver is at the sole discretion of COMMERCE.

SEQUENCE OF APPLICATION OF EXPENDITURES AGAINST GRANT FUNDS SHALL BE AS FOLLOWS:

COMMERCE shall apply reported expenditures, and its reimbursement of those expenditures, as follows:

- Limited life funds (carryover about to expire) shall be disbursed first.

- After limited life funds are disbursed, State General Funds awarded under this Agreement shall be disbursed at a rate proportionate to the total federal funds disbursed (including any limited life funds). COMMERCE shall control this disbursement rate to ensure that sufficient State Funds are available to cover any program-wide rescission or a spending limit on state funds that may be imposed. COMMERCE shall notify each Contractor of the precise amount/source of disbursed funding upon request, and shall further notify the Contractor upon the imposition of any rescission or spending limit.
**ACTIVITY REPORTING**

**M13-31440-017**
Attachment C

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Year-to-Date</th>
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<tr>
<td>CTFI Training done in last 120 days</td>
<td>New Personnel</td>
<td>New Personnel</td>
<td>Competing CTFI Training</td>
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<tr>
<td>Essential Training</td>
<td>Drug Related</td>
<td>Drug Related</td>
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<tr>
<td>Investigations/Case Management</td>
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<tr>
<td>Open/Closed</td>
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**Quarterly Performance Activity Reporting**

**July 2013 - June 2014**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Position</th>
<th>Std Hrs/Qtr</th>
<th>Hrs Worked this Qtr</th>
<th>FTEs this Qtr</th>
<th>Grant FTE</th>
<th>Match</th>
<th>Local FTE</th>
<th>Non-Local FTE</th>
<th>Total</th>
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<tbody>
<tr>
<td>Grays Harbor Co</td>
<td>Commander</td>
<td>520</td>
<td>130</td>
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<td>Grays Harbor Co</td>
<td>Supr (Lt/Gov)</td>
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<td>Grays Harbor Co</td>
<td>Investigator</td>
<td>520</td>
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<tr>
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<tr>
<td>Grays Harbor Co</td>
<td>Admin/Sup/Legal</td>
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</table>

**Local Budget**

All Cities/Counties/Tribal NTIF Funding

Comment: Make appropriate adjustments to your total budget above.

**Task Force Staffing**

Report Quarter Staffing Only - No Roll-Up by Quarter

<table>
<thead>
<tr>
<th>Agency</th>
<th>Position</th>
<th>Std Hrs/Qtr</th>
<th>Hrs Worked this Qtr</th>
<th>FTEs this Qtr</th>
<th>Grant FTE</th>
<th>Match</th>
<th>Local FTE</th>
<th>Non-Local FTE</th>
<th>Total</th>
</tr>
</thead>
</table>

**1 Position = 1 FTE is 100 FTE**

Note: If a person is working partially with the task force, only count the portion that is spent on the task force.

For Model Compliance:

- Law Enf = Supr/(Invest/LEO)
- Supt = Admin/Sup/Legal
- Hos Supt = Opiq Prosecutor

**Overtime**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Position</th>
<th>Std Hrs/Qtr</th>
<th>Hrs Worked this Qtr</th>
<th>FTEs this Qtr</th>
<th>Grant FTE</th>
<th>Match</th>
<th>Local FTE</th>
<th>Non-Local FTE</th>
<th>Total</th>
</tr>
</thead>
</table>

**Overall**

Meets Pers/T Model | YES |

**Training**

CTFI Training done last 120 days | New Person |

**Essential Training**

Drug Related |

**Investigations/Case Management**

Open/Closed | | | | | |

<table>
<thead>
<tr>
<th>Agency</th>
<th>Position</th>
<th>Std Hrs/Qtr</th>
<th>Hrs Worked this Qtr</th>
<th>FTEs this Qtr</th>
<th>Grant FTE</th>
<th>Match</th>
<th>Local FTE</th>
<th>Non-Local FTE</th>
<th>Total</th>
</tr>
</thead>
</table>

**Open/Closed**

- Command/Tip Report Period
- Opened During this Report Period
- No Cases/Tip
- No Cases
- No Closed
- Multiple Arrests
- Open at End of this Report Period
- Multi-Arrest Case Percentage

<table>
<thead>
<tr>
<th>Agency</th>
<th>Position</th>
<th>Std Hrs/Qtr</th>
<th>Hrs Worked this Qtr</th>
<th>FTEs this Qtr</th>
<th>Grant FTE</th>
<th>Match</th>
<th>Local FTE</th>
<th>Non-Local FTE</th>
<th>Total</th>
</tr>
</thead>
</table>

**Conclusion**

- Evaluate the performance and progress of the task force.
- Make necessary adjustments to the budget and staffing.
- Ensure compliance with the model.

**References**

- Refer to the original document for more detailed information.
<table>
<thead>
<tr>
<th>Meth Investigations</th>
<th>Q1 Jul-Sep</th>
<th>Q2 Oct-Dec</th>
<th>Q3 Jan-Mar</th>
<th>Q4 Apr-Jun</th>
<th>Year to Date</th>
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<td>Single Suspect Investigations</td>
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<td>Total Nbr Meth Investigations</td>
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<td>Nbr Labs Investigated</td>
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<tr>
<td>Nbr Labs Dismantled</td>
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<td>Nbr Lab Sites Processed</td>
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<td>Nbr Labs w/Juveniles Present/Processd</td>
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<tr>
<td>Small Groups Dismantled/Disrupted</td>
<td>Q1 Jul-Sep</td>
<td>Q2 Oct-Dec</td>
<td>Q3 Jan-Mar</td>
<td>Q4 Apr-Jun</td>
<td>Year to Date</td>
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<td>Disrupted/</td>
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<td>Dismantled</td>
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<tr>
<td>Primary Nexus (3-4 Mbr Org's)</td>
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<td>Not Gang or Drug</td>
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<td>What Other Characteristics of Above Orgs (3-4 Mbr Org's)</td>
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## ACTIVITY REPORTING

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### Overall Prosecution

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### Forfeitures

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### Summary

- **State**
  - Nbr Felony
  - Nbr Misdemeanor
  - Results Received
  - Guilty/Verdict/Plea
  - Gang Nexus
  - Gang & Drug Nexus
  - Drug Nexus
  - Other Nexus
  - Firearm Violation

- **Federal**
  - Nbr Felony
  - Nbr Misdemeanor
  - Results Received
  - Guilty/Verdict/Plea
  - Gang Nexus
  - Gang & Drug Nexus
  - Drug Nexus
  - Other Nexus
  - Firearm Violation

- **Overall Prosecution**
  - Success Rate

- **Forfeitures**
  - Number Successful
  - Number Un-Successful
  - Currency Amt For-Released
  - Real Property (Realized $ Value)
  - Other (Realized $ Value)
  - Success Rate
  - Transfer to Non-Participating Agencies

- **Subject to Federal Rules from State Processed Forfeitures**
  - Carried Forward into Quarter
  - Date of Earliest Forfeiture's Realization Date Not Fully Expended
  - Realized this Qtr
  - Expended this Qtr
  - Balance

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### ACTIVITY REPORTING

**M13-31440-017**
Attachment C

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**Marijuana**

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**Meth & Club Drugs**

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### Violent Crime Situation

**Homicide**

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**Aggravated Assault**

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**Robbery**

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**TITLE OF DOCUMENT:**
Washington State Nurses Association Collective Bargaining Agreement

**ATTACHMENTS:**

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

---

**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

<table>
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<tr>
<th>Originating Department:</th>
<th>Administrative Services – Human Resources</th>
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<tr>
<td>Contract or Grant Administrator:</td>
<td>Wendy Wefer-Clinton</td>
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<tr>
<td>Contractor’s / Agency Name:</td>
<td>Washington State Nurses Association</td>
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Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes X No 
Yes ___ No ___ If Amendment or Renewal, Original Contract # 200804003

Does contract require Council Approval? Yes X No 

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

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

Is this contract the result of a RFP or Bid process? Contract Yes ___ No X If yes, RFP and Bid number(s) __________________ Cost Center: __________________

Is this agreement excluded from E-Verify? No ____ Yes X If no, include Attachment D Contractor Declaration form. 

If yes, indicate exclusion(s) below:
- X Professional services agreement for certified/licensed professional
- □ Contract less than $100,000.
- □ Contract for Commercial off the shelf items (COTS)
- □ Contract work is all performed outside U.S.
- □ Work related subcontract less than $25,000.
- □ Interlocal Agreement (between Govt’s) □ Public Works - Local Agency/Federally Funded FHWA

Contract Amount:(sum of original contract amount and any prior amendments) $ __________

This Amendment Amount: $ __________

Total Amended Amount: $ __________

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope:

Collective Bargaining Agreement


Contract Routing Steps & Signoff: [sign or initial][indicate date transmitted]
1. Prepared by: WWC Date 7/25/13 [electronic]
2. Attorney reviewed: Daniel L. Gibson Date 07/24/13 [electronic]
3. AS Finance reviewed: ________________________________ Date __________________ [electronic]
4. IT reviewed if IT related Date __________________ [electronic] hard copy printed
5. Corrections made: ________________________________ Date __________________
6. Attorney signoff: Daniel L. Gibson Date 07/24/13
7. Contractor signed: ________________________________ Date __________________
8. Submitted to Exec Office __ Date 7-24-13 [summary via electronic; hardcopies]
9. Council approved (if necessary) ________________________________ Date __________________
10. Executive signed: ________________________________ Date __________________
11. Contractor Original Returned to dept; ________________________________ Date __________________
12. County Original to Council ________________________________ Date __________________

Last Edited 7/2/13

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COLLECTIVE BARGAINING AGREEMENT

By and Between

WHATCOM COUNTY, WASHINGTON

and

WASHINGTON STATE NURSES ASSOCIATION

August 6, 2013 – December 31, 2014
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COLLECTIVE BARGAINING AGREEMENT
By and Between
WHATCOM COUNTY, WASHINGTON
and
WASHINGTON STATE NURSES ASSOCIATION

PREAMBLE

This Agreement is by and between Whatcom County, hereinafter referred to as the "County," and the Washington State Nurses Association, hereinafter referred to as the "Association." The purpose of this Agreement is to facilitate the achievement of the mutual goal of providing quality community public health services, efficiently and economically, by establishing standards of wages, hours, and other conditions of employment, and to provide an orderly system of employer, employee relations.

ARTICLE 1 - RECOGNITION

1.1 Recognition. The County recognizes the Association as the sole collective bargaining agent representing all full-time and part-time employees working in the collective bargaining unit certified by the Public Employment Relations Commission in Case No. 2704-E-80-522 in those job classifications listed in Addendum A as they currently exist or as they may be amended during the life of this Agreement. Excluded from the bargaining unit are temporary full- or part-time help hired for periods of less than 1040 hours in a calendar year to meet the transient needs of the County with the understanding that employment will be terminated when the County determines the need for temporary help is over. A temporary employee may not be employed by the County for more than 1040 hours in a calendar year.

1.2 Unilateral Changes. The County agrees not to unilaterally change the working conditions, wages, or benefits of bargaining unit employees during the term of this Agreement. This section shall not be a waiver of RCW 41.56 rights. Changes made pursuant to a contractual provision shall not constitute a unilateral change.

1.3 Bargaining Unit Work. Existing bargaining unit work shall be performed by bargaining unit employees. When a new classification is created, the Association will continue to be recognized as the exclusive bargaining representative for employees performing traditional bargaining unit work, unless they are bona fide supervisory or administrative/management positions.

ARTICLE 2 - MEMBERSHIP AND UNION RIGHTS

2.1 Fair Share Membership. It shall be a condition of employment that all employees covered by this Agreement who are members of the Association in good standing on the date this Agreement is executed shall remain members in good standing and those who are not members on the date this Agreement is executed shall, on or after the thirtieth (30th) day following the date this Agreement is executed become and remain
members in good standing in the Association. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on or before the thirtieth (30th) day following the beginning of such employment, become and remain members in good standing in the Association. Tender of the Association's periodic dues and initiation fees uniformly required as a condition of acquiring or obtaining such membership shall, for the purpose of this Article, be considered membership in the Association.

2.2 Religious Objections. In order to provide bargaining unit employees the right of non-association with the Association because of the employee's belief in bona fide religious tenets or teachings of a church or religious body of which such employee is a member, which has historically held conscientious objections to joining or financially supporting a labor organization shall not be required to join or financially support the Association, but in the alternative, shall be required to pay a monthly amount equal to the Association membership fee to a non-religious charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. These religious objections and decisions as to which fund will be used must be documented and declared in writing.

2.3 Dues Deduction. The County agrees to deduct Association dues from each employee's wages if the employee so desires. The County shall submit the dues to the address and name provided by the Association.

The Association and all bargaining unit employees agree to indemnify and hold harmless the County from any and all liability resulting from such deduction.

2.4 Access to Premises. The business representative authorized by the Association shall have access to the office during business hours, providing he or she does not interfere or cause employees to neglect their work.

2.5 Negotiations. At least one employee of the bargaining unit shall be allowed paid time off for contract negotiation purposes. If the negotiations continue beyond the employee's regular workday, such employee shall not receive any pay beyond his or her regular work hours for participating in the negotiations. One additional bargaining unit employee elected to serve on the negotiating committee will, subject to operating efficiency, be released (without pay) from work to attend scheduled negotiating meetings. Such employee may use vacation or personal days to cover time spent at negotiating meetings.

2.6 Bulletin Board. The County shall provide bulletin board space for the use by the Association in areas accessible to members of the bargaining unit.

2.7 Meeting Rooms. The County shall make available to the Association, meeting space, rooms, etc., for the purpose of County-related contract administration and bargaining activities, and where such activities would not interfere with the normal work of the County, provided that bargaining unit employees who attend such meetings shall be on their own time. Upon request, the Association shall use the procedures for requesting space specified in County Policy AD118005Z.
2.8 Distribution of Agreement. The Association will provide copies of this Agreement and related materials to the County for distribution to new employees.

2.9 Rosters. The County agrees to provide the Association and the local unit chairperson with an Excel Spreadsheet attachment to an email on a monthly basis with a complete list of employees covered by this Agreement, as well as employees who have been terminated or have resigned since the last report, including termination/resignation dates. The list will include name, home address, home telephone number, employee number, title, range, step, hourly rate of pay, actual FTE, and division seniority date for each employee listed. The Union shall indemnify the County for any claims arising from the requirement to supply the foregoing information.

ARTICLE 3 - MANAGEMENT RIGHTS

The County retains all rights except as those rights are limited by the express provisions of this Agreement. Nothing anywhere in this Agreement shall be construed to impair the rights of the County to conduct all its business and all particulars except as expressly and specifically modified in this Agreement.

ARTICLE 4 - HOURS OF WORK AND OVERTIME

4.1 Work Schedule. The work schedule shall be set by the County as provided herein. The basic work week shall be forty (40) hours, Monday through Friday. The basic workday will be eight (8) hours. Special programs or unusual circumstances may necessitate work on other days; in such instances, the work week shall be five (5) days out of a seven (7) day period; provided the County shall notify employees at least one week prior to changing their work schedules. Nothing in this Article shall prevent the Health Director from changing work schedules, on a temporary basis, in the event of a bona fide public health emergency, as determined by the Director.

4.1.1 Modifications. Any change to employees’ Section 4.1 work schedule shall be mutually agreed upon between the Association and the Executive or designee except in case of an emergency as provided by POL AD110010Z. Such agreed upon modifications to the workweek which result in a reduction of hours shall not be construed to be a “layoff” as provided in Article 16.

4.1.2 Work in Pt. Roberts. Employees who are required by the County to cross the border to Pt. Roberts to perform work will cooperate with their supervisor to adjust their schedule within the week to avoid the payment of overtime. Both parties recognize there may be circumstances where overtime work is unavoidable.

4.2 Overtime. All work performed in excess of the basic workday or scheduled workweek shall be compensated at time and one-half the regular straight-time hourly rate of pay. Payment for such hours worked shall be in wages or in equivalent compensatory time, in accordance with Section 4.9 below. All overtime must be approved in advance by the employee’s supervisor, provided that the parties agree to continue the existing practice
of allowing nurses to take flex time off at straight-time under circumstances where the employee alters the daily work schedule to accommodate operating needs.

4.3 **Pyramiding.** The hour requirements referred to above shall in no manner constitute a guarantee, nor shall there be any pyramiding of overtime.

4.4 **Alternative Scheduling.** The County and the Association agree to continue alternative scheduling by mutual agreement (see LOU, item #6) between the Association and the Executive or designee. Such Agreement will provide for no reduction in the effective service to the public and will insure that critical service days are adequately covered by the remaining personnel. The parties will agree to a schedule that does not increase the County's compensation costs and that recognizes the impact of employee illnesses and vacations.

4.5 **Flex Time.** Upon employee request for a change of schedule and by mutual agreement between the employee and the department head or designee, "flex time" may be used for periodic personal employee matters, to make up doctor or dental appointments, to attend meetings or to perform work on behalf of the County. Such agreements shall provide for no reduction in service to the public and must not increase the County's compensation costs.

4.6 **Emergency Callbacks.** Emergency callbacks will be compensated at a minimum of two (2) hours to be compensated at time and one-half (1-1/2). When an employee is recalled to work from vacation, the employee shall be guaranteed a minimum of four (4) hours at the overtime rate and no deduction will be made from the employee's vacation balance for a day when the employee is recalled.

4.6.1 **Telephonic Response.** Employees authorized by their department head or designee to telephonically respond to emergencies, and who do respond between the hours of 9:00 p.m. and 6:00 a.m. shall receive one (1) hour minimum pay per incident at the rate of time and one half.

4.7 **Reporting Pay.** An employee who reports for work at the time scheduled by the County shall be entitled to pay for the full scheduled workday, even if the County is unable to provide work on the day they report. This reporting pay guarantee does not apply if the County notifies the employee prior to the start of his/her regularly scheduled shift not to report for work through any reasonable communication, taking into consideration the method of communication and the timing of the communication, such as electronically, voicemail, email, radio or television announcements, or in person.

4.8 **Absence Due to Adverse Weather.** Absence from work due to an employee's inability to report for scheduled work because of severe inclement weather, conditions caused by severe inclement weather or other unusual emergency conditions shall be charged to one of the following in sequential order, unless the employee wishes to designate a specific alternative option:
a. Compensatory time.
b. Any accrued vacation leave.
c. Personal Holiday.
d. Leave without pay.
   An employee has the option of taking leave without pay, instead of having the
   lost time charged against accruals, provided the departmental payroll clerk is
   notified before the payroll cutoff date.

4.8.1 Tardiness Due to Adverse Weather. Tardiness due to inability to
report to work because of severe inclement weather, conditions caused by severe
inclement weather, or other unusual emergency will be allowed up to one (1) hour at the
beginning of the work day. Tardiness in excess of one (1) hour, shall be charged as
provided above.

4.9 Compensatory Time. Compensatory time may be substituted for payment of
one and one-half times the regular hourly pay rate for overtime work, by mutual agreement
between the employee and the County, under the following conditions:

4.9.1 Accrual. The employee must request compensatory time in lieu of
overtime pay. The County may grant the request, but shall not impose compensatory time
upon any employee who has not requested it. Employees requesting compensatory time
shall have such request granted up to an accrual of twenty-four (24) hours per calendar
year. An employee may accrue no more than 80 hours of compensatory time. Any
compensatory hours which would be above the 80 hour limit will be paid. Compensatory
time is accrued at the rate of one and one-half hours for each hour of overtime worked.

4.9.2 Usage. An employee will be allowed to use the compensatory time
within a reasonable period of time mutually acceptable to the employee and supervisor, so
long as such use does not unduly disrupt the operations of the County.

4.9.3 Cashout. By mutual agreement between the employee and County,
the employee may cash out accrued compensatory time at the end of each calendar year.
The payment shall be calculated on the basis of the employee’s regular hourly rate at the
time payment is received. Upon termination of employment, an employee shall be paid for
unused accrued compensatory time at the employee’s current regular hourly rate.

4.10 Breaks. Breaks include two paid fifteen (15) minute rest breaks. A thirty
(30) to sixty (60) minute lunch period on the employee’s time beginning no earlier than two
(2) hours and no later than five (5) hours after the start of the shift or as otherwise
required/permitted by law. Employees not able to take a rest or lunch break shall notify
their supervisor as soon as possible. Rest and lunch breaks may, at the employee’s
option, be intermittent. The thirty minute lunch period must be by mutual agreement of the
employee and his/her supervisor, except in the case of alternative schedules where service
needs must be met. Lunch and rest breaks may not be accumulated or not taken in order to shorten the workday or workweek. Section 4.2 of this agreement shall apply when an employee is not able to take a rest break.

ARTICLE 5 – HOLIDAYS

5.1 Eligibility Criteria. All full-time and part-time (.5 FTE or above) employees are eligible for holiday pay. To receive holiday pay, an employee must have been in paid status, or on approved voluntary unpaid furlough, the scheduled work day before and after the holiday. “Paid status” is defined as payment of wages for work performed, vacation or accrued sick leave, or other paid leave including income for industrial injury not to exceed twelve (12) calendar months.

5.1.1 Employees Working Less Than 1.0 FTE. Part-time employees are eligible for holiday pay on a pro-rated basis in relation to their currently assigned, but no more than their budgeted full-time equivalency (FTE).

5.2 Holiday Schedule. The following days shall be considered as holidays with pay under the terms of this Agreement:

New Year’s Day
Martin Luther King’s Birthday
President’s Day
Memorial Day
Independence Day
Labor Day
Veteran’s Day
Thanksgiving Day
The day after Thanksgiving Day
The Day before Christmas
Christmas
Personal Holiday

5.2.1 Holiday Timing. If a holiday falls on a Saturday, it shall be observed the preceding Friday; if it falls on a Sunday, it shall be observed the following Monday.

5.3 Holiday Pay. Holiday pay shall be at the employee’s regular rate of pay regardless of which day it may fall on.

5.3.1 Working a Holiday. If an employee works on a holiday, he or she shall receive one and one-half (1-1/2) times the regular rate of pay for all hours actually worked. Double time shall be paid for time worked by an employee for all hours beyond the regular work day on a recognized holiday.

5.3.2 Less Than 1.0 FTE’s Working Extra Hours. An employee working less than a full-time schedule who works more hours than budgeted that month will, on a quarterly basis, receive extra holiday pay based on the extra hours worked. Effective with implementation of this Agreement, employees assigned to work less than a 1.0 full-time equivalency (FTE) shall accrue holiday benefits based on their currently assigned, but no more than their budgeted FTE. If an employee works more than their budgeted FTE in a month, they will receive an adjustment to their compensatory time balance. Adjustments to compensatory time will be exactly equal in hours to the employee’s percent FTE worked.
times eight (8) hours less actual holiday earned. Adjustments to compensatory time are
hour for hour at regular rate of pay. Adjustments to compensatory time will not be pursuant
to section 4.9, and therefore will not be calculated at one and one-half times the regular
rate of pay. Adjustments to compensatory time balances will be made quarterly.

5.4 Personal Holiday. Each employee shall receive one personal holiday each
calendar year which may be taken by the employee when the schedule is approved by the
County. Scheduling for the Personal Holiday must be approved by the County. The
personal holiday must be taken during the calendar year and cannot be cashed out upon
separation.

5.4.1 Personal Holiday for New Hires. New hires must have been on the
County’s payroll three (3) calendar months of 80 compensated hours prior to utilizing the
personal holiday.

5.4.2 Employees Working Less Than 1.0 FTE. The personal holiday for
employees working less than an assigned eight (8) hour schedule shall be prorated based
on their currently assigned, but no more than their budgeted full time equivalency (FTE) on
January 1 of the calendar year.

ARTICLE 6 – VACATIONS

6.1 Eligibility Criteria. Eligible employees shall accrue vacation on a calendar
month basis. All full-time and part-time employees regularly scheduled to work at least 80
hours per month are eligible to accrue vacation, provided employees must receive
compensation each month, as defined in Article 23.3.

6.1.1 New Employees. New employees may use accrued vacation following
completion of six months of initial employment.

6.2 Accrual. The amount of vacation earned for each calendar month shall be
determined by the number of years of continuous service completed by the employee
immediately prior to the commencement of the calendar month in accordance with the
following chart:

<table>
<thead>
<tr>
<th>During the Following Years of Service</th>
<th>Hours of Vacation (based on 1.0 FTE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-1 years</td>
<td>6.67 hours</td>
</tr>
<tr>
<td>2 years</td>
<td>7.34 hours</td>
</tr>
<tr>
<td>3 years</td>
<td>8.00 hours</td>
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<tr>
<td>4 years</td>
<td>10.00 hours</td>
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<tr>
<td>5-7 years</td>
<td>11.34 hours</td>
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<tr>
<td>8-9 years</td>
<td>12.00 hours</td>
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<td>10 years</td>
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<td>11 years</td>
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<td>14 years</td>
<td>16.00 hours</td>
</tr>
<tr>
<td>15 years</td>
<td>16.67 hours</td>
</tr>
</tbody>
</table>
6.2.1 Employees Working Less Than 1.0 FTE. Employees working less than a full-time schedule shall accrue paid vacation based upon their currently assigned, but no more than their budgeted full-time equivalency (FTE).

6.2.2 Maximum Accrual & Carryover. Employees may accrue and carry forward a maximum of 240 hours vacation on the last pay period of any calendar year. Unused vacation in excess of 240 hours shall be forfeited with the following exceptions: an employee whose timely vacation request is denied due to the County’s needs, shall be allowed to carry over vacation in excess of the 240 maximum for up to twelve months.

6.3 Scheduling. The County reserves the right at all times to restrict the taking of vacations during peak workload periods or determining the number of employees that may be on vacation at any one time for operational efficiency.

6.3.1 Vacation Requests. Requests for leave shall be in writing and approved in advance by the employee’s supervisor. In the event of conflicts between the employee’s requests for leave, the employee first requesting leave shall prevail. Vacation may be taken with the County’s approval.

6.4 Vacation Pay. All vacation pay shall be based on the employee’s regular rate of pay in effect during the time he or she takes a vacation. If a holiday recognized by the Agreement falls on a normal working day during which the employee is on vacation the holiday shall not be counted against the employee’s vacation account.

6.4.1 Less Than 1.0 FTE's Working Extra Hours. Employees will, on a quarterly basis, receive extra vacation pay if they work beyond their budgeted hours in a month. Effective with implementation of this Agreement, employees assigned to work less than a 1.0 full-time equivalency (FTE) shall accrue vacation benefits based on their currently assigned, but no more than their budgeted FTE. The following references to adjustments to compensatory time will not be made relative to section 4.9, the requirement of one and one-half times the regular rate of pay, but rather the following: If an employee works more than their assigned FTE in a month, they will receive an adjustment to their compensatory time balance. Adjustments to compensatory time will be exactly equal in hours to the difference between an employee’s vacation accrual rate times percent FTE worked and actual vacation earned based on assigned FTE. Adjustments to compensatory time balances will be made quarterly.

6.5 Termination. An employee who voluntarily terminates or is terminated for cause shall be compensated for any vacation earned, which they are eligible to take, but not already taken.

6.5.1 457 Contribution. An employee may elect to contribute cashout to a 457 plan if election is made at least two pay periods prior to termination.
ARTICLE 7 - SICK LEAVE

7.1 Eligibility Criteria. To be eligible to accrue sick leave as provided herein, employees must receive compensation each month, as defined in Article 23.3.

7.2 Accrual Rate. Cumulative sick leave shall accrue, to all full-time and part-time employees who are regularly scheduled to work at least 80 hours per month and who are compensated at least eighty (80) hours in one (1) calendar month of employment, in the amount of eight (8) hours for each month of employment to a maximum of nine hundred and sixty (960) hours except as noted in section 7.2.3.

7.2.1 Employees Working Less Than 1.0 FTE. Part-time employees accrue sick leave on a pro-rated basis in relation to their currently assigned, but no more than their budgeted full-time equivalency (FTE).

7.2.2 Accrual During Paid Leaves. Sick leave shall continue to accrue during paid leaves of absence as long as eligibility criteria is met.

7.2.3 Maximum Accrual & Additional Accrual. An employee who has accrued nine hundred and sixty (960) hours of sick leave on December 31 of any year, shall be allowed to accrue up to one thousand and fifty-six (1,056) hours of sick leave during the year immediately subsequent. These additional hours of accrual may not be cashed out. The employee’s total accrual reverts back to no more than nine hundred and sixty (960) hours at the end of the year.

7.3 Sick Leave Usage. Conditions under which an employee is to be paid sick leave are limited to the following:

7.3.1 Personal Use. While the employee personally is disabled because of his or her illness, pregnancy, or injury, while receiving preventive health care, or when an employee whose exposure to contagious disease, as determined by the Health Officer, would jeopardize the health of fellow workers or the public should he or she attend work as scheduled.

7.3.2 Use to Care for Others. An employee may use sick leave to care for the child of the employee with a health condition that requires treatment or supervision if the child is either under eighteen years of age or older but incapable of self-care because of mental or physical disability; for the care of an adult child who doesn’t have a mental or physical disability (40-hour maximum per calendar year); or for the care of an employee’s spouse, registered domestic partner, registered spousal equivalent (40-hour maximum per calendar year), parent, parent-in-law, or grandparent with a serious health condition or an emergency condition. Family members are as defined in RCW 49.12.

7.3.3 Registering Spousal Equivalents. Employees must register their spousal equivalent with Administrative Services – Human Resources on the appropriate form before being able to utilize accrued sick leave.
7.3.4 **Proof of Illness.** The County reserves the right to require a doctor's statement or other verification that the employee was ill while on sick leave, or that the illness of the employee's spouse, registered domestic partner, registered spousal equivalent, parent, parent-in-law, grandparent, or child was sufficiently serious to require the employee to be in attendance.

7.3.5 **Sick Leave Sharing Program.** The County agrees to allow a yearly donation of twenty-four (24) hours under the County's Sick Leave Sharing Program.

7.3.6 **Return Rights From Leave of Absence.** Employees on extended leave of absence because of illness or injury shall retain the right to return to their original position for a period of one year from the last day for which they have received compensation.

7.3.7 **On-The-Job Injury.** An employee may use sick leave to offset loss of wages when he or she is injured on the job and is collecting time loss compensation.

7.3.8 **Excess Sick Leave Contributions.** Employees with at least 960 hours in their sick leave bank at the beginning and end of the calendar year (or at the beginning of a calendar year and upon termination in that same year) shall receive a Retirement Health Savings (RHS) contribution based upon additional hours accrued during that year: Hours accrued (to a maximum of 48) minus hours used, multiplied by 25%, multiplied by hourly rate at year-end, equals RHS contribution.

7.4 **Unused Sick Leave.** Any employee shall be entitled to cash upon termination in the amount of twenty-five percent (25%) of their sick leave bank at the time of termination; provided, however, such employee has given at least thirty (30) days' notice prior to termination; and provided further, that this section shall not apply to any employee terminated for cause.

7.4.1 **457 Contribution.** An employee may elect to contribute cashout to a 457 plan if an election is made at least two pay periods prior to termination.

**ARTICLE 8 - LEAVES OF ABSENCE**

8.1 **Jury Duty & Civil Leave.** Civil leave with pay shall be allowed to permit an employee to serve as a juror or to testify in any federal, state or municipal court when a subpoena compels such testimony and such testimony is in connection with a matter in which Whatcom County is a party. An employee must notify the immediate supervisor prior to taking civil leave and show proof of compulsion. When an employee receives any payment for serving as a juror or witness, such payments must be paid to the County.

8.2 **Military Leave.** Compensation and benefits during periods of military leave shall be as outlined in state law, USERRA and County policy. Employees must notify his or her supervisor and Human Resources upon notice or receipt of orders requiring an employee to be absent from their job.
8.3 Maternity Leave. Maternity leave shall be granted to any employee for pregnancy and its ending. The provisions of this Section shall be applied consistent with the provisions of RCW 9.02.100 et seq. as amended. Employees on maternity leave not eligible for FMLA shall use their accrued sick leave and vacation leave. Unless the birth mother chooses to invoke FMLA, a birth mother’s period of temporary pregnancy-related disability shall not be deducted from the FMLA leave entitlement. If additional leave is required, it shall be without pay, for a total of six (6) months, at the discretion of and with prior written approval of the Health Director and Executive or designee. Normally, there would be no extension beyond six (6) months, but under extraordinary circumstances, this period may be extended an additional six (6) months at the discretion of the County. The County may require the employee to submit a letter from her physician stating the date she can return to work without impairing her health. The employee is entitled to return to her former or equivalent position. If leave pursuant to this provision would also qualify as leave under any federal or state statute, including the Federal Family and Medical Leave Act or any applicable Washington state statutes, the period of leave will apply toward the employee’s entitlement to leave under any applicable statute.

8.4 Other Leaves of Absence. Any employee may be granted leave of absence without pay for a period of six (6) months at the discretion of and with prior written approval of the Health Director and the Executive or designee. Under special circumstances, the period may be extended an additional six (6) months at the discretion of the County. No leave of absence shall be taken unless the employee has first expended compensatory time, accumulated vacation leave, personal holiday and sick leave, if allowable; provided, this prohibition may be waived upon application to, and at the discretion of, the Executive or designee.

8.5 Return From Leave. Upon return from any authorized leave of absence with pay an employee shall be entitled to the former position or similar position, and there shall be no reduction in seniority, status, or pay. Seniority shall not be credited for leaves of absence without pay. An employee during a leave of absence may continue medical, dental, or life insurance benefits provided such employee makes satisfactory arrangements for payment of such premiums.

8.6 Professional Leave. The County reserves the right to determine the type and amount of professional training the nurses shall receive with pay; provided, that at least four (4) days per nurse per year with pay will be provided to allow employees to attend such professional work related conferences and training programs.

Any employee may be granted an unpaid leave of absence for up to one (1) year for educational purposes not leading to a master’s degree, or up to two (2) years for programs leading to a master’s degree. All educational leave will be granted only at the discretion of and with prior written approval of the County. The further education sought must be related to the profession of the employee and provide skills that can be utilized by the County. Two (2) months prior to the termination of leave, the employee must confirm in writing to the County the intention to return to work. The employee is entitled to return to her/his former or equivalent position. Seniority shall not accrue during the unpaid leave.
8.7 Domestic Violence Leave. The County provides unpaid leave to employees who are victims of, or who are family members of victims of domestic violence, sexual assault, or stalking, or consistent with the requirements of the Washington Domestic Violence Leave Law (RCW 49.76). Employees can substitute accrued paid leave for unpaid leave.

8.8 Failure to Return. Failure to return from an authorized leave of absence may be grounds for discipline up to and including discharge.

ARTICLE 9 - BEREAVEMENT LEAVE

If an employee suffers a death in the immediate family, the employee shall be allowed not more than five (5) days (up to 40 hours) off without loss in pay for bereavement in the death of a spouse, registered domestic partner, registered spousal equivalent, child or parent (including step), of the employee or spouse. Employees must register their spousal equivalent with Administrative Services – Human Resources on the appropriate form before being able to utilize bereavement leave. Three (3) days off without loss of pay shall be allowed for other immediate family members. Other immediate family members are defined to be: brothers, sisters, grandchildren or grandparents of either the employee or the employee's spouse, including step. In the event of a funeral or other memorial occurring as a result of the death of a current, lawful brother or sister-in-law, the affected employee may have up to eight (8) hours of paid time off to attend the funeral or memorial.

For the purposes of bereavement leave only, a “day” is defined as the number of hours an employee is assigned to work for the requested days off (not to exceed forty (40) hours). Employees working less than an assigned eight (8) hour schedule shall receive bereavement leave benefits based on their current assignment, but no more than their budgeted full time equivalency. Employees desiring additional days off without pay or using accrued leave shall make a written request through his or her department head or designee for approval by the County.

ARTICLE 10 - FAMILY LEAVE

10.1 Family Leave. The County will comply with all state and federal laws and regulations, as amended, regarding family and medical leave, including military family leave entitlements and will make copies of the statutes and regulations available upon request. Employees are not required to use accrued vacation time or sick leave before commencing unpaid family leave. Beginning January 1, 2006, once an employee has used a total of twelve (12) work weeks of unpaid FMLA, while employed by Whatcom County, all available accruals must be exhausted during any future FMLA leave before taking unpaid leave.

10.2 Physician Certifications. The County may require physician certifications as permitted by law.
ARTICLE 11 - COMPENSATION AND RATES OF PAY

11.1 Salary Schedules. All bargaining unit employees shall be classified pursuant to Addendum A and paid pursuant to Addendum B, which are made a part of this Agreement by reference.

11.2 Longevity Pay. Effective January 1, 2009, longevity was eliminated as a separate compensation item and was added to the base wage where it shall be increased automatically as future wage increases occur. The Parties agree for comparability purposes, this collective bargaining agreement provides such longevity as an element of wages.

11.3 Premiums

11.3.1 Certified Registered Nurses. Nurses certified by a nationally recognized specialty nursing association (such as American Nurses Credentialing Center or the International Board of Certified Lactation Consultant Examiners) or by the Washington State Board of Nursing and who utilize such certification because of their employment assignment with the Health Department will be designated as Public Health Nurse (Certified) and paid at the appropriate range (consistent with Section 13.4).

11.3.2 ARNP. Effective the first pay period 2008 matrix rates were implemented in the payroll computer system, the ARNP premium was eliminated as a separate compensation item and was added to the base wage where it shall be increased automatically as future wage increases occur. The Parties agree for comparability purposes, this collective bargaining agreement provides such premium as an element of wages.

11.3.3 Jail and Juvenile Premium. A premium of $1.00 per hour will be paid for all hours worked in the Whatcom County Jail and the Whatcom County Juvenile Detention Unit.

11.3.4 Jail Shift Premium. A shift premium or $2.50/hour will be paid for all hours worked in the Whatcom County Jail between the hours of 6:00 p.m. and 7:00 a.m.

11.3.5 Jail Weekend Premium. A weekend premium of $2.00 per hour will be paid for all hours worked in the jail on Saturday or Sunday. There will be no pyramid of shift and weekend premiums; if both premiums apply, the employee will get the higher of the two.

11.4 Probation. Employees shall be on probation during their first six (6) months of employment. Probationary periods can be extended up to six (6) months with mutual agreement by the Association and the Executive or designee provided the Local Unit Chairperson or designee is notified at least ten (10) calendar days prior to the end of the probationary period.
11.5 **Step Increases.** Step increases are awarded per Addendum B (based on satisfactory performance) on the first day of the month in which the employee’s anniversary/step date falls.

11.6 **Electronic Contact.** The parties agree that a public health emergent situation may be identified by the Director, or designee, as requiring a bargaining unit member with specific expertise which is otherwise not readily available to remain in electronic contact with the Department. During such periods, assigned employees shall receive $8.70 per day. Whenever employees respond electronically pursuant to this article, they will also be compensated the amount set out in Article 4.6.1 – Telephonic response. When employees respond in person, they will also be compensated per Article 4.6 – Emergency Callbacks. To the extent reasonable and practical, employees shall respond electronically as opposed to in person.

**ARTICLE 12 - NO STRIKE - NO LOCKOUT**

There shall be no work stoppage, slowdown, picketing, boycott, sympathy strike, refusal to cross a picket line, or lockout concerning matters covered by the Agreement for its duration. Any action of the County in closing operations during a riot or civil commotion, for the protection of the property, shall not be deemed a lockout. Notwithstanding the foregoing, it shall not be considered grounds for discipline or discharge for employees to observe a lawful picket line, except when the Health Director has directed a member of the bargaining unit to cross the picket line to perform duties immediately and directly necessary for the protection of public health.

**ARTICLE 13 - CLASSIFICATIONS**

13.1 **Higher Classification.** When an employee works in a higher classification for five (5) or more working days, such employee shall be paid at the higher rate of pay.

13.1.1 **Training.** Section 13.1 shall not apply to employees being trained for the calendar month in a higher classification. During such training, employees shall not be paid above their regular rate of pay.

13.2 **Lower Classification.** An employee may be temporarily assigned the duties of a lower classification without suffering a reduction in pay.

13.3 **New Classification.** The County shall give the Association thirty (30) days notice of new classifications. The County shall place employees in a pay range that is consistent with their duties, responsibilities and job content. Disputes regarding proper pay range placement shall be subject to negotiations.

13.4 **Split Classifications.** Bargaining unit employees who are budgeted to work in more than one classification covered by the collective bargaining agreement shall be paid at the applicable rate for the number of hours worked in each classification. Employees will be compensated for accrual usage and cashout based on their FTE assignment in each classification.
ARTICLE 14 - HIRING AND PROMOTIONS

14.1 Job Vacancies. Whenever it is necessary to fill position vacancies, the following procedure shall be followed:

14.1.1 Job Postings. When vacancies or new jobs occur in positions covered by this Agreement, the County shall post a vacancy which shall include any resulting subsequent vacancies for six (6) working days in a manner and in places conspicuous to employees in the bargaining unit. The County agrees it will continue to make job postings accessible to employees away from the job site. Job postings shall include job title, range, the date and time for closing, the place to file application materials, the shift and the supervisor's title.

14.1.2 Expedited Posting. Once all employees in the unit have expressed on a "sign-off sheet" that they are not interested in the position, the posting period is over. An expedited posting will only be for six (6) working days or less.

14.1.3 Preference Filling Vacancies. Preference in filling vacancies and new positions created during the term of this Agreement will be given regular employees having the necessary qualifications, except as restricted by the Layoff and Recall Article of this Agreement. Preference in hiring shall mean that qualified regular employees who apply for such position shall be considered first, and applications from outside the bargaining unit will be considered only if the County decides not to make a selection from employee applicants.

14.2 Promotions. Except for supervisory positions (which the County may fill in accordance with its sole judgment) promotions will be based on meeting of stated qualifications, job knowledge, past performance and seniority. Where stated qualifications, job knowledge and past performance of applicants are relatively equal, seniority will apply.

14.3 Placement On Salary Schedule.

14.3.1 Promotion. In the event of a promotion an employee shall move to the closest step in the new salary range which awards at least a five percent (5%) increase (but no higher than the top step) over the original salary. The promotion date shall then become the future date for step increases. Movement to the next higher step follows twelve (12) months' service in the new range. All promotions are subject to a four (4) calendar month evaluation period (six (6) calendar months for supervisory positions).

14.3.2 Reclassification. In the event of a reclassification upward, an employee shall move to the closest step in the new salary range which awards at least a five percent (5%) increase (but no higher than the top step) over the original salary. The reclassification date shall then become the future date for step increases.

14.3.3 Position Realignment. The Union may petition the County by August 15 of any year to be effective the following January 1st, for the realignment of
positions that meet the conditions defined in this Section. No position shall be realigned more than once during the term of this Agreement. "Realignment" shall mean "change in wage range with no change in duties." For positions to be reviewed the petition must demonstrate at least four (4) matches of the bargaining unit position duties, method of compensation and qualifications to the same position duties, method of compensation, and qualifications in comparable counties or health districts and have an hourly wage that is under the average hour wage of the comparable counties' or health districts positions by at least five (5) percent. Comparable counties or health districts are: Benton, Cowlitz, Kitsap, Skagit, Thurston, Yakima. All comparable counties or health districts where matches exist must be used. Comparisons will be based on the top step hourly wage. Petitions, except those using AWC salary survey data, shall include position job descriptions and wage tables for the comparison counties used in the petition. Once the County determine the data submitted supports the petition that a position requires realignment, affected employees in the position will be placed in a new higher range (one range higher but not more than the top step of the new range or the top step of the top range) in their current step. The effective date of the realignment shall become the step increase date.

14.3.3.1 Additional Considerations. In the administration of section 14.3.3 – Position Realignment, in the event the County identifies a position as one with documented local recruitment and/or retention difficulties then secondary comparables based on closed geographical and sociological issues may be considered.

14.3.4 Temporary License. For employees promoted under a temporary license, the date the employee began performing duties under the temporary license will be the date of reference for step increases, rather than the date of permanent licensure. If the employee is promoted under a temporary license, the employee will receive fifty percent (50%) of the increased rate of pay during the period the employee is working under the temporary license and receive the other fifty percent (50%) of the increased rate of pay upon permanent licensure.

14.3.4.1 Rate for Stipulated Positions. Except as indicated above, graduate ARNPs, Public Health Nurses and Registered Nurses shall be paid two point five percent (2.5%) under the applicable Step 1 rate pending permanent licensure.

14.4 Ability to Cross Border. Employees must maintain the ability to cross the Canadian border if they are assigned to a position which may at any time require crossing the Canadian border. In the event U.S. employees are required to provide documents crossing the border where the cost to the employee would exceed $100, the County and Association agree to meet and bargain the impact on employees.

ARTICLE 15 - EMPLOYMENT PRACTICES

15.1 Non-discrimination. The County and the Association shall comply with all applicable federal, state, and local laws prohibiting discrimination in employment, except as provided in Article 2, Union Security and applicable law as provided in RCW 41.56. Where the masculine or feminine gender is used in this Agreement, it is used solely for the

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purpose of illustration and shall not be construed to indicate the sex of any employee or job applicant.

15.2 Discipline and Discharge. The County shall take no adverse action against any employee including discipline, discharge or suspension without just cause, provided that a probationary employee (as defined in Section 11.4) may be summarily discharged.

15.2.1 Representation. Employees shall have the right to Association representation at any meeting regarding the discussion of possible disciplinary action affecting the employee. If the employee desires Association representation, said employee shall be provided reasonable time to arrange for Association representation. Prior to such meeting, the supervisor involved shall notify the employee of his or her right to such representation.

15.3 Mileage Allowance. The County agrees to reimburse employees for mileage based on Internal Revenue Service guidelines for the use of their own vehicle while on official County business.

15.4 Personnel Files. The employees covered by this Agreement may examine their personnel files.

15.5 Performance Standards. Any performance standards used to measure the performance of employees shall be fair, just and reasonable and uniformly applied throughout the Department.

15.6 Electronic Funds Transfer. All regular employees shall authorize paycheck deposit by electronic funds transfer (EFT) within thirty (30) days of employment.

15.6.1 Changes. Changes to a different institution or account require four (4) weeks notice and can be made no more than once per calendar quarter. The Executive or designee may grant exceptions.

15.6.2 Emergency Cessation. Employees may temporarily stop EFT in emergency situations with at least seven (7) calendar days notice before a scheduled payday. Employees must restart the EFT within three months. The Executive or designee may grant exceptions.

15.6.3 Implementation. Employees providing documentation of their inability to open a checking and/or savings account may have this requirement waived.

ARTICLE 16 - LAYOFF AND RECALL

16.1 Seniority. The County and the Association agree that seniority (defined as length of continuous service in the Department) shall govern in layoff and recall procedures (i.e., the least senior employee shall be laid off first); provided, that the remaining employees are qualified to perform the available work. This Article shall not apply to any
probationary employee. Except as provided in Section 4.1.1, the above procedure shall apply in cases of reduction of hours of any job as well as layoff.

16.2 Notice. Employees shall be given written notice of their pending layoff at least fifteen (15) calendar days in advance of their layoff date. The County agrees that in the event of a layoff or reduction of hours within the bargaining unit, the County will notify the Association to discuss the procedure to be utilized.

16.3 Loss of Seniority. An employee shall lose seniority under this Agreement for the following reasons:

a. Voluntary termination.

b. Discharge for cause.

c. Failure to return to work if first offer of recall to a comparable position is refused.

d. Layoff for a period exceeding twenty-four (24) months.

16.4 New Employees. No new employees shall be hired by the County until all available employees placed on layoff who are qualified to perform the duties of the vacant position have been offered the position.

16.5 Recall. An offer of reemployment shall be in writing and sent by registered or certified mail to the employee.

16.6 Recall Rights. Employees recalled from layoff shall not forfeit previously accumulated seniority, or unpaid accrued sick leave. Vacation shall begin accruing at the same rate of accrual as at the time the layoff occurred.

ARTICLE 17 - CONFERENCE COMMITTEE

The County and the Association agree to establish a joint Conference Committee consisting of up to three (3) representatives of the unit, including the Association representative, and up to three (3) representatives of the County, including a representative from Administrative Services – Human Resources. The purpose of this Committee is to discuss matters of concern to employees or the County. The Committee shall function in an advisory capacity rather than a decision-making capacity and shall be for the purpose of discussing matters of concern to employees or the County and issue resolution. When either party desires to call a meeting of the Committee, they will inform the other party (including the Association representative and Human Resources) in writing, at least one (1) week in advance, stating the subjects they wish to discuss. Discussions shall not be considered commitments on the part of either party unless confirmed as an agreement in writing and signed by the Association and the County.
ARTICLE 18 - RETIREMENT

All employees shall be covered by the Washington State Department of Retirement Systems in accordance with applicable law.

ARTICLE 19 - GRIEVANCE PROCEDURE

19.1 Procedures. Working days as used in this Article shall be defined as Monday through Friday, excluding paid holidays. Probationary employees shall not be entitled to utilize this Grievance Procedure for any disciplinary actions that are taken by the County. Grievances may be heard on work time where practical and feasible.

The Association shall notify the County as to the identity of the Local Unit Chairperson. The Local Unit Chairperson shall be allowed to administer the terms of this Agreement and investigate grievances on work time where practical and feasible.

Throughout the procedures as set forth in this Article, grievances may be presented by employees, and/or Local Unit Chairperson and/or Association representatives. Grievances of general concern to the bargaining unit may be initiated at Step 2 of this Article.

In the event of any dispute arising as to the interpretation or application of this Agreement, it shall be handled in the following manner:

Step 1 Complaint

The employee and/or the Local Unit Chairperson shall put the complaint in writing and present it to his or her immediate supervisor within fifteen (15) working days after the employee should have been reasonably aware of the alleged contract violation, or it shall be considered null and void. Every effort shall be made to settle the complaint at this level. If it is not resolved within five (5) working days after submission, the matter may proceed to Step 2.

Step 2 Grievance

The employee, within the next ten (10) working days shall present it personally, or through his or her Association representative, to the Human Resources Manager or designee. If not resolved at this level within the next twenty (20) working days, the Association may refer the dispute to final and binding arbitration as provided below.

19.2 Arbitration. Upon receipt by either the Association or the County of a written request for arbitration of a dispute which has been processed in accordance with the procedures set forth above, representatives of the County and the Association shall attempt to agree upon an arbitrator. In the event no agreement has been reached on the selection of an arbitrator within ten (10) working days from the receipt of the request for arbitration, the Federal Mediation and Conciliation Service shall be requested to submit a
list of eleven (11) qualified arbitrators from which list the arbitrator shall be selected by alternately striking one name from the list until only one (1) name shall remain. A hearing shall be conducted by the arbitrator as soon thereafter as is practicable. The decision of the arbitrator shall be rendered within thirty (30) calendar days after the close of the hearing and such decision shall be final and binding upon all parties. Any decision rendered shall be within the scope of this Agreement and shall not add to or subtract from any of the terms of the Agreement. In all matters submitted to arbitration each party to the arbitration shall bear the entire cost of its own witnesses and representatives. The cost of the arbitrator and all other mutually incurred expenses of the arbitration shall be borne equally by the parties.

19.3 Time Limits. Time limits referred to in this Article must be strictly adhered to, but may be waived by mutual agreement in writing. It is the intent of the parties that all procedures set forth herein shall be complied with as expeditiously as practicable.

ARTICLE 20 - SUBORDINATION OF AGREEMENT

It is understood that the parties hereto and the employees of the County are governed by the provisions of applicable federal and state law. When any provisions thereof are in conflict with, or are different than the provisions of this Agreement, the provisions of said federal or state law are paramount and shall prevail.

ARTICLE 21 - SAVINGS CLAUSE

If any article of this Agreement or any addenda thereto is held invalid by operation of law or by an tribunal of competent jurisdiction, or if compliance with, or enforcement of, any article is restrained by such tribunal, the remainder of this Agreement and addenda shall not be affected thereby, and the parties shall enter immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article.

ARTICLE 22 - CONTRACTING OUT

22.1 Bargaining Unit Work. All bargaining unit work of the County shall be performed by bargaining unit employees except where it can be clearly demonstrated that the required expertise is not available, or when work required for special projects of limited duration cannot be performed without excessive overtime hours, or when the County does not own the equipment necessary to perform the work or such equipment owned by the County is not currently available, or when the production schedule for completion of the work could not be met utilizing currently employed employees on a straight-time basis. The County will not subcontract work normally performed by bargaining unit employees if, at the time the work is initially to be subcontracted, employees are on layoff who are entitled to recall to positions which normally perform such work or the subcontracting would result in the layoff of employees who normally perform such work.

22.2 Contracting Out. Except in emergency situations, if the County proposes to contract out bargaining unit work as described above, the reasons for doing so shall be supplied to the Association with ample time (30 days) for discussion of such decision.
ARTICLE 23 - GROUP INSURANCE

23.1 Health & Welfare. The County agrees to make monthly contributions for employees, their spouses and dependents towards the following plans.

a) Medical – Whatcom County Self-Insured Cap Plan
c) Vision – WCIF Extended Vision Care Plan

23.1.1 Life Insurance. The County agrees to pay the entire employee only premium for life insurance through a carrier to be selected by the County providing the equivalent of one year’s base salary to a maximum of $50,000 of coverage.

23.1.2 Long-Term Disability. The County agrees to pay the entire employee premium for long-term disability insurance coverage for eligible bargaining unit employees through a carrier to be selected by the County for a plan comparable to the current benefit level.

23.1.3 Disputes. The County and the Association agree that any dispute over a denial of coverage under the Whatcom County Self-Insured Medical Plan may be appealed, through Human Resources to the County Executive or designee for final resolution.

23.1.4 Change or Modification of Plans. Except as otherwise provided herein, the County and the Association agree that carriers may be changed, or benefits modified upon mutual agreement.

23.2 Medical Plans Contributions.

23.2.1 2013 Medical Plans and Contributions. For Plan Year 2013, the County shall make contributions to fund a Medical Plan for each eligible employee up to $1,039.50 per month.

23.2.1.1 2013 Cap Medical Plan (QHDHP). The 2013 Cap Plan shall have an employee-only deductible of $1500 per year and an employee plus dependents deductible of $3000 per year. The Benefit Consultant’s projected monthly contribution cost of the 2013 Cap Medical Plan (QHDHP) was approximately $992.83. The County shall pay the entire premium for all employees enrolled in the 2013 Cap Medical Plan (QHDHP). For qualified employees enrolled in the 2013 Cap Medical Plan (QHDHP) who have enrolled in a County Health Savings Account (HSA), the County will contribute one-time seed money in 2013 to a voluntary HSA, a total of $1,250 per employee if signing up as an employee only OR $2,500 for an employee plus dependents. Fifty percent (50%) was contributed following execution of a Memorandum of Understanding with the remainder contributed in equal monthly installments throughout the remaining months in 2013. Health Savings Account contributions for part-time employees were pro-rated based on currently assigned, but not more than their budgeted FTE. This one-time seed money amount is inclusive of the difference between the County’s monthly contribution commitment of $1039.50 and the monthly Benefit Consultant’s projected contribution cost of the Cap Medical Plan (QHDHP) of $992.83.
23.2.1.1.1. Employee Health Savings Account (HSA) Contributions. Qualified employees enrolled in the County Health Savings Account are also eligible to contribute to this HSA through payroll deduction.

23.2.1.1.2 New Hires. For qualified employees hired between January 1, 2013 and December 31, 2013, and enrolled in the 2013 Cap Medical Plan (QHDHP) and County HSA, the County will contribute one-time seed money to a voluntary HSA, a total of up to $1,000 for an employee signing up as an employee only OR up to $2,000 for an employee if also signing up to cover dependents. Fifty percent (50%) will be contributed the first paycheck they are eligible for medical benefits and enrolled in the HSA with either $45.45 (employee only) OR $90.91 (employee plus dependents) contributed by the County throughout the remaining months in 2013. Health Savings Account contributions for part-time employees will be pro-rated based on currently assigned, but not more than their budgeted FTE.

23.2.1.2 2013 Contributory Cap Medical Plan. The 2013 Contributory Cap Plan shall have a deductible of $500 for employee only with a maximum deductible of up to $1,500 for an employee plus dependents. Employees enrolled in the 2013 Contributory Cap Medical Plan shall pay a monthly premium of $100.44 via payroll deduction.

23.2.1.3 2013 Cap 2000 Medical Plan (Non-Qualified High Deductible Plan). The 2013 Cap 2000 Plan shall have a $2,000 deductible for employee only; with a maximum deductible of up to $6,000 for an employee plus dependents and out-of-pocket maximum (which does not include co-pays and other items not applied to the out-of-pocket maximum) will be $4,000 for an employee only with a maximum of up to $12,000 for an employee plus dependents. The County shall pay the entire premium for all employees enrolled in the 2013 Cap 2000 Medical Plan.

23.2.2 2014 Medical Plans and Contributions. For Plan Year 2014, the County shall make contributions to fund a Medical Plan for each eligible employee up to $1,089.50 per month. Employees will elect their plan choice during an open enrollment period.

23.2.2.1 2014 Cap Medical Plan (QHDHP). In the event that the Benefit Consultant’s projected contribution cost for the 2014 Cap Medical Plan (QHDHP) is greater than $1,089.50, modifications to the plan benefits will be made per section 23.2.4 – Medical Schedule of Benefits, so that the projected contribution cost is up to $1,089.50 and employees pay no premium. For 2014, if the projected monthly contribution cost is less than the County’s contribution of up to $1,089.50, the County will contribute the difference monthly to qualified employees’ HSA accounts.

23.2.2.1.2 Employees Who Did Not Elect to Enroll in the 2013 Cap Medical Plan (QHDHP) But Who Enroll in the 2014 Cap Medical Plan (QHDHP). The County will contribute one-time seed money in 2014 to a voluntary County HSA, a total of $1,250 per employee if signing up as an employee only OR $2,500 for employee plus dependents for employees who did not elect to enroll in the 2013 Cap Medical Plan (QHDHP), but who enroll in the 2014 Cap Medical Plan (QHDHP). Health Savings Account
contributions for part-time employees will be pro-rated based on currently assigned, but not more than their budgeted FTE. Fifty percent (50%) will be contributed in January 2014 with the remainder contributed in equal monthly installments throughout the remaining months in 2014. This one-time seed money amount is inclusive of any remaining difference between the County’s monthly contribution commitment of up to $1089.50 and the monthly Benefit Consultant’s projected contribution cost of the Cap Medical Plan (QHDHP) for 2014.

23.2.2.1.3 New Hires. For qualified employees hired between January 1, 2014 and December 31, 2014, and enrolled in the 2014 Cap Medical Plan (QHDHP) and County HSA, the County will contribute one-time seed money to a voluntary HSA, a total of up to $1,000 for an employee signing up as an employee only OR up to $2,000 for an employee plus dependents. Fifty percent (50%) will be contributed the first paycheck they are eligible for medical benefits and enrolled in the HSA with either $45.45 (employee only) OR $90.91 (employee plus dependents) contributed by the County throughout the remaining months in 2014. Health Savings Account contributions for part-time employees will be pro-rated based on currently assigned, but not more than their budgeted FTE.

23.2.2.1.4 Employee HSA Contributions. Qualified employees enrolled in the County Health Savings Account are also eligible to contribute to this HSA through payroll deduction.

23.2.2.2 2014 Contributory Cap Medical Plan. In the event that the Benefit Consultant’s projected contribution cost for the 2014 Contributory Cap Plan is greater than $1,189.94 ($1,089.50 County contribution plus the $100.44 employee premium), modifications to the plan benefits will be made per section 23.2.4 — Medical Schedule of Benefits, so that the County’s contribution is up to $1,089.50 with the employee premium remaining at or below $100.44. In the event that the Benefit Consultant’s projected contribution for the 2014 Contributory Cap Medical Plan is less than $1,189.94 ($1,089.50 County contribution plus the $100.44 employee premium), the County will reduce the employee’s premium amount accordingly.

23.2.2.3 2014 Non-Qualified High Deductible Cap Medical Plan. For 2014, the County anticipates the continuation of this plan, but in the event that the Benefit Consultant’s projected contribution cost for the 2014 Non-Qualified High Deductible Cap Plan is greater than $1,089.50, modifications to the plan benefits will be made per section 23.2.4 — Medical Schedule of Benefits, so that the projected contribution cost is up to $1,089.50 and employees pay no premium.

23.2.3 Self-Insured Cap Medical Plan. If the County provides the Self-Insured Cap Medical Plans on a different basis to any other employee(s) in the County, represented or unrepresented, excluding binding interest arbitration groups, upon written request by the Association, the County shall agree to good faith bargaining regarding the Self-Insured Cap Medical Plans being offered to bargaining unit employees on the same basis.

23.2.4 Medical Schedule of Benefits. The schedule of benefits for the Cap Medical Plans may require modification during the life of the agreement in order that
coverage can be provided within the County's and Employee's contribution Cap amounts as established above. The parties agree that at any time the County may change the schedule of benefits in order to be legally compliant with applicable law or changes in plan administrator or administration. The parties agree the County is not required to enhance the Cap plan.

23.2.5 Dental, Vision, LTD and Life Insurance. The County agrees to pay the appropriate monthly premium amounts and such increases as required to maintain the dental, vision, LTD and life benefits listed above.

23.3 Eligibility. To be eligible for the benefits as provided herein, employees must be regularly scheduled to work at least 80 hours per month with contributions to begin on the first of the month following one (1) calendar month of 80 compensated hours of employment, and must receive compensation each month. The term compensation as used herein is defined to be payment of wages for work performed, vacation, accrued sick leave, or other paid leave; provided that said work, vacation and/or other paid leave must equal or exceed payment for 80 hours in a calendar month. Income resulting from an industrial injury to a maximum of twelve months from the date of the injury shall be credited as compensation.

23.3.1 Scheduling Quirk. If an employee fails to receive compensation in any month for 80 hours as required by Article 5, 6, and 7 of the Agreement, and the failure is due to a quirk in scheduling and through no fault of the employee, the individual nevertheless shall be considered eligible for all applicable benefits during the month in question.

23.4 Flex 125. All members of the bargaining unit will be eligible to participate in the County's Flexible Spending Account Plan (Flex 125 Plan).

23.5 Medical Advisory Committee. In the event the Cap Medical Plan is to be modified pursuant to Section 23.2.4 - Medical Schedule of Benefits, the County shall convene the Medical Advisory Committee. The Association shall be given advance notice of such meeting and the union representative and one (1) bargaining unit member, designated by the union, shall be afforded the opportunity to attend and participate in the Medical Advisory Committee meeting.

23.6 Retirement Health Savings Plan. The County agrees to make available to bargaining unit members a Retirement Health Savings Plan in accordance with and as allowed by IRS regulations.

ARTICLE 24 - INDEMNIFICATION

The County agrees to hold harmless employees for all damages, including attorney fees, which they may suffer as a result of lawsuits commenced against them arising out of their activities which are within the scope of their employment for Whatcom County. Should the employee's actions be outside the scope of their employment, or the allegations contained in the complaint allege actions which, if proven, would be outside the scope of their employment; or be intentional torts, then the County will not pay that judgment. In addition, the employee will hire counsel. Whatcom County will compensate the employee for that counsel on a reservation of rights basis. This means, if the allegation contained in the complaint is proven
then the County will not pay the judgment and the employee will be responsible for reimbursing the County for its attorneys fees. However, should the allegation of intentional tort not be proven but merely negligence, then the County will pay the judgment and will not seek reimbursement for the attorney fees.

**ARTICLE 25 - DURATION**

This Agreement shall be effective August 6, 2013, except for those provisions of the Agreement which have been assigned other effective dates as herein set forth, and shall remain in full force and effect to and including the 31st of December, 2014. At least sixty (60) days prior to the first day of January 2015, either party shall file written notice with the other of its desire to amend, modify, or terminate this Agreement.

This Agreement contains the entire understanding and agreement between the parties. Changes to this Agreement, whether by addition, deletion, amendment or modification, must be reduced to writing and executed by both the County and the Association.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 6th day of August, 2013.

WASHINGTON STATE NURSES ASSOCIATION

[Signature]
Negotiating Team Member

[Signature]
Negotiating Team Member

[Signature]
WSNA Nurse Representative

Executive Director

WHATCOM COUNTY

[Signature]
Whatcom County Executive
Jack Louws

DATE COUNCIL APPROVED:

[Signature]
APPROVED AS TO FORM:

Daniel L. Gibson
Chief Civil Deputy Prosecutor
ADDENDUM A
TO THE AGREEMENT
by and between
WHATCOM COUNTY, WASHINGTON
and
WASHINGTON STATE NURSES ASSOCIATION

Position Title Index

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## ADDENDUM B - Wages

### 2013 - 2014 Matrix – Ranges 47 - 52

#### 2013-2014 Hourly Matrix – Effective first full pay period in January

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#### 2013-2014 Monthly Matrix – For Reference Purposes Only

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### 2013 - 2014 Matrix – Ranges 23 - 40

#### 2013-2014 Hourly Matrix – Effective first full pay period in January

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<th>Range</th>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
<th>Step 5</th>
<th>Step 6</th>
<th>Step 7</th>
<th>Step 8</th>
<th>Step 9</th>
<th>12 months of service to move to next step</th>
<th>(36 mos. at step 10 req’d to move to step 11)</th>
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<tr>
<td>24</td>
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<td>$22.11</td>
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#### 2013-2014 Monthly Matrix – For Reference Purposes Only

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<tr>
<th>Range</th>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
<th>Step 5</th>
<th>Step 6</th>
<th>Step 7</th>
<th>Step 8</th>
<th>Step 9</th>
<th>12 months of service to move to next step</th>
<th>(36 mos. at step 10 req’d to move to step 11)</th>
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<tr>
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Whatcom County/WSNA CBA 8/6/13 – 12/31/14 – page 33

175
ADDENDUM C
WSNA ALTERNATIVE WORK SCHEDULE REQUEST

Employee Name: __________________________ Position: _______________________

% Full-Time Equivalency (FTE): ______

Please itemize below the schedule you would like to request. This schedule must be mutually agreed upon with your supervisor and have the approval of your supervisor, division manager, director or designee as well as Human Resources. Per Article 4.4 - Alternative Scheduling of the collective bargaining agreement, the requested schedule must not create a reduction in the effective hours of service to the public, critical service days must be adequately covered by the remaining personnel, and this schedule must not increase the department's compensation costs. Once a schedule is agreed upon and been approved, there will be no floating or changing of flex days unless approved by the supervisor to recognize the impact of employee illnesses and vacations. Approval of this request is not a guarantee by the County this schedule will be continued if changes need to be made in order to maintain service to the public or to meet other criteria in Article 4.4. Both parties recognize that alternative schedules are a benefit and must be worked as scheduled.

The schedule submitted below will be utilized to designate a Fair Labor Standards Act (FLSA) work week which is defined as 7 consecutive days with work weeks not to exceed 40 hours per week. Once an FLSA work week is agreed upon and approved, there will be no changing of that work week or flex day. Mutually agreed upon adjustments by the employee and supervisor of hours within a work day may be made as long as the adjustment takes place within the same FLSA work week.

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<th>Length of Lunch Break (e.g.: 1 hour)</th>
<th>Total # of Hours Worked per Day</th>
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<tbody>
<tr>
<td>Supervisor Signature</td>
<td>Date</td>
</tr>
<tr>
<td>Division Manager Signature</td>
<td>Date</td>
</tr>
<tr>
<td>Director or Designee Signature</td>
<td>Date</td>
</tr>
<tr>
<td>Human Resources Signature</td>
<td>Date</td>
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</tbody>
</table>
ADDENDUM D
COLLECTIVE BARGAINING AGREEMENT
LETTER OF UNDERSTANDING
By and Between
WASHINGTON STATE NURSES ASSOCIATION
and
WHATCOM COUNTY

This is to confirm the following agreements reached during the recent negotiations and is attached to the WSNA collective bargaining agreement identified as “August 6, 2013 through December 31, 2014”:

1. Shift Differential. If during the term of the Agreement the County implements a second and/or third shift, it will notify the Association in advance and upon request will meet and bargain about the appropriate shift differential payments for such shifts.

2. Drug Testing. Upon request by the County during the term of the contract, the Association shall meet and enter into negotiations on an alcohol and drug free workplace policy, including drug testing.

3. Benefits Eligibility Requirements. The eligibility requirement of 80 hours compensated in Articles 6 (Vacations) and 7 (Sick Leave) is not applicable to Mary Boire. Such employee shall continue to receive prorated benefits based on her budgeted percentage of a full-time position. The new eligibility requirement of 80 hours compensated in Article 23, Group Insurance, is not applicable to any employee eligible for group insurance benefits on August 9, 1994.

4. Leaves of Absence. Leaves of Absence without pay may be granted by the Department Head for periods of five or less work days per calendar year. The employee will not be required to have used all paid time off prior to the granting of such leave. Requests for such leave must be made in writing with the period of leave and flex time reconciliation being specified and approved in writing.

5. Alternative Schedules – Existing Practice. The existing process for Alternative Scheduling incorporates the following conditions:

   Staff may vary their time from the basic workday or workweek by written mutual agreement between the Director or designee and the employee. Alternative schedules cannot create a situation where the criteria in Article 4.4 is not met nor can the employee work more than:

   1) 40 hours in a basic workweek (unless written designation of pay weeks is requested and approved per Alternative Work Schedule Request form – Addendum C)

   2) 80 hours in a pay period, or

   3) 10 hours in a workday.

   Altering schedules for personal or work reasons must have the approval of the employee’s supervisor in accordance with Article 4.5 Flex Time.
It is anticipated that alternative schedules currently worked by employees will be continued; however both parties recognize that schedules may need to be changed in order to maintain service to the public or to meet other criteria in Article 4.4. Both parties recognize that alternative schedules are a benefit and must be worked as scheduled.
Addendum E
LETTER OF UNDERSTANDING
JOB SHARE AGREEMENT
WSNA COLLECTIVE BARGAINING AGREEMENT

This Letter of Understanding regarding Job Share Agreements is by and between Whatcom County, hereafter called "the County" and the Washington State Nurses Association, hereinafter called "the Association" regarding and attached to the WSNA Collective Bargaining Agreement identified as "August 6, 2013 through December 31, 2014.

The purpose of this Letter of Understanding is to confirm our understanding and agreement that two employees may request a job share arrangement. Job share agreements shall not increase personnel costs for the County nor shall they unduly increase administrative burdens for the department or the County. Should the County approve the request, it is understood the employees would be voluntarily electing to share a 1.0 FTE (40 hours per week) position and that the County will not exceed the equivalent of one set of Health & Welfare benefits (medical, dental, vision, life and long-term disability) subject to the following conditions:

VOLUNTARY JOB SHARE AGREEMENT
This fully executed Agreement must be in place prior to commencement of Job Share

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<tr>
<td>DEPARTMENT:</td>
<td>SUPERVISOR:</td>
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<td>PARTICIPANT B:</td>
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<td>HOURS/MONTH:</td>
<td>HOURS/MONTH:</td>
</tr>
<tr>
<td>Health &amp; Welfare Benefits</td>
<td>☐ Yes ☐ No</td>
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Agreement.
- Participants acknowledge they have voluntarily elected to equally share a 1.0 FTE position and agree to the conditions outlined in this Agreement.
- Participants together perform the duties of a full-time position. Total hours worked for both will not exceed an average of 173.33 regular hours per month (1.0 budgeted FTE), unless additional hours are designated as extra help hours.

Health & Welfare Benefits.
- Participants are eligible to receive employee-only medical, life and long-term disability coverage as well as family dental and vision benefits, provided they meet eligibility requirements. Should an employee desire family medical coverage, contributions shall be deducted from paychecks.
- Participants who initially opt out of health & welfare benefits for dependents may enroll at a later date if a COBRA qualifying event occurs or during the month of November may elect
coverage beginning the following January 1. In these situations, the eligibility requirements of each benefit plan must be met before coverage becomes effective.

- Participants who elect medical coverage for dependents may elect during the month of November to drop coverage effective the following January 1.

- The County will make contributions to the appropriate health & welfare plans on behalf of employees who are regularly scheduled to work and who are compensated for at least eighty (80) hours per month.

- Participants who have not previously been on health and welfare benefits must meet eligibility requirements in the WSNA Agreement to be eligible for health and welfare benefits coverage. Employees whose health and welfare benefits are being reinstated will be subject to the waiting periods specified in plan documents.

### PARTICIPANT ELECTIONS

<table>
<thead>
<tr>
<th>CHOICES</th>
<th>PARTICIPANT A (initial choice below)</th>
<th>PARTICIPANT B (initial choice below)</th>
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<tr>
<td>I elect medical coverage for my dependents and I will be obligated to pay via payroll deduction the amount established by the County for this coverage.</td>
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<td></td>
</tr>
<tr>
<td>I opt out of medical coverage for my dependents.</td>
<td></td>
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</tr>
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**Other Benefits.**

- Each participant will accrue and use vacation and sick leave based on their agreed upon 0.5 FTE position. Participants can use accrued vacation or sick leave only for days and hours they are regularly scheduled to work.

- Each participant will receive four hours of holiday pay for each holiday where they meet the eligibility criteria in the WSNA Agreement, and each participant will receive four hours of personal holiday each calendar year. During weeks when a holiday occurs, participants must work with their supervisor to assure the required number of hours will be worked and/or compensated that week.

- Accruals will not exceed 0.5 FTE regardless of the number of hours worked. If additional hours are worked, employees will receive compensatory time per the WSNA Agreement.

- Any additional leave (bereavement, etc.) will be no more than one-half the time (in hours) allowed in the WSNA Agreement or state or federal law.

- Participants individually accrue and have full use of seniority rights allowed under the WSNA Agreement.

- To be eligible for leave under the federal Family Medical Leave Act (FMLA), 1250 hours of time must be actually worked during the twelve months prior to the requested leave.
Participants understand by entering this Agreement, they are likely forfeiting rights to FMLA.

- Since the 1.0 FTE position is Washington State Department of Retirement Systems eligible, participants and the County will contribute to the retirement system.

Compensation.
- Participants will be paid the appropriate hourly rate for actual hours worked. They will be eligible for step increases based on their individual anniversary date in the position.

Schedules and Breaks.
- Participants’ work schedules must be approved by, and may be changed by, their supervisor as provided herein. Article 4.1 “Work Schedule” shall apply except as modified by this Job Share Agreement. It is understood that a job share participant is not routinely required to cover for the other job share participant for vacations and sick leave. However, in the event of an extended absence of one job share participant, the other participant may be required to work extra hours, up to 40 per week, in order to assure the work of the position is completed. In such circumstances, the County will, when circumstances permit, explore other staffing measures to reduce the impact on the affected participant.

- Notwithstanding Article 4.10, “Breaks”, participants are allowed one paid fifteen (15) minutes rest break during each four-hour work period after no more than three hours of work, and during each day where they work five (5) or more hours, they are entitled to an unpaid lunch break of thirty (30) to sixty (60) minutes.

Termination of Job Share.
- Participants understand that if one participant leaves his or her job share position, a new job share agreement must be executed. Upon separation or movement of a job share participant, the County will first offer the 1.0 FTE position to the remaining incumbent. If the participant declines the 1.0 FTE position and desires to continue in a job share arrangement and the department concurs, he or she understands that, during the period of vacancy for the other half of the job share, the remaining participant may be required to work extra hours, up to 40 per week, in order to assure the work of the position is completed. No other terms or conditions of this Agreement will change.

Each Job Share Agreement will require signatures of Participant A, Participant B, the Department Head, and the WSNA Representative. The County or the Association may, at any time, cancel this agreement after thirty (30) days written notice.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
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<tr>
<th>Initial</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>Orignator:</td>
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<td>8/6/13</td>
<td>Finance</td>
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<td>C. Brueske</td>
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<td>J. Louws</td>
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TITLE OF DOCUMENT:

Design Assistance for Academy Road Stormwater Improvements

ATTACHMENTS:

1. Memo
2. Contract information sheet
3. Contract and related exhibits

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.)

Whatcom County Public Works-Stormwater and the City of Bellingham plan to jointly construct a new stormwater infrastructure for water quality improvements in the Academy sub-basin of the Lake Whatcom Watershed. This project will treat stormwater runoff to reduce phosphorus loading to Lake Whatcom. This is a priority capital project in the Lake Whatcom Comprehensive Stormwater Plan and for the City of Bellingham. Construction is planned for the summer of 2015 during the Lake Whatcom Watershed work window.

Wilson Engineering was selected to provide assistance in analysis of stormwater treatment alternatives and to design the project. In addition, Wilson will prepare plans, specifications, and a construction estimate.

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

FROM: Chris Brueske, P.E., Assistant Director
       Kirk Christensen, P.E., Stormwater Manager

THROUGH: Frank Abart, Public Works Director

RE: Contract with Wilson Engineering for Design Assistance for Academy Road Stormwater Improvements

DATE: July 15, 2013

Enclosed for your review and signature are two (2) originals of a contract between Wilson Engineering and Whatcom County for design of the Academy Road Stormwater Improvement joint project with the City of Bellingham.

- **Background and Purpose**
  Whatcom County and the City of Bellingham plan to jointly construct a new stormwater infrastructure project for water quality improvements in the Academy sub-basin of the Lake Whatcom Watershed. This project will treat stormwater runoff to reduce phosphorus loading to Lake Whatcom. This is a priority capital project in the Lake Whatcom Comprehensive Stormwater Plan and for the City of Bellingham. Construction is planned for the summer of 2015 during the Lake Whatcom Watershed work window.

  The project construction site is in a residential lot that the City of Bellingham recently purchased on North Shore Drive. This location receives runoff from approximately 80 acres of residential and forested area. The existing stormwater drainage in this area consists of roadside ditches along Toad Lake Road and Academy Road that discharge to an unnamed creek/ditch, and then flows to Lake Whatcom.

  Wilson Engineering will provide assistance in analysis of stormwater treatment alternatives and design the project. In addition, the consultant will prepare plans, specifications, and a construction estimate. Wilson Engineering was chosen through a competitive selection process (RFQ 13-01).

- **Funding Amount and Source**
  The project cost of $98,796 will be funded by existing authority in Public Works-Stormwater's 2013 base budget.

Please contact Kirk Christensen at extension 50209 if you have any questions regarding this agreement.

Enclosures
Whatcom County and the City of Bellingham are jointly developing a project to improve stormwater quality in the Academy sub-basin of the Lake Whatcom Watershed. The project will treat runoff from approximately 80 acres and is estimated to prevent 20 pounds of phosphorus from reaching the lake each year.

Proposed Project Scope
The City of Bellingham recently purchased the principal project site, which was previously a residential lot. The project will include several of the following components:

- Pretreatment unit to remove sediment, oil and grease, and floating debris.
- Bio-infiltration swales or sand filters to provide treatment and infiltration of stormwater.
- Vaults containing stormwater filter cartridges or media targeted for phosphorus removal in conjunction with the swales or sand filters to provide additional treatment.
- High flow bypass for storm flows in excess of the treatment system capacity to divert flows directly to the lake.
- A vegetated buffer will be established along the lake front.

Project Schedule
Preliminary design and cost estimating are underway. The project is expected to be constructed during the summer of 2015 during the Lake Whatcom Watershed work window.

Project Cost
Preliminary estimate of the project cost is approximately $1.1 million plus an additional $575,000 for the purchase of the project site. The project will be jointly funded by the City and County. In addition, City and County staff will look for appropriate grant opportunities that may arise to help defray project costs.

Project Contacts
Bill Reilly, City of Bellingham
778-7955 breilly@cob.org

Kirk Christensen, Whatcom County
715-7450 kchriste@co.whatcom.wa.us
WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
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<tr>
<th>Originating Department:</th>
<th>Public Works – Stormwater</th>
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</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Kirk Christensen, Stormwater Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Wilson Engineering, LLC</td>
</tr>
</tbody>
</table>

Is this a New Contract? Yes __ No __
If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ___
Yes ___ No ___
If Amendment or Renewal, Original Contract #
Does contract require Council Approval? Yes ___ No ___
Yes ___ No ___
If yes, grantor agency contract number(s) CFDA #
Yes ___ No ___
If yes, associated Whatcom County grant contract number(s)
Yes ___ No ___
If yes, RFP and Bid number(s) Direct letter invite Cost Center: 123207
Yes ___ No ___
If no, include Attachment D Contractor Declaration form

If yes, indicate exclusion(s) below:
- Professional services agreement for certified/licensed professional
- Contract less than $100,000.
- Contract work is all performed outside U.S.
- Work related subcontract less than $25,000.
- Interlocal Agreement (between Gov'ts)
- Public Works - Local Agency/Federally Funded FHWA

Contract Amount:(sum of original contract amount and any prior amendments) $98,796
This Amendment Amount: $  
Total Amended Amount: $ 

Contracts that require Council Approval (incl. agenda bill & memo)
- Professional Services Agreement above $20,000.
- Bid is more than $40,000.
- Amendments that have either an increase greater than 10% or provide a $10,000 increase in amount (whichever is greater)

RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.

Summary of Scope:
Whatcom County and the City of Bellingham plan to jointly construct a new stormwater infrastructure for water quality improvements in the Academy sub-basin of the Lake Whatcom Watershed. This project will treat stormwater runoff to reduce phosphorus loading to Lake Whatcom. This is a priority capital project for the Lake Whatcom Comprehensive Stormwater Plan and for the City of Bellingham. Construction is planned during the Lake Whatcom Watershed work window in the summer of 2015. Wilson Engineering will provide assistance in analysis of stormwater treatment alternatives and to design the project. In addition, Wilson will prepare plans, specifications, and a construction estimate.

Term of Contract: 12-31-15  Expiration Date: 12-31-15

Contract Routing Steps & Signoff: [sign or initial] [indicate date transmitted]
1. Prepared by: R. McConnell
2. Attorney reviewed: Daniel L. Gibson
3. AS Finance reviewed: 
4. IT reviewed if IT related
5. Corrections made:
6. Attorney signoff: Daniel L. Gibson
7. Contractor signed: 
8. Submitted to Exec Office
9. Reviewed by DCA
10. Council approved (if necessary)
11. Executive signed:
12. Contractor Original Returned to dept;
13. County Original to Council

Date 7/15/13 [electronic]
Date 07/22/13 [electronic]
Date 7/24/13 [electronic]
Date 7/25/13 [electronic] hard copy printed
Date 07/22/13
Date 7-24-13
Date 7-26-13 [summary via electronic; hardcopies]
CONTRACT FOR SERVICES
Design Assistance for Academy Road Stormwater Improvements

WILSON ENGINEERING, LLC, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 8,
Exhibit A (Scope of Work), pp. 9 to 12,
Exhibit B (Compensation), pp. 13 to 14,
Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 7TH day of AUGUST, 2013, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31ST day of DECEMBER, 2015.

The general purpose or objective of this Agreement is to provide design assistance for the Academy Road Stormwater Improvements project, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed NINETY-EIGHT THOUSAND, SEVEN HUNDRED NINETY-SIX AND NO/100 DOLLARS ($98,996.00). The Contract Number, set forth above, shall be included on all billings or correspondences in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this day of _____________, 20__.

CONTRACTOR:

WILSON ENGINEERING, LLC

Andrew Law, P.E., Managing Member

STATE OF WASHINGTON )
COUNTY OF Whatcom ) ss.

On this 24th day of July, 2013, before me personally appeared ANDREW LAW, to me known to be the MANAGING MEMBER of WILSON ENGINEERING, LLC, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

ANDREW M. HESTER
WHATCOM COUNTY:
Recommended for Approval:

Frank M. Abart
Public Works Director

Approved as to form:

Daniel L. Gibson
Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County:

By: __________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this _____ day of ___________, 20____ before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at ____________________. My commission expires _______.

CONTRACTOR INFORMATION:

WILSON ENGINEERING, LLC
Andrew Low, P.E., Managing Member

Address:
805 Dupont Street #7
Bellingham, WA 98225

Contact Phone: (360) 733-6100
Contact Email: alaw@wilsonengineering.com

Contract for Services: Design Assistance for Academy Road Stormwater Improvements
GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension: Not Applicable

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

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

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

Series 20-29: Provisions Related to Consideration and Payments

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

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate
documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit 'B.'

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

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

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

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

Series 30-39: Provisions Related to Administration of Agreement

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

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

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

30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.
30.3 No Guarantee of Employment:
The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.1 Ownership of Items Produced:
When the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

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

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

34.1 Proof of insurance:
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
Property Damage per occurrence - $500,000.00 (this amount may vary with circumstances)
General Liability & Property Damage for bodily injury - $1,000,000.00 (this amount may vary with circumstances)

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - $1,000,000 per occurrence (this amount may vary with circumstances)

34.2 Industrial Insurance Waiver:
Contract for Services: Design Assistance for Academy Road Stormwater Improvements
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the neglection of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

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

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

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

35.2 Non-Discrimination in Client Services:
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

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

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

37.1 Administration of Contract:
Contract for Services: Design Assistance for Academy Road Stormwater Improvements
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

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

Frank M. Abart, Director, Whatcom County Public Works, 322 N. Commercial Street, Suite 210, Bellingham, WA 98225

37.2 Notice:
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County’s Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the “Contractor Information” section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor’s Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

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

40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contract for Services: Design Assistance for Academy Road Stormwater Improvements
Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

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

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

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

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

45.1 **Entire Agreement:**
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
EXHIBIT "A"
(SCOPE OF WORK)
Wilson Engineering, LLC

Design Assistance for Academy Road Stormwater Improvements

Background and Purpose
The Lake Whatcom Comprehensive Stormwater Management Plan identified high priority Capital Improvement Projects (CIPs) to address water quality. One of these CIPs is CIP-05: Velocity Reductions, Toad Lake Road at Academy Street. The City of Bellingham has recently acquired a lot on North Shore Rd through which flows the drainage from Toad Lake Road. Whatcom County and City wish to jointly implement a stormwater treatment system (on the acquired lot) to treat runoff from about 80 acres. Treatment would primarily target phosphorus removal.

This scope of work consists of preparing an analysis of treatment alternatives, assisting with grant applications, selecting a treatment alternative, assisting with permitting, designing the selected treatment system, and preparing bid documents.

SCAPE OF WORK

The work described above and in the following sections constitutes services to be provided by Wilson Engineering to the County. The Consultant’s work will be organized into four phases as outlined below.

PHASE 1-A. PROJECT MANAGEMENT AND COMMUNICATIONS
PHASE 1-B. EVALUATION OF ALTERNATIVES
PHASE 1-C. PRELIMINARY DESIGN FOR STORMWATER RETROFIT FACILITIES
PHASE 1-D. DESIGN FOR STORMWATER RETROFIT FACILITIES

Subtasks are described for each phase. Similar subtasks are described together but listed separately in the fee estimate exhibit.

SCHEDULE AND BUDGET

Phase 1-B will be completed within 31 days of notice to proceed. The remaining work will be completed in time to allow for (1) grant applications and (2) bidding in winter of 2015 and construction completion during the watershed work window of 2015. The attached Exhibit B (spreadsheet) gives the basis for the not-to-exceed estimate of $98,800 for these professional services. All work will be performed on a time and materials basis at the personnel and expense rates shown in Exhibit B-1.

PHASE 1-A. PROJECT MANAGEMENT AND COMMUNICATIONS

Subtask 1
Provide overall management of projects including budgets, scheduling, billing, and contracting.

Subtask 2
Work includes meetings and communications with County staff, project team members, and agencies.
Subtask 3
Assist with Grant Applications. Prepare exhibits. Provide Project Analysis Form (report).

Subtask 4
Coordinate with County surveyors to have County staff perform topographic surveys as necessary to prepare base maps for design of these three CIPs.

Subtasks 5/6
Prepare informational materials, photos, and figures to explain retrofits and present at two public meetings. Receive input from neighbors and others. Provide additional informal site visits and other communications for neighbor concerns.

PHASE 1-B. EVALUATION OF ALTERNATIVES

Subtask 1
Meet with County/City staff to discuss overall goals and design concepts and discuss specific alternative treatment approaches considering: phosphorus reduction effectiveness, longevity, controlled infiltration possibilities, potential vicinity drainage issues, and aesthetics.

Subtask 2
Perform field reconnaissance with special attention to how system will discharge to the lake, the upstream conveyance systems, and potential drainage problems adjacent to site.

Subtask 3
Perform preliminary hydrologic analysis of the contributing drainage areas using the Western Washington Hydrology Model. Perform preliminary hydraulic analyses for stormwater design report.

Subtasks 4/5
Prepare evaluation of the range of feasible and applicable retrofit alternative approaches and prepare a memorandum discussing the pro and cons each option, including rough costs.

Subtasks 6
Discuss the range of options with City and County staff. It is assumed discussions will continue beyond just one meeting. Select 3 options to pursue further.

Subtasks 7
Conduct one onsite Pilot Infiltration Test. Prepare a geotechnical memo detailing results. NOTE: This task may be deleted if infiltration is ruled out as infeasible beforehand.

Subtasks 8/9
Prepare conceptual design for 3 options in sufficient detail as needed to make an informed choice on the best option. Prepare a design memo including cost estimates.

PHASE 1-C. PRELIMINARY DESIGN FOR STORMWATER RETROFIT FACILITIES

Subtask 1
Meet with City/County staff to discuss design approach, design criteria, and specific design elements for the selected alternative.

Subtask 2
Prepare base map of site.

Subtask 3
Perform preliminary hydraulic analyses for stormwater design report. Prepare Preliminary

Contract for Services: Design Assistance for Academy Road Stormwater Improvements
Stormwater Design Report.

**Subtask 4**  
Prepare preliminary plans showing plan view, basic hydraulic grade line, and conceptual detail.

**Subtask 5**  
Prepare preliminary construction cost estimate.

**Subtasks 6/7/8**  
Prepare figures and data for SEPA Checklist and JARPA and Shoreline Permit applications. Provide other assistance as needed.

**Phase 1-C. Design Phase - Stormwater Retrofit Facilities**

**Subtask 1**  
Prepare stormwater design report documenting hydrologic and hydraulic calculations, documenting water quality treatment design, LID practices implemented, flow control and infiltration, and construction stormwater pollution prevention.

**Subtask 2**  
Prepare one set of engineering plans. Plan set will include Cover sheet, index, legend, notes, vicinity maps, existing site conditions, SWPPP sheets, plan and profile sheet, and detail sheets. 60% submittal (8 sheets).

**Subtask 3**  
Prepare one set of engineering plans. Plan set will include Cover sheet, index, legend, notes, vicinity maps, existing site conditions, SWPPP sheets, plan and profile sheet, and detail sheets. 90% submittal (10 sheets).

**Subtask 4**  
Prepare one set of engineering plans. Plan set will include Cover sheet, index, legend, notes, vicinity maps, existing site conditions, SWPPP sheets, plan and profile sheet, and all detail sheets. 95% submittal (10 sheets).

**Subtask 5**  
Prepare one final set of engineering plans. Plan set will include cover sheet, index, legend, notes, vicinity maps, existing site conditions, SWPPP sheets, plan and profile sheet, and all detail sheets. 90% submittal (10 sheets).

**Subtasks 6/7**  
Prepare one 90% set of specifications and contract documents based on the WSDOT 2012 standard specifications. Documents will include bid forms, contract forms, general specifications, and Division 1 though Division 9 special provisions. A 90% construction cost estimate will also be prepared.

**Subtasks 8/9**  
Prepare one 95% set of specifications and contract documents. Documents will include bid forms, contract forms, general specifications, and Division 1 though Division 9 special provisions. An updated construction cost estimate will be prepared.

**Subtasks 10/11**  
Prepare one final bid set of specifications and contract documents. Documents will include will include bid forms, contract forms, general specifications, and Division 1 though Division 9 special provisions. A final construction cost estimate will be prepared.

Contract for Services: Design Assistance for Academy Road Stormwater Improvements
Subtask 12
Assist County staff with bidding by answering questions during bidding and providing addenda.

DELIVERABLES FOR SCOPE OF WORK:

1. Public Meetings (2)
2. Neighborhood site visits
3. Grant application figures and project analysis form
4. Memo on all feasible options
5. Infiltration testing onsite and memo
6. Conceptual Design and Memo
7. Base Map (no survey)
8. Preliminary Stormwater Report
9. Preliminary plans
10. Preliminary cost estimate
11. SEPA Checklist data and JARPA/Shorelines Figures and data
12. Stormwater Report (draft and final submittals)
13. 60% Plans, Specifications and Cost Estimates
14. 90% Plans, Specifications and Cost Estimates
15. 95% Plans, Specifications and Cost Estimates
17. Addenda
### Exhibit "B"

**Compensation**

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**Total Estimated Costs for Phase 1 Stormwater Retrofit Facilities:** $98,796
Exhibit B-1
Compensation

As consideration for the services provided pursuant to Exhibit A, Scope of Work, the County agrees to compensate the Contractor according to the hourly rates provided below. Compensation for engineering, planning, and surveying professional services shall be for time and expenses not to exceed $98,796, as outlined below and in Exhibits A and B, based on work performed in satisfactory fulfillment of all items listed and receipt of deliverables.

Work continuing after the completion date of this contract shall be at the Contractor's expense unless otherwise agreed to in writing. In no event shall total compensation paid to Contractor by the County under this contract exceed $98,800 for engineering, planning, surveying and design professional services unless the contract is modified in this regard and such amendment executed in writing by the parties hereto.

Where professional services are provided on an hourly basis, the following rates shall apply to cover salaries, taxes, insurance, administration, general overhead, and profit:

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Sub-consultants - reimbursed at cost plus 5%
Direct expenses (reimbursed at cost plus 5%) include but are not limited to) the following:
- Reproduction of drawings and construction documents
- Postage and shipping
- Specialized Equipment Rental, at rental rate

(Submission of the above personnel rates should not be construed as a proposal to perform a set scope of work for a particular monetary sum unless accompanied by a detailed estimate of personnel time by discipline which would be required to perform said work.)
EXHIBIT "C"

CERTIFICATE OF LIABILITY INSURANCE

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

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

PRODUCER
Michael J Hall & Company
Hall & Company
19660 10th Ave NE
Poulsbo WA 98370

CONTACT
NAME: Michael J Hall & Company
PHONE: 360-598-3700
FAX: 360-598-3703
E-MAIL: addresscertificates@hallandcompany.com

INSURED
Wilson Engineering LLC
805 Dupont Street, Suite 7
Bellingham WA 98225

INSURER A: HANGVER INS CO
NAIC #: 22292

COVERAGES CERTIFICATE NUMBER: 16996144

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

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<tr>
<td>WORKERS COMPENSATION</td>
<td>$2,000,000 Per Claim</td>
<td>$2,000,000 Aggregate</td>
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</tbody>
</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Attn: Renny McConnell, CAP-OM
Project: Design and Construction Services for Stormwater Treatment - Northshore near Academy

CERTIFICATE HOLDER
Whitcom County Public Works-Stormwater
Civic Center Annex
322 N. Commercial Street, Suite 301
Bellingham WA 98225

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Matthew J. Cooper

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**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>7/30/13</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:** Approval to Purchase a Replacement Brush Cutter

**ATTACHMENTS:** Memos from Finance and Public Works

**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.)

Public Works is requesting approval to use a Washington State Contract to purchase a replacement brush cutter. The vendor is PCI Waste & Recycling Equipment and the total cost is $86,346.01. This is a planned purchase and adequate funds are available in their current budget.

**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.
DATE: 25 July 2013
TO: Jack Louws, County Executive
FROM: Brad Bennett, Administrative Services Finance Manager
SUBJECT: Brush Chipper

- **Background & Purpose**

Public Works Equipment Services would like to use the Washington State Contract to purchase a replacement brush chipper. The vendor is PCI Waste & Recycling Equipment.

The total cost for this purchase is $86,346.01.

- **Funding**

This is a planned purchase. The budgeted amount is less than the actual cost of the unit. The additional funds are available in their current budget.

I concur with this request.

[Signature]
Admin. Services Finance Manager

Approved as recommended:

__________________________
County Executive

Date of Council Action _____________
MEMORANDUM

TO:        Brad Bennett, AS Finance Manager

THROUGH:   Frank M. Abart, PW Director

FROM:      Eric L. Schlehuber, PW Equipment Services Manager
           Jeff Gollen, PW Maintenance & Operations Superintendent

RE:        State Bid Contract 10212 (2013 Brush Chipper)

DATE:      July 23, 2013

- Requested Action
After researching the cost for brush chippers, I am requesting Executive and Council approval to purchase one 2013 Bandit Model 1890XP heavy-duty brush chipper from the Washington State Bid Procurement List to replace the following:

<table>
<thead>
<tr>
<th>DEPT</th>
<th>REPLACE UNIT</th>
<th>MAKE / MODEL</th>
<th>EST. HOURS</th>
</tr>
</thead>
<tbody>
<tr>
<td>M&amp;O</td>
<td>434</td>
<td>2001 Bandit 1890HD Chipper</td>
<td>8,705.0</td>
</tr>
</tbody>
</table>

- Background and Purpose
This unit was originally approved in the 2011-2012 Equipment Rental and Revolving Capital Equipment Budget. This unit was resubmitted and approved in the 2013-2014 Equipment Rental and Revolving Capital Equipment Budget. The replacement amount budgeted for this unit in 2013 was originally $60,000 and the additional approximate $26,000 will be covered by not replacing a Flood pickup #126 (1995 Ford Ranger) that was turned in as part of the Public Works’ six(6) vehicle fleet reduction that was effective 1/1/2013. The Public Works Maintenance & Operations Division will use this unit in the performance of county business as part of the vegetation management program. The below amount is with a Tier 4 engine and if a Tier 3 engine is still available, it will save approximately $12,990, however the availability of a Tier 3 engine will not be known until the actual order is placed.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>MAKE / MODEL</th>
<th>BASE PRICE EACH</th>
<th>SALES TAX ON BASE (8.7%)</th>
<th>TOTAL FOR 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCI Waste and Recycling Equipment, Portland, OR</td>
<td>2013 Bandit Model 1890XP HD Brush Chipper</td>
<td>$79,435.15</td>
<td>$6,910.86</td>
<td>$86,346.01</td>
</tr>
</tbody>
</table>

- Funding Amount and Source
This amount was budgeted in the 2013-2014 Budget. I am requesting Executive and Council approval to purchase this unit from PCI Waste and Recycling Equipment in Portland, Oregon for the base price of $79,435.15 per unit, plus sales tax of $6,910.86, for a total of $86,346.01.

Please approve this purchase from the state contract and forward to the Executive and the Whatcom County Council for approval at the August 6, 2013 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>Executive:</td>
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</tbody>
</table>

**TITLE OF DOCUMENT:** Bid 13-54 Paving at Plantation Rifle Range

**ATTACHMENTS:** Memos from Finance and Parks

**SEPA review required?** ( ) Yes ( x ) No **SEPA review completed?** ( ) 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.)

The Parks & Recreation Department is requesting approval to award the bid and enter into a contract for the paving repairs at Plantation Rifle Range. Three bids were received and Parks would like to award to the low bidder, Granite Construction in the amount of $53,599.00. This is a planned project and funds were approved in the current budget using REET II funding.

**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.
DATE: 26 July 2013

TO: Jack Louws, County Executive
FROM: Brad Bennett, AS Finance Manager
SUBJECT: Award of Bid 13-54 Asphalt Paving Repairs at Plantation Rifle Range

- Background & Purpose
Bids were advertised for hot mix asphalt paving repairs at Plantation Rifle Range. Two bids were received on Tuesday July 23 and are noted below:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Base Bid</th>
<th>Sales Tax</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granite Construction</td>
<td>49,400.00</td>
<td>4,199.00</td>
<td>53,599.00</td>
</tr>
<tr>
<td>Whatcom Builders</td>
<td>59,846.00</td>
<td>5,086.91</td>
<td>64,932.91</td>
</tr>
<tr>
<td>Western Refinery Services</td>
<td>69,975.00</td>
<td>5,947.88</td>
<td>75,922.88</td>
</tr>
</tbody>
</table>

The Park Department is requesting approval to award the bid and to enter into a contract with the low bidder, Granite Construction for a total amount of $53,599.00.

- Funding
This is a planned project and funds were approved in the current budget using REET II funding, (Ordinance 2012-048).

I concur with this recommendation.

[Signature]
AS Finance Manager

Approved as Recommended:

________________________
County Executive

Date of Council Action ________________
MEMORANDUM

TO: Brad Bennett, Finance Manager
FROM: Michael McFarlane, Director
DATE: July 25, 2013
RE: Recommend to Accept Bid Award #13-54, Hot Mix Asphalt Paving at Plantation Rifle Range

On Tuesday, July 23, 2013 three bids were received in response to Whatcom County Bid #13-54, Hot Mix Asphalt Paving at Plantation Rifle Range.

*Granite Construction* met all the required specifications for this work. I am recommending that the bid totaling $53,599.00 which includes 8.5% Washington State Sales Tax, submitted by *Granite Construction* be accepted.

This project is being funded with REET II funds approved by the Council on November 20, 2012 (Ordinance 2012-048).

If you need any additional information, please contact Erik Axelson at extension 32073.

Phone: 360.733.2900  www.whatcomcounty.us/parks  Fax: 360.676.1180
**Title of Document:** Approval to Purchase Toughbook Laptop Computers

**Attachments:** Memo from Finance and the Sheriff’s Office

---

**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 Sheriff’s Office is requesting approval to purchase 50 Toughbook laptop computers and related accessories using Inter-local agreement #200904026 with the City of Everett. The vendor is DATEC and the total purchase cost is $194,981.71. Funds for this purchase are coming from a Stonegarden FY2012 Grant and the Records Management System budget. All funds are available in the Sheriff’s current budget.

---

**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.
DATE: 26 July 2013

TO: Jack Louws, County Executive

FROM: Brad Bennett, Administrative Services Finance Manager

SUBJECT: Purchase of Replacement Toughbook Computers

BACKGROUND

The Sheriff’s Office is requesting approval to purchase 50 Toughbook laptop computers and related accessories using Inter-local agreement #200904026 with the City of Everett. This will replace existing equipment that is too outdated to be compatible with the new Records Management System. The vendor is DATEC and the total price for this purchase is $194,981.71.

FUNDING

Funds for this purchase are coming from a Stonegarden FY20/21 grant and the Records Management System budget. All funds are available in the Sheriff’s current budget. I recommend approval.

__________________________
Brad Bennett, Admin. Services Finance Manager

__________________________
County Executive

__________________________
Date of Council Action
TO: Jack Louws, County Executive  
FROM: Sheriff Bill Elfo  
DATE: July 26th 2013  

RE: Request for authorization to purchase 50 Panasonic Toughbooks

The Whatcom County Sheriff’s Office is requesting approval for the purchase of 50 Panasonic Toughbooks, (Mobile Computing Laptops) and associated mobile power adapters, to replace units currently being used that do not meet the operating system requirements to run the new software necessary for the new records management system. Most of the laptops slated for replacement are 6 years old or older.

These 50 laptops will be purchased using a combination of funding sources; 30 Toughbooks will be procured using the approved records management system project funding budget, with the remaining 20 purchased through the Operation Stonegarden (2012) grant, outlined below.

Whatcom County’s total award for Operation Stonegarden (FY2012) is $159,766.92 for approved equipment and operational overtime. This grant has approved budget authority, contract #201305008. A portion of this grant award was set aside to purchase 20 mobile computers using $78,000 of the total grant award. The units being purchased have been vetted and approved using grant guidelines.

The Sheriff’s Office will purchase all 50 Toughbooks from Datec Inc., a vendor that has been the source of all of our past Toughbook purchases and who were awarded the bid for the City Of Everett for Panasonic computing equipment. Whatcom County entered into an inter-local purchasing agreement with the City of Everett for the purpose of acquiring Panasonic Toughbooks, based on their bid award, Contract #200904026, expiration 12/04/2013. Datec was checked against the federal debarment system on this date and was not listed as a prohibited business. A copy of this check is attached.

- The total purchase price for 30 CF-31 Panasonic Toughbooks per the records management system replacement project budget - $116,989.03.
- The total purchase price for 20 CF-31 Panasonic Toughbooks per Operation Stonegarden FY2012 - $77,992.68.
- The total cost for 50 Toughbooks using both funding sources - $194,981.71.

If you have any questions or require further information please contact Undersheriff Jeff Parks at ext. 50418.
TITIE OF DOCUMENT: 
Agricultural License Agreement Between Lawrence Edward Larsen and Whatcom County Parks & Recreation

ATTACHMENTS:
- License Agreement
- Contract Information Sheet

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.)

Agricultural license agreement granting Lawrence Edward Larsen, Licensee, permission to access and harvest the hay crop on approximately 59 acres of park and agricultural land located at Silver Lake Park.

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**

<table>
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<tr>
<th>Originating Department:</th>
<th>Parks &amp; Recreation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Erik Axelson, Operations Manager</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Lawrence Edward Larsen</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**  Yes  No  
**If not, is this an Amendment or Renewal to an Existing Contract?**  Yes  No  
**If yes, previous number(s):**

**Is this a grant agreement?**  Yes  No  
**If yes, grantor agency contract number(s):**

**Is this contract grant funded?**  Yes  No  
**If yes, associated Whatcom County grant contract number(s):**

**Is this contract the result of a RFP or Bid process?**  Yes  No  
**If yes, RFP and Bid number(s):**

**Is this contract excluded from E-Verify?**  Yes  No  
**If yes, indicate qualified exclusion(s):**

| 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:**

| $1.00/rolled bale | 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. |

**Total Amended Amount:**

| $1.00/rolled bale ($80 estimated) |

**Scope of Services:**  [Insert language from contract (Exhibit A) or summarize; expand space as necessary]  
Agricultural license agreement granting Lawrence Edward Larsen, Licensee, permission to access and harvest the hay crop on approximately 59 acres of park and agricultural land located at Silver Lake Park.

**Term of Contract:** August 10, 2013—October 31, 2013  
**Expiration Date:** October 31, 2013

**Contract Routing Steps & Signoff:**

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<th>[sign or initial]</th>
<th>[indicate date transmitted]</th>
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<td>Date 7/26/2013 [electronic]</td>
</tr>
<tr>
<td>2. Attorney reviewed Gallery</td>
<td>Date 7/29/2013 [electronic]</td>
</tr>
<tr>
<td>3. AS Finance reviewed</td>
<td>Date [electronic]</td>
</tr>
<tr>
<td>4. IT reviewed if IT related</td>
<td>Date [electronic]</td>
</tr>
<tr>
<td>5. Corrections made</td>
<td>Date [electronic] hard copy printed</td>
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<tr>
<td>6. Attorney signoff</td>
<td>Date</td>
</tr>
<tr>
<td>7. Contractor signed</td>
<td>Date 7-29-13</td>
</tr>
<tr>
<td>8. Submitted to Exec Office</td>
<td>Date 7-30-13 [summary via electronic; hardcopies]</td>
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<tr>
<td>9. Council approved (if necessary)</td>
<td>Date</td>
</tr>
<tr>
<td>10. Executive signed</td>
<td>Date</td>
</tr>
<tr>
<td>11. Contractor Original Returned to dept.</td>
<td>Date</td>
</tr>
<tr>
<td>12. County Original to Council</td>
<td>Date</td>
</tr>
</tbody>
</table>

Last Revised 1/19/12

211
TO: Jack Louws  
County Executive

FROM: Michael G. McFarlane  
Director

DATE: July 29, 2013

SUBJECT: Agricultural License for Silver Lake Park

Attached please find two signed originals of the Agricultural License Agreement for Silver Lake Park with Edward Larsen.

The proposed license is for haying on approximately 59 acres of Silver Lake Park. The quality of the hay crop at Silver Lake is substandard; Mr. Larsen has proposed a payment of $1.00 per rolled bale and/or $0.15 per rectangular bale, rather than a flat license payment amount. Our lead park ranger will count bales before the hay is removed from the park. This payment method was also used in 2012 at Silver Lake, and the total payment was less than $80.00.

The main objective is to harvest and remove the hay at no cost to the department before several cross-country running events are held in the park in September and October.

Contract information sheet for the License Agreement is also attached.

This agreement is pursuant to RFP 13-55 opened on July 23, in which Mr. Larsen was the only respondent for haying on approximately 59 acres at Silver Lake Park.

Please contact me or Parks Operations Manager Erik Axelsson if you have any questions.

Attachments:

- Agricultural License Agreement
- Contract Information Sheet
AGRICULTURAL LICENSE AGREEMENT BETWEEN

LAWRENCE EDWARD LARSEN

and

WHATCOM COUNTY PARKS & RECREATION DEPARTMENT

WHATCOM COUNTY (PARKS & RECREATION DEPARTMENT), a municipal corporation, LICENSOR, hereby grants unto LAWRENCE EDWARD LARSEN, 9910 Silver Lake Road, Maple Falls WA 98266 LICENSEE, permission to access and harvest the hay crop on approximately 59 acres of park and agricultural land located at Silver Lake Park ("Park") located thereon and more particularly described as follows:

Approximately 59 acres of land located within the boundaries of Park located within Section 7, Township 40 North, Range E. W.M., all situated in Whatcom County.

This license shall be for a term commencing August 10, 2013 and terminating October 31, 2013. It may be amended or terminated at any time by mutual written agreement of both parties, and may be terminated by either party upon 30 days written notice to the other party.

In the event Licensee becomes in default of any of the covenants or conditions hereof, the Licensor, at its option, shall also have the right to terminate this license and any options to renew. As per the Licensee’s response to the Request for Proposal 13-55, Licensee shall be granted a first right of refusal on license for 2014.

It is further agreed as follows:

1. LAND PRACTICES
   Licensee shall conform to accepted practices for good land/crop management in the use of said land and comply with all county and state critical areas ordinances. Licensee shall repair or restore at his own expense, areas (including but not limited to fields and roads) that are damaged by Licensee, his employees and agents.
2. **INDEMNIFICATION AND HOLD HARMLESS**
   Licensee shall protect, defend, save harmless and indemnify Whatcom County and the Parks & Recreation Department from and against all claims, suits, and actions arising from negligent acts or omissions of the Licensee or authorized subcontractors, and the agents or employees of either in the performance of this agreement.

3. **INSURANCE**
   Licensee shall maintain in effect throughout the term of this agreement general liability insurance covering the activities that occur on the premises by the Licensee, or any agents of the Licensee, in the amount of $150,000 for injury or death of any one person and $300,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of $50,000.

   Licensee shall provide proof of such insurance to Whatcom County prior to any activity, by delivering, mailing, or faxing insurance certificate to Whatcom County Parks & Recreation, 3373 Mt. Baker Highway, Bellingham WA 98226 (Fax: 360-676-1180).

4. **CROP CONDITION**
   Licensor does not warrant the quality or condition of the grass crop. Crop is taken upon an "as is" basis. Land cannot be plowed and planted to another crop. Further, Licensee shall hold Whatcom County free and harmless from all crop damages caused by flood, drought, fire, public use, or any other cause.

5. **PAYMENT**
   As consideration for this license, Licensee shall pay to Whatcom County Parks & Recreation Department on or before October 31, 2013: (a) $1.00 per rolled bale; and/or (b) $0.15 per rectangular bale, plus current sales tax. Silver Lake Park Lead Park Ranger or Park Ranger will count the number of bales before any removal of hay from fields.

6. **PROHIBITION AGAINST ASSIGNMENT**
   Licensee agrees not to let the whole or any part of said premises, nor assign this Agreement, or any interest therein without written consent of Licensor.

7. **NOTIFICATION OF OTHER CONDITIONS AND USES OF THE PROPERTY**
   Licensee is hereby notified of the following conditions and concurrent uses of the property:
   a. The public has access to the farmland for recreational purposes and will be allowed to walk on the fields. Licensee must get approval from Licensor to temporarily limit public access to the fields during certain farming practices.
   b. Licensee must have a Field Nutrient Management Plan on file with the Licensor and Whatcom Conservation District for use of commercial fertilizer or manure on the property. If manure is used, an Import-Export Agreement will also be required.
c. Operation of motorized vehicles on the property off road by the Licensee, its agents, subcontractors and employees is restricted to activities related to the growing and harvesting of the crop.

d. Application of any herbicide or pesticide on the property will require permission from the Licensor and be subject to all requirements of RCW 17.21.

e. Licensee will notify and coordinate the timing of all cuttings and farming practices with Lead Park Ranger so as not to interfere with the schedule of events at the park. Licensee understands that the grassed fields will be used at times for staging of special events, parking, and that Licensor and park users are not responsible to any damage to the crop.

SIGNED AND AGREED this 29 day of July, 2013.

LICENSEE

LAWRENCE EDWARD LARSEN

Lawrence Edward Larsen 360-966-5131
9910 Silver Lake Road
Maple Falls WA 98266

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM )

On this 29 day of July, 2013, personally appeared before me Lawrence Edward Larsen to be known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that she/he/they signed the same as her/his/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal this 29 day of July, 2013.

DARLA K. SMITH
NOTARY PUBLIC in and for the State of Washington, residing at Ferndale WA
My Commission expires: 4/11/2015

Land License Agreement – Page 3 of 4
Executed as of the date first written above.

WHATCOM COUNTY

__________________________
Jack Louws, County Executive

STATE OF WASHINGTON)
 ) ss.
COUNTY OF WHATCOM )

On this ___ day of _______________, 2013, before me personally appeared JACK LOUWS, to me known to be the County Executive of WHATCOM COUNTY and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this ___ day of _______________, 2013.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham
My Commission expires:

WHATCOM COUNTY PARKS & RECREATION DEPARTMENT

______________________________
Michael McFarlane, Director

APPROVED AS TO FORM:

______________________________
Deputy Prosecuting Attorney

Land License Agreement – Page 4 of 4
## WHATCOM COUNTY COUNCIL AGENDA BILL

**Title:** Discussion with Dave McEachran, Prosecuting Attorney, and planning and development staff, on protocol for zoning and permitting marijuana grow operations

### ATTACHMENTS: No attachments

### 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.)

Discussion with Dave McEachran, Prosecuting Attorney, and planning and development staff, on protocol for zoning and permitting marijuana grow operations

### COMMITTEE ACTION:

### COUNCIL ACTION:

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 AGENDA BILL**

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**TITLE OF DOCUMENT:**
Discussion regarding tubing on the South Fork of the Nooksack River

**ATTACHMENTS:**

**SEPA review required?** ( ) Yes ( ) No
**SEPA review completed?** ( ) Yes ( ) 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.)

**COMMITTEE ACTION:**
6/18/2013: Discussed. COTW requested the Executive, Public Works Director, & Parks Director have a meeting and address the issues that are confronting the community to attempt to develop solutions to these problems: parking, access, safety, refuse & litter, and disorderly, disruptive and illegal conduct and adequate sanitation.

**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 AGENDA BILL

**NO.** 2013 - 278

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**TITLE OF DOCUMENT:**
Discussion Regarding Various Gang Related Issues

**ATTACHMENTS:**

**SEPA review required?**

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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.)

Discussion regarding various gang related issues

**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:
Text amendment to WCC 21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.

ATTACHMENTS:
1. Staff Memo
2. Proposed Ordinance and Exhibits
3. Planning Commission Findings of Fact and Reasons for Action
4. Planning Commission minutes

Other background information is on file at the Council office.

SEPA review required? (X) Yes ( ) 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.)

Proposal for a text amendment to WCC 21.05.039 to allow for long subdivisions to gain final approval consistent with the changes in RCW 58.17.140.

COMMITTEE ACTION:

COUNCIL ACTION:
7/23/2013: 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.
Memorandum

TO: Jack Louws, The Honorable Whatcom County Executive
   The Honorable Whatcom County Council

FROM: Amy Keenan, AICP

THROUGH: J.E. "Sam" Ryan, Director

DATE: July 8, 2013

SUBJECT: Text Amendment to WCC 21.05.039 (PLN2013-00011)

Planning and Development Services (PDS) is proposing an amendment to WCC 21.05.039 Phasing, expiration and time extension to allow additional time for preliminarily approved long subdivisions to reach final approval.

Currently WCC 21.05.039 states that a final long subdivision must be submitted within five years of preliminary approval, however, the Washington State Legislature recently amended state RCW 58.17.140 to allow additional time (five, seven, or ten years) depending up preliminary approval date.

The proposed amendment will allow PDS to grant additional time for preliminary approval consistent with the state RCW allowing predictability and consistency for the development community. PDS is requesting Council consideration of this amendment on August 6, 2013.

Thank you for your consideration of this matter.
July 2, 2013

PROPOSED BY: ________
SPONSORED BY: ________
INTRODUCTION DATE: ________

ORDINANCE NO. ________

Text amendment to WCC 21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.

WHEREAS, the Planning and Development Services (PDS) staff has brought forward a proposal for a text amendment to WCC 21.05.039 to allow for long subdivisions to gain final approval consistent with the changes in RCW 58.17.140.

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, the Whatcom County Planning Commission held a public hearing on the proposed amendments, with notices published in the Bellingham Herald, and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

FINDINGS

1. The proposal is for a text amendment to the Whatcom County Subdivision Code, Title 21 to allow additional time for submittal of a final plat after preliminary approval consistent with RCW 58.17.140.

2. On April 18, 2013, Jay Inslee, Governor of Washington State approved Substitute House Bill (SHB) 1074 which was passed by both the Washington State House of Representatives and the Senate. SHB 1074 amended the final plat approval dates allowing ten years from preliminary approval to reach final approval if the plat is not subject to shorelines and if preliminary plat approval is on or before December 31, 2007. If preliminary approval was after December 31, 2007, but is before December 31, 2014 the applicant shall have seven years to submit a final subdivision pursuant to SHB 1074.
July 2, 2013

Plats receiving preliminary approval after January 1, 2015 will be subject to the five year timeframe to reach final plat approval. SHB will be effective on July 28, 2013.

3. There are several preliminarily approved plats that may benefit from extension of the timeframes including, but not limited to, the plats of Tall Cedars, Belmont, Shuksan Highlands Phase 2, and Sunrise Meadows.

4. A State Environmental Policy Act (SEPA) checklist was prepared on May 30, 2013. SEPA review and determination is in process.

5. The proposal was posted on the County website by June 5, 2013.

6. Notice that the proposal had been posted on the County website was sent to citizen, media and other groups on the County’s e-mail list by June 5, 2013.

7. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 4, 2013.

8. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on May 31, 2013.

9. Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on June 4, 2013.


In order to approve the text amendment, the County must find that is consistent with the Growth Management Act. Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

CONCLUSIONS

1. The subject zoning amendment complies with the Growth Management Act.

2. The subject zoning amendment is consistent with 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.
July 2, 2013

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:

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved  ( ) Denied
Date Signed: _____________________
21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.

(1) Approval of a preliminary subdivision shall expire unless a final plat is submitted in proper form for final plat approval within five years of the date of preliminary subdivision approval.

(2) Except as provided by (a) of this section, a final plat shall be submitted in proper form for final plat approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(a) A final plat shall be submitted in proper form for final plat approval within ten years of the date of preliminary plat approval if this project is not subject to requirements adopted under RCW 90.58 and the date of preliminary plat approval is on or before December 31, 2007.

(2) Extension of Time for Submittal of Final Long Subdivision. The five-year expiration of a preliminary long subdivision approval may be extended under the following provisions:

(a) An applicant files a written request with the subdivision administrator prior to expiration of the five-year expiration period. The request shall state the specific work items, standards, and criteria which have not been completed and the reasons therefor. The request shall also indicate when the work will be completed within the requested period. The subdivision administrator shall review the request and provide a recommendation to the hearing examiner.

(b) The hearing examiner shall have authority to grant one one-year extension subsequent to the original preliminary plat approval.

(c) The one-year extension may be granted if after taking into consideration technical, economic and other matters beyond the control of the applicant the hearing examiner finds that there is reasonable justification for the granting of an extension.

(d) In granting the one-year extension the hearing examiner shall take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted.

(e) The hearing examiner may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, or development standards, or portion thereof, that are deemed necessary to protect the public health, safety and welfare.
WHATCOM COUNTY
PLANNING COMMISSION

Text amendment to WCC 21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.

FINDINGS OF FACT AND REASONS FOR ACTION

1. The proposal is for a text amendment to the Whatcom County Subdivision Code, Title 21 to allow additional time for submittal of a final plat after preliminary approval consistent with RCW 58.17.140.

2. On April 18, 2013, Jay Inslee, Governor of Washington State approved Substitute House Bill (SHB) 1074 which was passed by both the Washington State House of Representatives and the Senate. SHB 1074 amended the final plat approval dates allowing ten years from preliminary approval to reach final approval if the plat is not subject to shorelines and if preliminary plat approval is on or before December 31, 2007. If preliminary approval was after December 31, 2007, but is before December 31, 2014 the applicant shall have seven years to submit a final subdivision pursuant to SHB 1074. Plats receiving preliminary approval after January 1, 2015 will be subject to the five year timeframe to reach final plat approval. SHB will be effective on July 28, 2013.

3. There are several preliminarily approved plats that may benefit from extension of the timeframes including, but not limited to, the plats of Tall Cedars, Belmont, Shuksan Highlands Phase 2, and Sunrise Meadows.

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posted on the County’s website on June 4, 2013.


11. In order to approve the text amendment, the County must find that is consistent with the Growth Management Act. Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

CONCLUSION

1. The subject zoning amendment complies with the Growth Management Act.

2. The subject zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends the following:

1. Approval of Exhibit 1, amendments to Whatcom County Title 21

WHATCOM COUNTY PLANNING COMMISSION

Michelle Luke, Chair

Sam Ryan, Secretary

Date: 7-9-13

Commissioners present at the June 13, 2013 meeting when the vote was taken: Ben Elenbaas, Rod Erickson, Michelle Luke, David Onkels, Jeff Rainey, Mary Beth Teigroob, and Gerald Vekved.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 2. Motion carried to adopt the above amendments.
Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Michelle Luke, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call
Present: Michelle Luke, Ben Elenbaas, Jerry Vekved, Rod Erickson, David Onkels, Jeff Rainey, Mary Beth Teigrob,
Absent: Ken Bell, Gary Honcoop

Staff Present: Mark Personius, Peter Gill, Amy Keenan, Becky Boxx

Department Update

Mark updated the Commission on the following:

- The Growth Management Hearings Board decision regarding water resources and transportation planning. More detailed information will be presented at the next meeting.
- An overview of the Water Symposium held in May.
- Interviews were held regarding a consultant for the Purchase of Development Rights program.
- Review of the upcoming Planning Commission schedule.
- Review of items before the County Council.
- PDS staff updates.

Open Session for Public Comment

Don Hickey, Whatcom County: Addressed the Commission regarding property his mother-in-law owns on Yew Street Road. The family would like to separate the property and put another home on it for family members. Because of the zoning this is not possible. He has spoken with PDS, the County Executive, County Council and the City of Bellingham to try and assess his options. He asked the Commission to address this area in the 2016 Comprehensive Plan update.

Commissioner Comments

Commissioner Rainey stated he read an article in John Deere Magazine regarding stormwater issues in Sweden. A lot of the pollution in the Baltic Sea is from agricultural runoff. He feels some of the issues could be solved using science instead of taking people’s property rights away. He has read that phosphorous isn’t that hard to deal with. It can easily be neutralized and is easier to deal with than nitrates.

The Commission further discussed the water symposium and water issues.

Approval of Minutes
April 25, 2013: Commissioner Onkels moved to approve as written. Commissioner Erickson seconded. The motion carried.
Regular Meeting

May 9, 2013: Commissioner Onkels moved to approve as written. Commissioner Vekved seconded. The motion carried.

May 23, 2013: Commissioner Teigrob moved to approve as written. Commissioner Erickson seconded. The motion carried.

2016 Comprehensive Plan Update and Urban Growth Area Review.

Mark gave an overview of the process to date. On June 5, 2013 the second quarterly meeting was held with elected officials and city/county staffs in the County. This was an opportunity to get updates on what is going on and address concerns and issues. Tribal issues were discussed at the meeting.

The Consultant, Berk & Associates, has put together a draft of the population projections and is working on the employment projections.

The projections will probably be brought to the Commission, for consideration, in late fall or early winter with a recommendation expected early next year.

Public Hearing

File #2013-00011: Proposed changes to WCC 21.05.039 to allow additional time for long subdivision approval consistent with RCW 58.17.140 and SHB 1074.

Amy Keenan presented the staff report. This proposed amendment is being brought forward in order to be consistent with State law.

The hearing was opened to the public. There was no public testimony. The hearing was closed to the public.

Commissioner Elenbaas asked what the motivation was for the State to extend the timeline.

Staff stated is was because of the economic conditions in the State the past several years.

Commissioner Rainey commented on Goal 2H stated in the staff report, which states: “Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.” He commented that an overarching statement such as this is what has got us into this water predicament. The Commission agreed they would like the verbage deleted and voted to have this reviewed during the 2016 Comprehensive Plan update.

Commissioner Onkels noted that Proposed Conclusion 2 should read: The subject zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan. The Commission voted in favor of this change.

Commissioner Teigrob moved to recommend approval of the staff report as amended. Commissioner Erickson seconded. Roll Call Vote: Ayes – Elenbaas,
Regular Meeting

Erikson, Luke, Onkels, Rainey, Teigrob, Vekved; Nays – 0; Abstain – 0; Absent – Bell, Honcoop. The motion carried.

Public Hearing

File #2011-00015: Text amendments to Whatcom County Comprehensive Plan, Land Use Chapter policies relating to water quality and stormwater management in the Lake Whatcom Watershed. The amendment adds references to the proposed WCC 20.51 in Policy 2DD – 2.C. This amendment is necessary to maintain consistency between the Comprehensive Plan and implementing development regulations.

Peter Gill presented the staff report. Because the development regulations are now referenced in the Comprehensive Plan this amendment is necessary for consistency.

The hearing was opened to the public. There was no public comment. The hearing was closed to the public.

The Commission voted to reword paragraph one of the Reason for Request to: The Washington State Growth Management Hearings Board, in its January 4, 2013 Compliance Order (GMHB No. 11-2-0010c), found that Whatcom County lacked measures to adequately protect the water quality in Lake Whatcom. A new chapter of the Zoning code, (proposed) WCC 20.51, includes water quality measures aimed at reducing the amount or concentration of nutrients and pathogens from entering Lake Whatcom inflow.

The Commission voted to reword Analysis of the Proposed Amendment, B. paragraph 2 to read: Lake Whatcom has been placed on the Federal Clean Water Act 303(d) list for low dissolved oxygen and fecal coliform. The 2013 Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Loads (TMDL) provides estimates of phosphorus loads into the lake, and through modeling, determined development scenarios to meet water quality standards. Low dissolved oxygen levels has have been connected to phosphorus loading resulting in from sediments entering into Lake Whatcom through various means to include land disturbance activities such as development. To comply with the Federal Clean Water Act, Whatcom County must develop a response to address development through the local regulatory process.

Commissioner Erickson moved to recommend approval of the staff report as amended. Commissioner Teigrob seconded. Roll Call Vote: Ayes – Elenbaas, Erickson, Luke, Onkels, Rainey, Teigrob, Vekved; Nays – 0; Abstain – 0; Absent – Bell, Honcoop. The motion carried.

The meeting was adjourned at 7:44 p.m.

Minutes prepared by B. Boxx.
WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Michelle Luke, Chair  J.E. “Sam” Ryan, Secretary
### WHATCOM COUNTY COUNCIL AGENDA BILL

**Clearances**

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**Title of Document:** Birch Bay NPDES Stormwater Development Regulations

**Attachments:** Memo

- Ordinance
- Exhibit A – Text Amendments to WCC 20.80.630, Stormwater and Drainage
- Exhibit B – Planning Commission recommended Findings and Reason for Action
- Exhibit C – Map of Birch Bay NPDES area

**SEPA review required?** (X) Yes  ( ) 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.)

Introduction of an ordinance amending the Whatcom County Zoning Code Title 20 – Section 20.80.630, Stormwater And Drainage, relating to water quality and stormwater management in the Birch Bay Urban Growth Area.

**Committee Action:**

**Council Action:**

7/23/2013: Introduced

**Related County Contract #:** PLN2013-00012

**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

THROUGH: Mark Personius, Long Range Planning Manager

FROM: Peter Gill, Senior Planner

DATE: July 23, 2013

SUBJECT: Introduction of Whatcom County Zoning Code Text Amendment related to the Birch Bay NPDES Stormwater Requirements

The State Department of Ecology has included the Birch Bay Urban Growth Area in Whatcom County’s National Pollution Discharge Elimination System (NPDES) Permit beginning August 1, 2013.


Without action the 2012 Manual will go into effect within the Birch Bay UGA on August 1, 2013.

This proposed text amendment maintains the current Stormwater Special District standards, Water Resource Management Areas, and implement the 2005 Stormwater Management Manual for Western Washington for larger projects.

Link to 2013 Western Washington Phase II Municipal Stormwater Permit
www.ecy.wa.gov/programs/wq/stormwater/municipal/phaseIIww/1YR/1YRWWAPhaseIIIPermit.pdf

In your packet you will find:

Ordinance to introduce Exhibit A

- Exhibit A – Text Amendments to WCC 20.80.630, Stormwater and Drainage
- Exhibit B – Planning Commission recommended Findings and Reason for Action
- Exhibit C – Map of Birch Bay NPDES area.
AMENDING THE WHATCOM COUNTY ZONING CODE TITLE 20 – SECTION 20.80.630, STORMWATER AND DRAINAGE, relating to water quality and stormwater management in the Birch Bay UGA.

WHEREAS, The State Department of Ecology has included the Birch Bay Urban Growth Area (UGA) in Whatcom County’s National Pollution Discharge Elimination System (NPDES) Permit beginning August 1, 2013; and

WHEREAS, Whatcom County zoning code, Title 20, Chapter 20.80, Section .630 requires use of the “most current edition[s]” of the manual, the 2012 WA State Stormwater Management Manual for Western Washington; and

WHEREAS, the 2013 Western Washington NPDES Phase II Municipal Stormwater Permit does not require use of the 2012 WA State Stormwater Management Manual for Western Washington until December 31, 2016; and

WHEREAS, Whatcom County will be implementing all other applicable aspects of the NPDES Phase II permit in Birch Bay on August 1, 2013. These aspects include public education and outreach, public involvement and participation, illicit discharge detection and elimination, and operations and maintenance of infrastructure; and

WHEREAS, this proposed text amendment maintains the current Stormwater Special District standards, Water Resource Management Areas; and

WHEREAS, existing Whatcom County stormwater requirements and thresholds meet or exceed the 2005 Washington State Department of Ecology Stormwater Management Manual; and

WHEREAS, this proposed text amendment implements the 2005 Stormwater Management Manual for Western Washington for larger development projects; and

WHEREAS, these development regulations preserve the hydrology and protect water quality through on-site stormwater facilities for individual lots, protected native growth areas, temporary erosion and sediment control, phased clearing, and soil stabilization measures; and

WHEREAS, the proposed changes were discussed at the Birch Bay Watershed and Aquatic Resources Management District Advisory Committee on June 19, 2013; and
WHEREAS, the Whatcom County Planning Commission held a public hearing on June 27, 2013 on the proposed zoning text amendment, and public comments, questions and concerns received were recorded in the public record.

WHEREAS, the Whatcom County Council finds the amendments to be in the best interest of the public health, safety and welfare; and

WHEREAS, the Council makes the following findings of fact to justify its actions as required by RCW 36.70.795;

1. The Planning Commission recommended approval of the proposed amendments to Whatcom County Council on June 27, 2013.

2. The State Department of Ecology has included the Birch Bay Urban Growth Area (UGA) in Whatcom County’s National Pollution Discharge Elimination System (NPDES) Permit beginning August 1, 2013.

3. Development within the 2013 Western Washington Phase II Municipal Stormwater Permit area must adopt a stormwater program for new development, redevelopment, and construction sites that meets the minimum requirements, thresholds, and definitions in Appendix 1 or adopt the WA State Stormwater Management Manual for Western Washington.


6. Current stormwater regulations in Birch Bay include WCC 20.80.735-Water Resource Special Management Area, and WCC 20.80.630 -.636, Stormwater and Drainage. Development standards are found in Whatcom County Development Regulations Chapter 2, Section 221.

7. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on June 24, 2013.

8. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on June 14, 2013.

9. Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on June 20, 2013.

10. The Planning Commission held a public hearing on the subject amendment on June 27, 2013.
PROPOSED CONCLUSIONS

1. The zoning text amendments are consistent with the processing requirements of WCC 20.90.050 and serve the public interest.

2. The amendments will not create an undue burden under section 1.11 of the County Charter.

3. The proposed amendments are consistent with the Comprehensive Plan, the Washington State Growth Management Act, and are in the public interest.

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

Section 1. The Whatcom County zoning code (WCC 20.80.630) is hereby amended as shown in Exhibit A.

Section 2. 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:

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ______________________

Civil Deputy Prosecutor
Exhibit A

Code Revisions – NPDES Phase II – Draft Birch Bay

20.80.630 Stormwater and drainage.
(1) All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards or the provision addressed herein, as applicable, unless specifically exempted.

(2) No project permit shall be issued prior to meeting the stormwater requirements of this chapter and/or Chapter 2 of the Whatcom County Development Standards. Advisory Note: Certain stormwater discharges to natural receiving waters are subject to state water quality standards and the requirements of the National Pollutant Discharge Elimination System (NPDES). Hydraulic Project Approval (HPA) may also be required if stormwater is discharged to a water body or stream that provides, or could provide, habitat for fish.

(3) Unless other county stormwater management provisions are more restrictive, all development activity within NPDES Phase II area boundaries (excepting areas within the Birch Bay NPDES Phase II area boundary), as delineated at the time that the county determines that the development application is complete, shall comply with the most current editions of:

- The Washington State Department of Ecology Stormwater Management Manual for Western Washington; and
- Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit; and

(4) Development activity within the Birch Bay NPDES Phase II area boundary shall be subject to this Chapter or the 2005 Department of Ecology Stormwater Management Manual for Western Washington and Appendix 1 and 7 of the NPDES Phase II 2012-13 permit, whichever is more restrictive.


June 27, 2013
WHATCOM COUNTY
PLANNING COMMISSION

Findings Of Fact And Reasons For Action
Birch Bay NPDES Stormwater Development Regulations
Whatcom County Planning Commission June 27, 2013

1. The State Department of Ecology has included the Birch Bay Urban Growth Area (UGA) in Whatcom County’s National Pollution Discharge Elimination System (NPDES) Permit beginning August 1, 2013.

2. Development within the 2013 Western Washington Phase II Municipal Stormwater Permit area must adopt a stormwater program for new development, redevelopment, and construction sites that meets the minimum requirements, thresholds, and definitions in Appendix 1 (S5.C.4.a.i) or adopt the WA State Stormwater Management Manual for Western Washington (S5.C.4.a.ii).

3. Our zoning code, Title 20, Chapter 20.80, Section .600 requires use of the "most current edition[s]" of the manual, the 2012 WA State Stormwater Management Manual for Western Washington.


5. Current stormwater regulations in Birch Bay include WCC 20.80.735-Water Resource Special Management Area, and WCC 20.80.630 – .636, Stormwater and Drainage. Development standards are found in Whatcom County Development Regulations Chapter 2, Section 221.

6. Current stormwater controls include on-site stormwater facilities for individual lots, protected native growth areas, temporary erosion and sediment control, phased clearing, and soil stabilization measures.


8. Whatcom County will be implementing all other applicable aspects of the NPDES Phase II permit in Birch Bay on August 1, 2013. These aspects include public education and outreach, public involvement and participation, illicit discharge detection and elimination, and operations and maintenance of infrastructure.

9. A presentation of the proposed changes was given to the Birch Bay
Watershed and Aquatic Resources Management District Advisory Committee on June 19, 2013.

10. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on June 24, 2013.

11. The proposal was posted on the County website on June 20, 2013.

12. Notice that the proposal had been posted on the County website was sent to citizen, media and other groups on the County’s e-mail list on June 20, 2013.

13. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 11, 2013.

14. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on June 14, 2013.

15. Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on June 20, 2013.


17. In order to approve the zoning amendment, the County must find that is consistent with the Growth Management Act. Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

18. This proposal is consistent with Growth Management Act because it keeps housing costs in the NPDES Phase II area comparable with the rural areas; and therefore, encourages development in the UGA.

19. Maintaining consistent stormwater rules will ensure the Growth Management Act policy goal of timely review of permits. A lack of training opportunities and clear guidance on the 2012 SWMMWW has made it difficult to consistently and effectively implement.

20. This proposal protects the environment with on-site stormwater facilities for individual lots, protected native growth areas, temporary erosion and sediment control, phased clearing, and soil stabilization measures.

21. The text amendment is consistent with the Whatcom County Comprehensive Plan because it meets the 2013 NPDES Phase II Permit requirements (Policy 11G-9).
IV. PROPOSED 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.

V. RECOMMENDATION

Based upon the above findings and conclusions, staff recommends approval of the proposed amendments as shown on Exhibit A.

WHATCOM COUNTY PLANNING COMMISSION

Michelle Luke, Chair

Sam Ryan, Secretary

7-9-13  7-9-13

Date  Date

Commissioners present at the June 27, 2013 meeting when the vote was taken: Ben Elenbaas, Rod Erickson, Michelle Luke, David Onkels, Mary Beth Teigrob, Ken Bell.

Vote: Ayes: 6, Nays: 0, Abstain: 0, Absent: 3. Motion carried to adopt the above amendments.
Exhibit C
### Whatcom County Council Agenda Bill

**2013-042B**

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**Title of Document:**

Jail Planner Consultant, DLR Group to present Jail Planning Update

**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.)

DLR Group to present an update of Whatcom County's Jail Planning Process.

**Committee Action:**

6/04/2013: Presented. Next presentation to Council in July or August

**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 AGENDA BILL

**No.** AB2013-274

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**TITLE OF DOCUMENT**
Community Development Block Grant Closeout – Opportunity Council’s Housing Rehabilitation Project

**ATTACHMENTS:**
Opportunity Council’s Summary Project Report

<table>
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<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( X ) Yes</th>
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<td>SEPA review completed?</td>
<td>( ) Yes</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.)

Whatcom County received a CDBG Housing Rehabilitation Grant from the State of Washington’s Department of Commerce in the amount of $500,000. This grant was passed through by Subrecipient Agreement to the Opportunity Council in support of their housing rehabilitation and repair program for low- and moderate-income homeowners in Whatcom County. The project is now nearing completion. (See attached project report). A final public hearing is requested in accordance with the grant requirements and in order to receive community input on this grant-funded project.

A Final Grant Closeout Report and Final Budget must be completed and submitted to Dept. of Commerce before year end, and the County Executive respectfully requests Council’s authorization to sign and submit the Report.

**Recommended Legal Notice Language:** Whatcom County received a CDBG Housing Rehabilitation Grant from the State of Washington’s Department of Commerce in the amount of $500,000. This grant was utilized for the Opportunity Council’s Housing Rehabilitation and Repair Program for the benefit of low- and moderate-income homeowners in Whatcom County. The grant term is now nearing completion, and notice is hereby given that a public hearing will be held by the Whatcom County Council in the Council Chambers at the County Courthouse, on August 6, 2013 at 7:00 p.m. in order to review the final project performance and invite community input on the completion of this grant-funded project.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
7/23/2013: 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](http://www.co.whatcom.wa.us/council).
COMMUNITY DEVELOPMENT BLOCK GRANT
REPORT TO WHATCOM COUNTY FOR A
HOUSING REPAIR AND REHABILITATION PROJECT

Information for Public Hearing to be held on 08/06/13

A $500,000 grant was received by Whatcom County to be used for housing repairs and rehabilitation in Whatcom County (excluding the city of Bellingham). This grant-funded program was managed and operated by the Opportunity Council.

Work started in 2010. 100% of the grant funds will have been expended by the end of August, 2013.

33 households were served:

17 households received major repairs and rehabilitation, averaging $18,985 each, for an approximate total of $323,000.

Approximately $113,000 will have been spent on administration by the end of August, in compliance with the terms of the grant contract.

$292,000 in revolving, deferred-payment loans were made. These funds, when repaid, will be used for future repair and rehabilitation activities.

The following are examples of repair projects undertaken:

1) Family of 3 living in a 1973 built ranch style home in Ferndale, with adult mentally handicapped daughter requiring full time parental supervision. Parents are seniors; one employed earning a modest income. Home is located in a comfortable middle class neighborhood. Poor construction allowed moisture damage, rotting floor joists and sill plate, creating an unsupported floor in two bedrooms. Catastrophic failure was imminent. Components replaced, water/moisture management system installed. Correcting these structural failures allowed installation of weatherization measures resulting in significant energy savings. Home is now preserved and operating efficiently. Without the CDBG program this home would have fallen into serious disrepair, possibly causing injury to occupants. The home, occupants, and neighborhood all benefited from this work.

2) Disabled occupant living in home requiring major repairs to sewage line, interior plumbing and electrical system. Sewage line was old style ceramic and collapsed causing sewage to back up into the house. Galvanized pipes in home had corroded and were leaking causing structural damage to bathroom floor. Serious electrical hazards discovered. Repair measures completed with CDBG allowing other work to be done with HPG and weatherization resources. Lead hazards identified and mitigated using CDBG funds. The homeowner will likely live in this home for her remaining years. It is now safe, well preserved, and more energy efficient. CDBG funding allowed this to become a viable and complete project.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<td>Frank Abart</td>
<td></td>
<td>4/9/2013</td>
<td></td>
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Division Head:

Dept. Head: Frank Abart 4/9/2013

Prosecutor: Dan Gibson 4/11/13

Purchasing/Budget:

Executive: Jack Louws 4/11/13

NO. 2013-162

TITILE OF DOCUMENT:

Ordinance amending WCC 10.34, Ferry Rates

ATTACHMENTS:

Ordinance, Exhibit A, and Exhibit B

SEPA review required? ( ) Yes ( X ) NO

SEPA review completed? ( ) Yes ( X ) 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.)

This ordinance amends Whatcom County Code 10.34. The amendment will change the method of calculating the 45% Road Fund Subsidy of the Ferry Operations expenses. The change will make the method of calculation identical to the 55% Ferry Fare Box contribution calculation. If approved, both calculations will be based upon the same adjusted total expenses number.

The Ordinance amendment also includes language to clarify the specific state funding included in the calculation as "Ferry Deficit Reimbursement" in an effort to reduce confusion.

COMMITTEE ACTION:

COUNCIL ACTION:

4/23/2013: Introduced
5/07/2013: Referred to Public Works Committee

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

AB2012-197

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 WHATCOM COUNTY CODE CHAPTER 10.34 FERRY RATES

WHEREAS, Chapter 10.34 of the Whatcom County Code addresses administration of ferry rates; and

WHEREAS, Section 10.34.030 addresses use of ferry user fee revenue; and

WHEREAS, the amendment will change the method of calculating the 45% Road Fund Subsidy of the Ferry Operations expenses. The change will make the method of calculation identical to the 55% Ferry Fare Box contribution calculation. If approved, both calculations will be based upon the same adjusted total expenses number.

WHEREAS, the amendment also includes language to clarify the specific state funding applicable to the calculation as “Ferry Deficit Reimbursement” in an effort to reduce confusion.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 10.34 is hereby amended as shown in Exhibit A to this ordinance, and

BE IT FURTHER ORDAINED that the amended calculations shall be effective retroactively to January 1, 2013.

ADOPTED this ___ day of ________, 2013.

ATTEST: __________________________  __________________________

Dana Brown-Davis, Clerk of the Council  Kathy Kershner, Council Chair

APPROVED AS TO FORM: __________________________

Daniel L. Gibson

Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: __________________________
MEMORANDUM

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

FROM: Frank M. Abart, Director

RE: An Ordinance to amend WCC 10.34, Ferry Rates

DATE: April 8, 2013

Requested Action:
Consideration of the attached ordinance that amends Whatcom County Code 10.34. The amendment will change the method of calculating the 45% Road Fund Subsidy of the Ferry Operations expenses. The change will make the method of calculation identical to the 55% Ferry Fare Box contribution calculation. **If approved, both calculations will be based upon the same adjusted total expenses number.**

The recommendation also includes language to clarify the specific state funding applicable to the calculation as “Ferry Deficit Reimbursement” in an effort to reduce confusion.

Background and Purpose:
The intended purpose is to provide the same basis of calculation for the 45% Road Fund Subsidy as is currently used to calculate the 55% Fare Box Recovery. The current calculation allowed by ordinance provides a disproportionate increase in the amount subsidized by the Road Fund.

The change also clarifies the source and identification of state funding intended to directly assist County Ferry Operations. There have been concerns expressed regarding other state funding and confusion about whether it applies or not. This language change is intended to eliminate the confusion.

Other Information:
The financial impact from the previous three years has required the Road Fund to pay an additional $228,888 in increased subsidy toward the Ferry Operational expenses (2010 = $61,735, 2011 = $80,028, 2012 = $87,125).

If approved, this Ordinance change would eliminate the increased subsidy (over 45%) from the Road Fund and shift the expense back to the Ferry Fund.

If you have any questions please call Frank Abart at extension 50678. Thank you.

Enc.
EXHIBIT A

Chapter 10.34 FERRY RATES

Sections:

10.34.005 Definitions.

10.34.010 Effective date for ferry user fees.

10.34.020 Interpretation of rate schedule.

10.34.030 Use of ferry user fee revenues.

10.34.005 Definitions.

A. "Ferry system" means all physical elements of the Lummi Island ferry operations, including both the Gooseberry Point and Lummi Island vehicle and pedestrian staging areas, vehicle parking areas, and ferry docks, and any and all boats utilized for transport purposes.

B. "Operating cost" means all actual daily running expenses and all actual regular and routine maintenance and administrative expenses associated with the use and operation of all physical elements of the ferry system.

C. "Capital cost" means all capital expenditures, including financing and depreciation expenses applied to the replacement, expansion, or creation of ferry system physical elements.

D. "Fare box recovery rate" means the calculated percentage of total revenue generated through ferry user fees in comparison to total actual operating costs for the same period of time minus any revenue from the motor vehicle fuel tax meant for ferry operations, or from interest.

E. "Ferry user fees" means the rates and charges required of and collected from any and all users of the ferry system, as established and periodically amended in the Unified Fee Schedule.


10.34.010 Effective date for ferry user fees.
Ferry user fees are set forth in the Whatcom County Unified Fee Schedule and become

10.34.020 Interpretation of rate schedule.

The following provisions should be observed in application of the ferry rate schedule:

A. Trailers shall include, but not be limited to, ball hitches, military hitches, fifth wheel in bed of pickup, dump trailers, recreation trailers and mobile homes.

B. Special trips are a surcharge in addition to the applicable fare.

C. A weekly run limited to fuel trucks, charged at the regular rate, shall be scheduled by the public works department and published appropriately.

D. Trucks and tow vehicles with trailers shall be charged a rate based on length and weight. Heavy machinery and motor homes shall be charged at the corresponding vehicle rate.

E. All trucks shall be charged regular round-trip rates based on legal license capacity.

F. Over-width vehicles or trailers occupying more than one lane shall be charged a 50 percent surcharge. In addition, vehicles towing over-width trailers shall also be charged a 50 percent surcharge.

G. Student multi-ride cards shall be sold to full-time post-high school students only. Proof of post-high school enrollment shall be required at time of purchase. No special student discount is available for drivers of vehicles.

H. Children 12 to under 19 (nineteen) years of age will receive free passenger and pedestrian passage all year round. No special child discount is available for drivers of vehicles.

I. County employees on official county business shall be exempt from fares. All county employee trips exempt from fares will be tracked, and $10.00 per trip will be credited toward the fare box recovery rate each year.

J. Enrolled members of the Lummi Indian Tribe who are issued appropriate identification cards by the tribe, or current fishing cards, licenses, or Lummi Indian Business Council ID cards and who have legitimate tribal business upon Lummi Island, as indicated by the Lummi Indian Tribe, shall have free foot passage upon and across the ferry operated by Whatcom County between Gooseberry Point and Lummi Island.

K. A special-needs-based discount is provided for Lummi Island residents who meet the income levels listed below. These special tickets will only be sold at the Whatcom County treasurer's office in Bellingham and will require proof of income and family size. Eligibility will be reviewed at least annually. Forms and procedures will be developed by the
Whatcom County treasurer's office.

1. Family of four or more with less than $40,000 total annual income;

2. Family of three with less than $30,000 total annual income;

3. Family of two with less than $20,000 total annual income;

4. Individual with less than $10,000 total annual income.

L. Eligibility for a special "senior/disabled" discount is available to all Lummi Island residents who currently hold property tax exemptions or deferral as defined under RCW 84.36.381 and 84.38.030 and WAC 458-16-020 and 458-18020, and as these may be hereafter amended. Eligibility for a special "senior/disabled" discount is also available to all Lummi Island residents that also qualify for medical assistance within the Medicaid Program.

M. Intentionally left blank.

N. All children under the age of 12 years when traveling on the Whatcom County ferry must be accompanied by an adult. An exception to this policy will be made only if the adult parent or guardian signs a waiver exempting Whatcom County from all liabilities for any and all injuries, loss of life, etc., while the child is traveling on the ferry.

10.34.030 Use of ferry user fee revenues.

Beginning January 1, 2006, a 55 percent fare box recovery rate shall be applied and evaluated continuously from that time forward. An annual review of ferry system services, actual and projected operating costs, and actual and projected revenue from ferry user fees shall occur in order to verify the 55 percent fare box recovery rate is being achieved.

In any given year the actual fare box recovery rate exceeds 55 percent, the excess revenue shall be retained in the ferry system fund and applied only to future operating costs.

In any given year the actual fare box recovery rate is below 55 percent, the difference shall be recovered in a future ferry user fee increase unless there is adequate excess ferry user fee revenue remaining in the ferry system fund collected during prior years.

Beginning January 1, 2007, any interest income or miscellaneous ferry fares income, or income from the State of Washington specifically identified as the annual Ferry Deficit Reimbursement motor vehicle fuel tax for ferry operation and the credit for County employee ferry trips will be deducted from the actual operating costs before the actual 55 percent fare box recovery rate is calculated and before the actual 45% Road Fund subsidy is calculated. The goal of this method of calculation is that the Road Fund will not contribute more than 45 percent of the adjusted operating costs each year. (Ord 2012-016, Exh A, Ord. 2010-054, Exh A, Ord. 2008-052 Exh. A; Ord. 2008-017 Exh. A; Ord. 2007-001
Prior legislation: Ord. 89-103.
EXHIBIT B

Example of Current and Proposed method of calculation and the resulting impact using actual numbers from the 2012 budget.

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<td>less county employee trip credit</td>
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<td>Cost recovery amounts</td>
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| **Road Fund**               |
| Total ferry operating expenses: | $ 2,488,023 (A) |
| less fare recovery amount | (1,261,927) (D) |
| less road fund contribution | (1,119,610) (E) |
| Amount paid by ferry fund | $ 106,486 (4.28%) (F)* |

| Total ferry operating expenses: | $ 2,488,023 (A) |
| Percent paid by ferry fund | 4.28% (rounded) |
| Total | $ 106,487 (F)* |

* $1 difference due to rounding.

The current Ferry Fund contribution is total operating expenses (A) less credited income items (B) equaling adjusted operating expenses (C), multiplied by 55 percent which results in a fare recovery amount of 50.72% of total operating expenses (D). The remaining 4.28 percent (F) of the credited income items is paid by the ferry fund.

The current calculation method for the Road fund contribution is total operating expenses (A), multiplied by 45 percent equaling the road fund contribution (E).
### Proposed Calculation Method

| Total ferry operating expenses | $ 2,488,023 (A) |
| less ferry deficit reimbursement | (181,433) (B) |
| less county employee trip credit | (5,510) (B) |
| less miscellaneous income | (526) (B) |
| less interest income | (6,142) (B) |
| **Adjusted operating expenses** | **$ 2,294,412** (C) |

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<td><strong>$ 2,294,412</strong> (C)</td>
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<td>Total ferry operating expenses:</td>
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<tr>
<td>less fare recovery amount</td>
<td>(1,261,927) (D)</td>
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<td>less road fund contribution</td>
<td>(1,032,485) (E)</td>
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<td><strong>Amount paid by ferry fund</strong></td>
<td><strong>$ 193,611</strong> (7.78%) (F)</td>
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<td>Percent paid by ferry fund</td>
<td>7.78%</td>
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<td><strong>Total</strong></td>
<td><strong>$ 193,568</strong> (F)*</td>
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* $43 difference due decimal points in percentage.

The proposed contribution amounts are adjusted operating expenses (C) multiplied by 55 and 45 percent respectively, which results in a fare recovery amounts of 50.72 percent (D) and 41.5 percent (E) of total operating expenses, (A). The remaining 7.78 percent (F) is paid by the ferry fund.

### 2010 Financial Impact:

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EXHIBIT A

Chapter 10.34 FERRY RATES

Sections:

10.34.005 Definitions.

10.34.010 Effective date for ferry user fees.

10.34.020 Interpretation of rate schedule.

10.34.030 Use of ferry user fee revenues.

10.34.005 Definitions.

A. "Ferry system" means all physical elements of the Lummi Island ferry operations, including both the Gooseberry Point and Lummi Island vehicle and pedestrian staging areas, vehicle parking areas, and ferry docks, and any and all boats utilized for transport purposes.

B. "Operating cost" means all actual daily running expenses and all actual regular and routine maintenance and administrative expenses associated with the use and operation of all physical elements of the ferry system.

C. "Capital cost" means all capital expenditures, including financing and depreciation expenses applied to the replacement, expansion, or creation of ferry system physical elements.

D. "Fare box recovery rate" means the calculated percentage of total revenue generated through ferry user fees in comparison to total actual operating costs for the same period of time minus any revenue from the motor vehicle fuel tax meant for ferry operations, or from interest.

E. "Ferry user fees" means the rates and charges required of and collected from any and all users of the ferry system, as established and periodically amended in the Unified Fee Schedule.


10.34.010 Effective date for ferry user fees.
Ferry user fees are set forth in the Whatcom County Unified Fee Schedule and become

10.34.020 Interpretation of rate schedule.

The following provisions should be observed in application of the ferry rate schedule:

A. Trailers shall include, but not be limited to, ball hitches, military hitches, fifth wheel in bed of pickup, dump trailers, recreation trailers and mobile homes.

B. Special trips are a surcharge in addition to the applicable fare.

C. A weekly run limited to fuel trucks, charged at the regular rate, shall be scheduled by the public works department and published appropriately.

D. Trucks and tow vehicles with trailers shall be charged a rate based on length and weight. Heavy machinery and motor homes shall be charged at the corresponding vehicle rate.

E. All trucks shall be charged regular round-trip rates based on legal license capacity.

F. Over-width vehicles or trailers occupying more than one lane shall be charged a 50 percent surcharge. In addition, vehicles towing over-width trailers shall also be charged a 50 percent surcharge.

G. Student multi-ride cards shall be sold to full-time post-high school students only. Proof of post-high school enrollment shall be required at time of purchase. No special student discount is available for drivers of vehicles.

H. Children 12 to under 19 (nineteen) years of age will receive free passenger and pedestrian passage all year round. No special child discount is available for drivers of vehicles.

I. County employees on official county business shall be exempt from fares. All county employee trips exempt from fares will be tracked, and $10.00 per trip will be credited toward the fare box recovery rate each year.

J. Enrolled members of the Lummi Indian Tribe who are issued appropriate identification cards by the tribe, or current fishing cards, licenses, or Lummi Indian Business Council ID cards and who have legitimate tribal business upon Lummi Island, as indicated by the Lummi Indian Tribe, shall have free foot passage upon and across the ferry operated by Whatcom County between Gooseberry Point and Lummi Island.

K. A special-needs-based discount is provided for Lummi Island residents who meet the income levels listed below. These special tickets will only be sold at the Whatcom County treasurer's office in Bellingham and will require proof of income and family size. Eligibility will be reviewed at least annually. Forms and procedures will be developed by the
Whatcom County treasurer's office.

1. Family of four or more with less than $40,000 total annual income;

2. Family of three with less than $30,000 total annual income;

3. Family of two with less than $20,000 total annual income;

4. Individual with less than $10,000 total annual income.

L. Eligibility for a special "senior/disabled" discount is available to all Lummi Island residents who currently hold property tax exemptions or deferral as defined under RCW 84.36.381 and 84.38.030 and WAC 458-16-020 and 458-18020, and as these may be hereafter amended. Eligibility for a special "senior/disabled" discount is also available to all Lummi Island residents that also qualify for medical assistance within the Medicaid Program.

M. Intentionally left blank.

N. All children under the age of 12 years when traveling on the Whatcom County ferry must be accompanied by an adult. An exception to this policy will be made only if the adult parent or guardian signs a waiver exempting Whatcom County from all liabilities for any and all injuries, loss of life, etc., while the child is traveling on the ferry.

10.34.030 Use of ferry user fee revenues.

Beginning January 1, 2006, a 55 percent fare box recovery rate shall be applied and evaluated continuously from that time forward. An annual review of ferry system services, actual and projected operating costs, and actual and projected revenue from ferry user fees shall occur in order to verify the 55 percent fare box recovery rate is being achieved.

In any given year the actual fare box recovery rate exceeds 55 percent, the excess revenue shall be retained in the ferry system fund and applied only to future operating costs.

In any given year the actual fare box recovery rate is below 55 percent, the difference shall be recovered in a future ferry user fee increase unless there is adequate excess ferry user fee revenue remaining in the ferry system fund collected during prior years.

Beginning January 1, 2013, any interest income or miscellaneous ferry fares income, or income from the State of Washington specifically identified as the annual Ferry Deficit Reimbursement and the credit for County employee ferry trips will be deducted from the actual operating costs before the actual 55 percent fare box recovery rate is calculated and before the actual 45% Road Fund subsidy is calculated. The goal of this method of calculation is that the Road Fund will not contribute more than 45 percent of the adjusted operating costs each year. (Ord 2012-016, Exh A; Ord. 2010-054, Exh A; Ord. 2008-052 Exh. A; Ord. 2008-017 Exh. A; Ord. 2007-001 Exh. A; Ord. 2005-090 Exh. A; Ord. 2002-012; Ord.)
Prior legislation: Ord. 89-103.
TITLE OF DOCUMENT: Appointment to the Whatcom County Agricultural Advisory Committee.

ATTACHMENTS: Application for Appointment from Leighton Overson.

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 Leighton Overson to the Whatcom County Agricultural Advisory Committee.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Leighton Olson
Street Address: 587 E Alder Dr
City: Sedro Woolley
Mailing Address (if different from street address):

Day Telephone: 360-525-1668   Evening Telephone: Same   Cell Phone: Same
E-mail address: leighton@curtmacberylfarm.com

Date: 12/8/12

1. Name of board or committee—please see reverse:
   Ag Advisory board
   Board Seat

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: Curt MacBery Farm Inc.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
   Agonomist, field manager for Curt MacBery Farm. I have a B.S. in Agriculture from WSU and many years experience in several communities

10. Please describe why you’re interested in serving on this board or commission: As a member of the Ag community, I hope to be able to share my opinions and listen to the opinions of others. To be involved.

   References (please include daytime telephone number): Oscar Currier

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.
### TITLE OF DOCUMENT: Zoning amendment to allow Packinghouses in the Agriculture Zoning District

**ATTACHMENTS:**
1. Proposed Ordinance
2. Exhibit A – Proposed Code Amendments

### 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 7,000 square feet as an accessory use, or greater than 7,000 but less than 20,000 square feet as a conditional use. Review criteria include limits on livestock source, limitations on holding pens, adequate services by necessary facilities, waste management requirements, appropriate vehicular approaches, limits on, noxious emissions, and requires avoidance of prime soils to the extent feasible.
ORDINANCE NO. _________

ZONING AMENDMENT TO ALLOW AGRICULTURAL PACKINGHOUSES IN THE AGRICULTURE ZONING DISTRICT

WHEREAS, an application has been submitted to amend the Agriculture (AG) zoning district to allow the small scale slaughter of local livestock; and

WHEREAS, the proposed amendment has 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 zoning text amendment; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission held 3 work sessions on the proposed amendment; 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 held 4 public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Council held 7 work sessions in the Planning and Development Committee; and

WHEREAS, The Whatcom County Council held 2 work session in the Special Committee of the Whole; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

FINDINGS

1. The proposal is to amend the Agriculture (AG) District portion of the Zoning Code (WCC 20.40), to allow for packinghouses.

2. The proposal has been posted to the County website.

3. Notice of the subject amendment was submitted to the Washington State
Department of Commerce on June 5, 2012.

4. Notice of the Planning Commission work session for the subject amendment was posted on the County’s website in May 2012.

5. In order to approve the zoning amendment, the County must find that it is consistent with the Growth Management Act. Additionally, the County must find that the zoning amendment is consistent with and implements the Whatcom County Comprehensive Plan.

6. The Growth Management Act includes a planning goal to “Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state’s natural resources, public services, and public facilities” (RCW 36.70A.020(5)).

This proposed zoning amendment would allow for new packinghouses within the agriculture zoning district. Presently, new packinghouses are prohibited within the agriculture zoning district. Staff recognizes the benefit to the agricultural industry this amendment would provide by allowing greater opportunities for farmers to get their product to the end user. The Growth Management Act allows for jurisdictions to implement innovative zoning techniques, which should be designed to conserve agricultural lands and encourage the agricultural economy. This proposed amendment would support planning goal RCW 36.70A.020(5) Economic Development.

7. The Growth Management Act also includes a planning goal to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)).

This proposed zoning amendment would allow for new packinghouses within the agriculture zoning district. Staff recognizes the benefit to the agricultural industry this amendment would provide by allowing greater opportunities for farmers to get their product to the end user. This proposed amendment would support planning goal RCW 36.70A.020(8) Natural Resource Industries.

8. Consistent with RCW 36.70A.177, this amendment will allow packinghouses within the agricultural zone that will support the agricultural community by allowing production of value-added agricultural products and will not interfere with the overall agricultural use and character of the County’s designated agricultural lands of long-term commercial significance.

This proposed zoning amendment would allow for new packinghouses within the agriculture zoning district. Presently, Keizer Meats of Lynden, which operates the only USDA approved facility north of King County Seattle that is open to the general public, has received conditional approval to operate a facility at the location of their approved meat cutting and packing facility on Bob Hall Rd. Approval of this proposed amendment would allow other citizens within the agriculture zoning district to provide slaughtering services to Whatcom County farmers and allow greater opportunities for farmers to generate value-added products and get their product to the end user.

10. Policy 8B-2: Assist Whatcom County’s agricultural industry in the pursuit of its long-term economic potential. This should include the development of strategies and policies necessary to reach this potential, in terms of both production and diversity.

This proposed zoning amendment would allow for new uses not presently allowed in the agriculture zoning district. Allowing this use may increase production and diversity of livestock by providing greater opportunities for livestock owners to get their product to the end user.

11. Policy 8B-4: Support methods and strategies to market Whatcom County agriculture in ways which ensure that agricultural activities (such as dairying) and entities (such as processors) will remain here in the long term.

Allowing new packinghouses within the agriculture zoning district would provide for additional marketing of Whatcom County livestock, as there is presently only one permitted USDA approved facility within any Whatcom County jurisdiction that is open to the public.

12. County-Wide Planning Policy I-5: The county and the cities should include an economic development element in their Comprehensive Plans. Economic development elements should be consistent with the CEDS. Economic development shall be coordinated with environmental concerns to protect the quality of life. Planning efforts should address economic sustainability. As part of the comprehensive planning process and through implementation of the comprehensive plan, the County shall develop and adopt goals, policies and regulations that protect resource land industries and support and encourage resource-based industries.

Approval of this proposed amendment would allow citizens within the agriculture zoning district to provide slaughtering services to Whatcom County farmers and allow greater opportunities for farmers to get their product to the end user. By approving the proposed amendment, comprehensive plan goals and policies and their related development regulations that support and encourage resource-based industries would be implemented.

13. County-Wide Planning Policy I-9: The County and the cities recognize the
need for the protection and utilization of natural resources and resource
lands including agricultural, mineral, forestry and fishing. As part of a broad
based economy, productive timber, agriculture and fisheries industries should
be supported in a sustainable manner.

Approval of this proposed amendment would allow citizens within the
agriculture zoning district to provide slaughtering services to Whatcom
County farmers and allow greater opportunities for farmers to get their
product to the end user. Approval of this proposal would allow for an
increase to the economic base for agricultural products related to livestock.

14. Packinghouses within the Agriculture zone allow for a local, sustainable,
humanely raised food supply for the citizens of Whatcom County.

15. Limiting holding pens to that necessary to accommodate animals intended for
immediate processing within 24 hours would prevent packinghouse holding
pens from becoming feedlots, while allowing each facility the flexibility to
adjust their business accordingly.

16. The proposed amendment has not changed substantially from the initial staff
proposal that was reviewed through the State Environmental Policy Act
(SEPA). The previously issued SEPA Threshold Determination of
Determination of Nonsignificance (DNS) is still applicable.

17. The Rural Industrial Manufacturing (RIM) zone is the only zone presently in
Whatcom County that provides a permitting pathway to allow for
slaughtering facilities packinghouses and slaughterhouses. Applicability of
land within the RIM zone to a new agricultural slaughtering facility is limited
to the I-5 Rural Business RIM zone.

18. According to the 2007 USDA Census of Agriculture, Whatcom County has
95,500 cattle and calves.

19. Keizer Meats, the only USDA approved slaughtering facility in Whatcom
County, is limited to slaughtering 2,000 animals per year through their
Conditional Use Permit.

20. Both nationwide and locally, the percentage of livestock operations selling
product directly to consumers or retailers is much smaller than that of other
agricultural products (US Department of Agriculture. Slaughter and
Processing Options and Issues for Locally Sourced Meat. USDA Economic

21. Limited slaughter and processing capacity is often cited as a key barrier to
marketing of meat and poultry locally (US Department of Agriculture,
Slaughter and Processing Options and Issues for Locally Sourced Meat. USDA

22. The number of slaughter plants has decreased in recent years, both
nationwide and locally (US Department of Agriculture. Slaughter and
Processing Options and Issues for Locally Sourced Meat. USDA Economic

24. Lack of nearby slaughter facilities can create logistical impediments to animal slaughter, particularly in being able to transport animals/meat to and from the slaughter plant in a financially practical way (US Department of Agriculture, *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).

25. Nationwide Given the mismatch between smaller producers and larger plants, many individual producers marketing their meat via niche marketing arrangements must rely on smaller facilities, wherever they are located. Small producers may prefer to use a smaller slaughter and processing facility because a smaller plant is likely to be more flexible in satisfying the producer’s individual processing requests (US Department of Agriculture, *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).

26. Nationwide Sales of food sold via direct-to-consumer marketing have more than doubled over the last decade (USDA/NASS, 2007 Census of Agriculture). However, direct-to-consumer and intermediately sales of livestock products have not grown as rapidly as other food categories, despite apparent demand. Local producers continue to perceive a lack of local slaughter capacity as a hindrance in trying to meet growing demand (US Department of Agriculture, *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).

27. Currently, the vast majority of livestock and poultry slaughter in the United States is done in a relatively small number of very large facilities (US Department of Agriculture, *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).

28. New methods for animal slaughter and processing geared toward local markets, for example, mobile slaughter units (MSUs), can help meet some of the need for increased slaughter capacity in localized areas and enable the growth of small livestock producers marketing products to consumers in their region or community (US Department of Agriculture, *Slaughter and Processing Options and Issues for Locally Sourced Meat*. USDA Economic Research Service. 2012).

29. As part of the review process for the proposed amendments, Planning and Development Services has read numerous background documents including, but not limited to: USDA Layout Guide for Small Meat Plants; University of Wisconsin Cooperative Extension, Pollution Prevention for Small Slaughterhouse and Meat-Packing Operations handout; USDA Slaughter and Processing Options and Issues for Locally Sourced Meat; Siskiyou Slaughter Facility Preliminary Feasibility Study & Action Plan; EPA Technical


30. Roughly 56% of agriculturally zoned land is within a Critical Aquifer Recharge Area (CARA) of high susceptibility, as identified by the Critical Areas Ordinance map.

**CONCLUSIONS**

1. The proposed amendments are consistent with the Whatcom County Comprehensive Plan.
2. The subject amendment serves the public interest by supporting the local agricultural industry.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit A.

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:

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM:

Jack Louws, County Executive

( ) Approved    ( ) Denied

Date Signed: ____________________
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 7,000 square feet.
2. The facility processes at least 75 percent agricultural goods produced in Whatcom, Skagit and/or Island 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 processing within 24 hours.
4. 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. A notice shall be mailed by Planning and Development Services explaining that an application is being processed for a packinghouse on the subject property as an allowed accessory use and that the notice is being provided as a courtesy only. A copy of WCC 20.40.114 shall be provided with the notice.
5. 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.
6. 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
7. An approved state waste discharge permit from the Washington State Department of Ecology with adequate storage, where required, that complies with WAC 173-216, WAC 173-226 industrial stormwater permit (general permits), and/or an NPDES Permit (RCW 90.48 and WAC 173-220), if required by the Washington State Department of Ecology.
8. 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.
9. 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.

(10) 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 7,000 square feet and no larger than 20,000 square feet.

(2) The facility processes at least 75 percent agricultural goods produced in Whatcom, Skagit and/or Island 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 processing within 24 hours.

(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 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) An approved state waste discharge permit from the Washington State Department of Ecology with adequate storage, where required, that complies with WAC 173-216, WAC 173-226 industrial stormwater permit (general permits), and/or an NPDES Permit (RCW 90.48 and WAC 173-220), if required by the Washington State Department of Ecology.

(7) 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.

(8) 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.

(9) 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.

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, 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.
(4) The minimum separation between packinghouses and adjacent property lines shall be 150 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.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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TITLE OF DOCUMENT:
Ord Repealing Ord2013-037 - Interm Moratorium on the Lk. Whatcom Watershed

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.)

On July 23, 2013, the Council adopted Ordinance 2013-043, establishing Lake Whatcom Watershed Overlay District, which amended certain sections of the County Codes and County Comprehensive Plan related to water quality and stormwater management in the Lake Whatcom watershed.

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.
ORDINANCE # ____________

REPEALING ORDINANCE 2013-037, WHICH IMPOSED AN INTERIM MORATORIUM ON THE ACCEPTANCE OF NEW APPLICATIONS FOR DIVISIONS OF LAND RESULTING IN LOTS SMALLER THAN FIVE ACRES WITHIN THE LAKE WHATCOM WATERSHED

WHEREAS, on July 9, 2013, the Whatcom County Council adopted Ordinance 2013-037, continuing an interim moratorium on the acceptance of new applications for divisions of land into lots smaller than five (5) acres in the Lake Whatcom Watershed until permanent regulations to protect Lake Whatcom could be finalized and adopted; and

WHEREAS, on July 23, 2013, the Council adopted Ordinance 2013-043, establishing Whatcom County Code Chapter 20.51, Lake Whatcom Watershed Overlay District, and amending certain sections of the County Code and the County Comprehensive Plan related to water quality and stormwater management in the Lake Whatcom Watershed; and

WHEREAS, with the adoption of Ordinance 2013-043, the interim moratorium imposed by Ordinance 2013-037 is no longer necessary.

NOW THEREFORE BE IT ORDAINED by the Whatcom County Council that Ordinance 2013-037 is hereby repealed in its entirety upon the effective date of this ordinance.

ADOPTED this _______day of ________, 2013.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

__________________________________________
Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

APPROVED AS TO FORM:

__________________________________________
Civil Deputy Prosecutor

Jack Louws, Executive

( ) Approved  ( ) Denied

Date: __________________________
### TITLE OF DOCUMENT:

Ordinance amending the 2013 Unified Fee Schedule

### ATTACHMENTS:

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>NO</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Should Clerk schedule a hearing?</th>
<th>Yes</th>
<th>NO</th>
</tr>
</thead>
</table>

### 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 ordinance amends the 2013 Unified Fee Schedule to incorporate a “Ferry Non-Payment Fee” that will be levied against ferry customers who board the ferry without proper payment or valid ferry punch cards in addition to the regular ferry fare owed.
MEMORANDUM

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

FROM: Frank M. Abart, Director

RE: An Ordinance to Amend the 2013 Unified Fee Schedule

DATE: July 23, 2013

Requested Action:
Consideration of the attached ordinance that amends the 2013 Unified Fee Schedule to incorporate a “Ferry Non-Payment Fee” that will be levied against ferry customers who board the ferry without proper payment or valid ferry punch cards in addition to the regular ferry fare owed.

These changes will occur within thirty (30) days after the date of signature of this ordinance by the Whatcom County Executive.

Background and Purpose:
The Whatcom Chief Employees, the Whatcom County Council, and the State Auditor’s office have all verbally expressed issues and concerns regarding ferry customers boarding the Whatcom Chief without proper payment or valid ferry punch cards. Additionally, the State Auditor’s office has also verbally expressed concern regarding extending credit of the County and a lack of process to deter this behavior.

The intended action is to amend the 2013 Unified Fee Schedule to incorporate a “Ferry Non-Payment Fee” that will be levied against ferry customers who board the ferry without proper payment or valid ferry punch cards in addition to the regular ferry fare owed. The Ferry Non-Payment Fee mirrors the current Non-Sufficient Funds Fee in the 2013 Unified Fee Schedule.

Other Information:
Public Works is also developing a Non-Payment Form that the pursers on the Whatcom Chief will issue to any and all customers who board the Whatcom Chief without sufficient funds or valid punch cards.

Public Works Accounting is developing policies and procedures for this new task and will also provide a training class for all Whatcom County Ferry employees.

If you have any questions please call Frank Abart at extension 50678. Thank you.

Enc.
ORDINANCE NO. ________

AMENDING WHATCOM COUNTY 2013 UNIFIED FEE SCHEDULE

WHEREAS, The Whatcom County 2013 Unified Fee Schedule addresses interpretation of the rate schedule; and

WHEREAS, The Whatcom County Ferry, the Whatcom Chief, has reported issues with customers boarding the Whatcom Chief without proper payment or valid ferry punch cards; and

WHEREAS, The State Auditor’s Office has verbally expressed concerns regarding the non-payment issues; and

WHEREAS, The Whatcom County Council has also expressed concerns related to the non-payment of ferry fares; and

WHEREAS, The State Auditor’s Office has also verbally expressed concern regarding extending credit of the County and lack of process to deter this behavior;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a “Ferry Non-Payment Fee” be levied against ferry customers who board the ferry without proper payment or valid ferry punch cards in addition to the regular ferry fare owed.

BE IT FURTHER ORDAINED that the Unified Fee Schedule be amended as set forth in the attached Exhibit A to this ordinance, and

BE IT FURTHER ORDAINED that this change will become effective within thirty (30) days after the date of signature of this ordinance by the Whatcom County Executive.
ADOPTED this ___ day of ________, 20__.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Kathy Kershner, Council Chair

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied

Date Signed: ________________________
## Exhibit AB – 20132 Unified Fee Schedule Amendment

### Public Works - Ferry & Docks

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>20132 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
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<tbody>
<tr>
<td>1</td>
<td>Passenger/Pedestrian</td>
<td>$ 4.00</td>
<td>$ 4.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>2</td>
<td>Passenger/Pedestrian – Multiride</td>
<td>$ 40.00</td>
<td>$ 40.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>3</td>
<td>Children under 12 W/ Parent</td>
<td>$ 0.00</td>
<td>$ 0.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>4</td>
<td>Children 12 to Under 19 yrs –</td>
<td>$ 0.00</td>
<td>$ 0.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>5</td>
<td>Needs Based Passenger/Pedestrian</td>
<td>$ 17.00</td>
<td>$ 17.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>6</td>
<td>Post-High School Full-time Students</td>
<td>$ 23.00</td>
<td>$23.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>7</td>
<td>Lummi Tribe W/ I.D.</td>
<td>$ 0.00</td>
<td>$ 0.00</td>
<td>Foot Passage Only</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
</tbody>
</table>

### Passenger Vehicles

|   | Bicycle W/Rider                                   | $ 4.00    | $ 4.00     | 1 Round Trip  | WCC 10.34     | Ordinance 2008-052 |
| 9 | Motorcycle W/Driver                                | $ 5.00    | $ 5.00     | 1 Round Trip  | WCC 10.34     | Ordinance 2008-052 |
| 10| Motorcycle W/Driver                                | $ 8.00    | $ 8.00     | 25 Round Trips| WCC 10.34     | Ordinance 2008-052 |
| 11| Vehicle W/Driver < 8,001 lbs.                      | $ 10.00   | $10.00     | 1 Round Trip  | WCC 10.34     | Ordinance 2008-052 |
| 12| Vehicle W/Driver < 8,001 lbs. – Multiride         | $ 72.00   | $ 72.00    | 10 Round Trips| WCC 10.34     | Ordinance 2008-052 |
| 13| Vehicle W/Driver <8,001 lbs. – Multiride          | $160.00   | $160.00    | 25 Round Trips| WCC 10.34     | Ordinance 2008-052 |
## Exhibit AB – 2013 Unified Fee Schedule Amendment

### Public Works - Ferry & Docks

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. 5057</td>
<td>Needs Based Vehicle W/Driver Senior/Disabled/Income</td>
<td>$36.00</td>
<td>$36.00</td>
<td>10 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>16. 5058</td>
<td>Vehicle W/Driver 8,001-20,000 lbs.</td>
<td>$29.00</td>
<td>$29.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>17. 5059</td>
<td>Vehicle W/Driver 8,001 - 20,000 lbs.</td>
<td>$207.00</td>
<td>$207.00</td>
<td>10 Round Trips</td>
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<td>Ordinance 2008-052</td>
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<td>18. 5060</td>
<td>Vehicle W/Driver 20,001-36,000 lbs.</td>
<td>$65.00</td>
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<td>19. 5061</td>
<td>Vehicle W/Driver 20,001 - 36,000 lbs.</td>
<td>$494.00</td>
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<td>10 Round Trips</td>
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<td>20. 5062</td>
<td>Vehicle W/Driver 36,001-50,000 lbs.</td>
<td>$130.00</td>
<td>$130.00</td>
<td>1 Round Trip</td>
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<td>Ordinance 2008-052</td>
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<td>21. 5063</td>
<td>Vehicle W/Driver 36,001-50,000 lbs.</td>
<td>$1040.00</td>
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<td>10 Round Trips</td>
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<td>Ordinance 2008-052</td>
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<tr>
<td>22. 5064</td>
<td>Trailer under 16 feet</td>
<td>$15.00</td>
<td>$15.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>23. 5065</td>
<td>Trailer 16 - 30 feet</td>
<td>$31.00</td>
<td>$31.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>24. 5066</td>
<td>Trailer over 30 feet</td>
<td>$60.00</td>
<td>$60.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>25. 5067</td>
<td>Over width Vehicle/Trailers &gt; 1 Lane</td>
<td>50%Surcharge 50%Surcharge</td>
<td>Surcharge</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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### Special Trips

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
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</thead>
<tbody>
<tr>
<td>26. 5068</td>
<td>Special Trips after regularly scheduled runs</td>
<td>$575.00</td>
<td>$575.00</td>
<td>Per trip surcharge</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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### Surcharge

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<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
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<tbody>
<tr>
<td>27. 5044</td>
<td>Per Trip Surcharge</td>
<td>$0.00</td>
<td>$3.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2010-054</td>
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### Additional Fees

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<thead>
<tr>
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<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
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<tbody>
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<td>28. 5069</td>
<td>Ferry Non-Payment Fee</td>
<td>$0.00</td>
<td>$30.00</td>
<td>Per Occurrence</td>
<td>Unified Fee Schedule</td>
<td>Ordinance</td>
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</tbody>
</table>

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*Formatted: Font: 10 pt, Font color: Red
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# Exhibit A – 2013 Unified Fee Schedule Amendment

## Public Works - Ferry & Docks

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
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<tr>
<td><strong>Pedestrians</strong></td>
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<tr>
<td>1.</td>
<td>5043 Passenger/Pedestrian</td>
<td>$ 4.00</td>
<td>$ 4.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>2.</td>
<td>5045 Passenger/Pedestrian – Multiride</td>
<td>$ 40.00</td>
<td>$ 40.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<td>3.</td>
<td>5046 Children under 12 W/ Parent</td>
<td>$ 0.00</td>
<td>$ 0.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>4.</td>
<td>5047 Children 12 to Under 19 yrs –</td>
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<td>$ 0.00</td>
<td>1 Round Trip</td>
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<td>Ordinance 2008-052</td>
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<td>6.</td>
<td>5049 Needs Based Passenger/Pedestrian</td>
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<td>$ 17.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td></td>
<td>(Senior/Disabled/Income)</td>
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<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>7.</td>
<td>5050 Post-High School Full-time Students</td>
<td>$ 23.00</td>
<td>$23.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>8.</td>
<td>5051 Lummi Tribe W/ I.D.</td>
<td>$ 0.00</td>
<td>$ 0.00</td>
<td>Foot Passage Only</td>
<td>WCC 10.34</td>
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<td><strong>Passenger Vehicles</strong></td>
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<td>9.</td>
<td>5052 Bicycle W/Rider</td>
<td>$ 4.00</td>
<td>$ 4.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>10.</td>
<td>5053 Motorcycle W/Driver</td>
<td>$ 5.00</td>
<td>$ 5.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>11.</td>
<td>5053PC Motorcycle W/Driver</td>
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<td>$ 80.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>12.</td>
<td>5054 Vehicle W/Driver &lt; 8,001 lbs.</td>
<td>$ 10.00</td>
<td>$ 10.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>13.</td>
<td>5055 Vehicle W/Driver &lt; 8,001 lbs. – Multiride</td>
<td>$ 72.00</td>
<td>$ 72.00</td>
<td>10 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
<td>14.</td>
<td>5056 Vehicle W/Driver &lt; 8,001 lbs. – Multiride</td>
<td>$ 160.00</td>
<td>$ 160.00</td>
<td>25 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
</tbody>
</table>
### Public Works - Ferry & Docks

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
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</thead>
<tbody>
<tr>
<td>15.</td>
<td>Needs Based Vehicle W/Driver Senior/Disabled/Income</td>
<td>$36.00</td>
<td>$36.00</td>
<td>10 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<tr>
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<td></td>
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<td><strong>Larger Vehicles</strong></td>
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<tr>
<td>16.</td>
<td>Vehicle W/Driver 8,001 - 20,000 lbs.</td>
<td>$29.00</td>
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<tr>
<td>18.</td>
<td>Vehicle W/Driver 20,001 - 36,000 lbs.</td>
<td>$65.00</td>
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<td>19.</td>
<td>Vehicle W/Driver 20,001 - 36,000 lbs.</td>
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<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>20.</td>
<td>Vehicle W/Driver 36,001 - 50,000 lbs.</td>
<td>$130.00</td>
<td>$130.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>21.</td>
<td>Vehicle W/Driver 36,001 - 50,000 lbs.</td>
<td>$1040.00</td>
<td>$1040.00</td>
<td>10 Round Trips</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>22.</td>
<td>Trailer under 16 feet</td>
<td>$15.00</td>
<td>$15.00</td>
<td>1 Round Trip</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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<td>23.</td>
<td>Trailer 16 - 30 feet</td>
<td>$31.00</td>
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<td>WCC 10.34</td>
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<tr>
<td>24.</td>
<td>Trailer over 30 feet</td>
<td>$60.00</td>
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<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
</tr>
<tr>
<td>25.</td>
<td>Over width Vehicle/Trailers &gt; 1 Lane</td>
<td></td>
<td></td>
<td>50%Surcharge</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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### Special Trips

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
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</thead>
<tbody>
<tr>
<td>26.</td>
<td>Special Trips after regularly scheduled runs</td>
<td>$575.00</td>
<td>$575.00</td>
<td>Per trip surcharge</td>
<td>WCC 10.34</td>
<td>Ordinance 2008-052</td>
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</table>

### Surcharge

<table>
<thead>
<tr>
<th>UFS#</th>
<th>Description</th>
<th>2012 Rate</th>
<th>2013 Rate</th>
<th>Rate Basis</th>
<th>Authorization</th>
<th>Authority</th>
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<tbody>
<tr>
<td>27.</td>
<td>Per Trip Surcharge</td>
<td>$0.00</td>
<td>$3.00</td>
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### Additional Fees

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A Resolution approving recommendations on applications for open space current use assessment.

**ATTACHMENTS:**

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
In accordance with Whatcom County Code, Section 3.28.020 which establishes procedures for processing applications for open space current use taxation, Whatcom County Planning Commission recommendations are hereby forwarded to the Whatcom County Council to approve in whole or in part or to deny 3 applications for open space current use assessment as authorized by the Open Space Taxation Act (Chapter 84.34 RCW). A draft resolution has been prepared to initiate Council action should they wish to approve Planning Commission recommendations.

* Distribution Request: Assessors Office – Jean Eastman

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

THROUGH: Mark Personius, Long Range Planning Division Manager

FROM: Erin Osborn, Planner

DATE: July 26, 2013

SUBJECT: 2013 Open Space Current Use Program Applications, and Planning Commission Comments on a PBRS Update

Three applications for Open Space Current Use Assessment have been reviewed by the Whatcom County Planning Commission and PDS staff, and the results of this review and subsequent recommendations are presented here in an attached packet.

A draft resolution has been prepared for Council should they wish to adopt findings that were made by the Whatcom County Planning Commission at a July 11, 2013 work session. Also included is staff’s report and recommendations, along with maps, aerial photos, and other supporting documents.

Staff would like to request that this item be introduced on August 6, 2013 for review in Planning and Development Committee on September 10, 2013, with a public hearing held on these applications in the evening of the same day.

Staff would also like to relay concerns expressed by the Planning Commission at their July 11, 2013 meeting, indicating that the County’s adopted Public Benefit Rating System (PBRS) which is used to evaluate applications for Open Space Land and Farm & Agricultural Conservation Land may be in need of an update. The PBRS received its last significant update approximately 24 years ago, and the Planning Commission has indicated that the PBRS in its current form may no longer be adequate to assess the public benefit of preserving open space lands.

Staff would like direction from Council on how they would like to proceed on this matter, and would welcome further discussion on this topic in Planning & Development Committee on September 10, 2013.

Thank you for your consideration.
RESOLUTION NO: ______________

APPROVING RECOMMENDATIONS ON APPLICATIONS FOR OPEN SPACE CURRENT USE ASSESSMENT

WHEREAS, The Open Space Taxation Act codified as Chapter 84.34 RCW, gives counties authority to approve applications for current use classification and reclassification for the following classifications: Farm and Agricultural Land, Open Space Land, Farm & Agricultural Conservation Land, and Timber Land; and

WHEREAS, Pursuant to Whatcom County Code, Section 3.28.020, applications for the classification of Open Space Land, Farm & Agricultural Conservation Land and Timber Land are received and evaluated by Whatcom County Planning and Development Services Department staff, and the results of this evaluation are then presented to the Whatcom County Planning Commission for their review and consideration in making recommendations to the County Council on whether to approve the applications in whole or in part; and

WHEREAS, Pursuant to RCW 84.34.055 and WAC 458-30-330 Whatcom County has adopted a Public Benefit Rating System (PBRS) by Ordinance # 95-040, which is used by staff to rate applications for Open Space Land and Open Space Farm & Agricultural Conservation Land; and

WHEREAS, Applications for Open Space Land and Open Space Farm & Agricultural Conservation Land are evaluated with the Public Benefit Rating System and assigned a Public Benefit Rating (PBR) that corresponds with a staff recommendation of approval or denial, and must receive a score of 45 or above for a staff recommendation of approval; and

WHEREAS, In accordance with the Whatcom County Open Space Policies and Public Benefit Rating System, public access is a condition of approval for Open Space Land applications, except that this requirement may be waived by the Council when the purpose of the classification is for the conservation of wetlands; or when there is a documented occurrence of: State or Federal Threatened Endangered
Species, Federal Proposed Endangered or Threatened Species, State Sensitive or Monitor Species; or when there is a known or potentially significant archaeological site; and

WHEREAS, On September 10, 2013, the Whatcom County Council held a public hearing and considered recommendations from the Whatcom County Planning Commission, staff recommendations, and considered all input from the public on applications referenced in Master File Number OS2013-1; and

WHEREAS, Pursuant to WAC 197-11-800(6)(c), matters relating to Open Space Current Use Assessment are determined not to be major actions and thus exempt from environmental review under the State Environmental Policy Act (SEPA); and

WHEREAS, Pursuant to RCW 36.70.390, the statutory requirements regarding legal notice have been met; and

WHEREAS, The County Council has adopted the following Findings of Fact and Reasons for Action:

1. In 2012, Whatcom County Planning and Development Services received three applications to classify or reclassify land under the open space current use program (Chapter 84.34. RCW) on lands located within the jurisdiction of Whatcom County. These applications were processed as a group under Master File Number OS2013-1.

2. Of the three applications referenced in OS2013-1: one is for Open Space Land (OSL), and two applications are for the classification of Open Space Timber Land (OST). Upon receipt of these applications, Planning and Development Services staff evaluated the open space land application with the Public Benefit Rating System (PBRS), and evaluated applications for timber land with Whatcom County Timber Management Plan Format and Criteria, and also for conformance with Subsection 84.34.041 of the Open Space Taxation Act (RCW 84.34).

3. Staff prepared a report for the Planning Commission with recommendations on whether to approve in whole or in part or to deny these applications based on review with the applicable evaluation criteria and scores assigned. This report was presented to the Whatcom County Planning Commission and to members of the public who were present at the Whatcom County Planning Commission meeting work session held on July 11, 2013.

4. At the July 11, 2013 Planning Commission Work Session, staff gave an approximately one hour overview presentation on the Open Space Current Use Program, its statutory and local authority, a brief overview on the historical legislative context in which the Open Space Taxation Act and other environmental laws that emerged in the 1970's & 1980's, and outlined roles of the Planning Commission, County Council, County
Assessor’s Office, and Joint Granting Authority (for applications located within incorporated areas). As part of this overview presentation, staff noted that decisions made to approve or deny applications authorized under the Open Space Taxation are reviewable (by Superior Court) only for “arbitrary & capricious actions”.

5. After conclusion of the staff overview on the open space current use program, staff then presented each of the individual applications referenced in Master File OS2013-1. The single application for the classification of open space land was presented first, followed by presentations on the timber land applications.

6. Staff recommended approval on the application for Open Space Land (Sefton). Staff recommendation of approval on this application was based on an assigned Public Benefit Rating (PBR) score of 45 points or higher which is consistent with a staff recommendation of approval pursuant to Whatcom County Open Space Policies and Criteria and Public Benefit Rating System.

The Sefton’s proposal included free public access to 10.78 acres of their almost 11.78 acre parcel during posted hours and to large groups by appointment. Proposed public access featured an existing half-mile loop trail situated in a wooded and grassy area that the applicant’s stated could be used recreational purposes, including: hiking, wildlife viewing, horseback riding, and star gazing at night (by appointment), with ample off-street parking that the applicant proposed would be improved and documented in a record site plan upon application approval.

7. Whatcom County Open Space Policies and Criteria and Public Benefit Rating System requires that the Planning Commission in making its recommendations to the County Council consider each application for Open Space Land in terms of its overall benefit relative to the monetary shift in taxes that would occur if the application were to be approved.

8. Staff presented information that described the estimated resulting tax shift that would occur if the Sefton application for Open Space Land were to be approved. Using figures provided by the County Assessor’s Office, staff calculated that the estimated difference between assessed fair market value and the estimated current use value would be approximately $88,832.00. This assessed property value reduction would result in an estimated tax shift of approximately $1,094.41 to other tax payers per year if the application were to be approved.

Staff was not able to provide information to the Planning Commission about what this overall tax shift would mean in terms of increased taxes affecting individual property owners because it would be a very difficult calculation to perform. Staff explained that not all property owners located in a geographic tax code area are subject to the same set of taxing district levies, and therefore it would not be as simple as dividing the number of parcels by the monetary shift in taxes to obtain an estimated tax shift on per parcel basis. Staff indicated that research had been done to obtain more precise information about the tax shift to other parcels, but
that further study in cooperation with the County Assessor would be necessary to create an accurate estimate of the tax shift on a per parcel basis that would occur as a result of application approval.

9. During discussion on the specifics of the Sefton application, Planning Commissioners asked about surface conditions of the proposed 1/2 mile of walking trails, and staff replied that the trails were mowed. Commissioners also asked for clarification about what was being offered in terms of off-street parking. Staff indicated that the existing parking appeared ample, but the Applicants who were present indicated that they intended to improve the parking area by grading an area to the south of the driveway and adding gravel. Staff indicated that Commissioners could recommend that a site map and parking plan be stipulated as a condition of approval.

10. After much deliberation, Planning Commissioners came to the general consensus that the application had low benefit relative to the tax shift, and that the public benefit being offered by the Sefton application was not commensurate with the loss of revenue or shift in taxes to the other tax payers in the taxing district, and voted to deny the application in its entirety.

11. During Planning Commission discussion on the Sefton application for Open Space Land, Planning Commissioners made comments to generally indicate that the Public Benefit Rating System (PBRS), originally conceived in the late 1980's, may not be adequate to measure application benefit in accordance with today's priorities for the conservation and preservation of land and other county resources under the Open Space Taxation Act.

12. Discussion was held and a general consensus reached by Planning Commissioners that the Public Benefit Rating System should be reviewed for a potential update.

13. Staff recommended approval on both the Smith, and Kennedy applications for Timber Land. Staff recommendations of approval were made after review of the Timber Management Plans submitted, site inspections to verify that forest conditions matched those identified in the Plans and for overall conformance with state law and county ordinances that apply to the review and staff recommendations of approval on applications for Open Space Timber Land. Both Timber Land applications received a score consistent with a staff recommendation of approval (7 points or above, up to a maximum of 14 points) with 14 points assigned to each application, respectively.

14. Whatcom County Planning Commissioners considered staff findings and recommendations on the Keith Smith Application for Timber Land and voted to recommend approval. This recommendation was based on a finding that the land was zoned for Rural Forestry, that there was no residence established on the property, and that the land appeared to be used for growing trees.

15. Whatcom County Planning Commissioners considered staff findings and
recommendations on the William Kennedy application and voted to recommended denial. During Planning Commissioner review, it was noted that aerial photographs depicted what looked like a soccer field set up on part of the land that was the subject of application.

Staff noted that aerial photographs of record did depict what appeared to have formerly been some sort of private soccer field occupying land where trees of a commercial species were now planted in accordance with the Timber Management Plan, and with Forest Practice rules for re-stocking. Staff stated that the land subject of application contained five or more acres devoted primarily to the growth and harvest of timber for commercial purposes (6.7 acres); that the applicant had retained the services of a professional forester who prepared a Timber Management Plan that contained all of the elements of a Timber Management Plan; and the application scored points consistent with a staff recommendation of approval (14 points).

Planning Commissioners based their recommendation to deny the application on a finding that although the Timber Management Plan submitted had received a score consistent with a staff recommendation of approval, the general consensus of the Planning Commission was that the land that was subject of application was not devoted primarily to the growth and harvest of timber for commercial purposes, as required by law.

16. On July 23, 2013, Planning & Development Services staff prepared a report on behalf of the Planning Commission containing Facts, Findings, and Reasons for Action on all applications referenced under OS2013-1, and this report was reviewed for accuracy and signed by the Planning Commission Chair and Planning Commissioner, Secretary.

17. On July 23, 2013, Planning & Development Services prepared an Agenda Bill, Draft Resolution and attachments including all relevant information on file in regards to the subject applications referenced under OS2013-1, and forwarded this to the Whatcom County Council. The agenda bill requested that the draft resolution be introduced at the regularly scheduled Council Meeting to be held on August 6, 2013, and also included a request for a public hearing to be scheduled on September 10, 2013.

18. On August 6, 2013, the draft resolution was introduced.

19. A public hearing was scheduled to take place before the County Council at their regularly scheduled evening meeting, held on September 10, 2013. Notice of this public hearing was published in the Bellingham Herald prior to the hearing. In addition, Applicants were sent a letter by US Mail stating that a public hearing would be held on their individual applications on September 10, 2013.

20. On September 10, 2013, the Whatcom County Council held a public hearing on all applications referenced under OS2013-1, and after considering all relevant information, and after considering input from the public, they made a final decision on whether to approve in whole or in
part or deny individual applications referenced under OS2013-1.

NOW, THEREFORE, BE IT RESOLVED BY THE WHATCOM COUNTY COUNCIL:

1. Recommendations on applications for open space current use assessment referenced in Master File Number OS2013-1 listed below are hereby approved subject to conditions and applicable scores as noted herein:

A. Open Space Land (OSL)

1. OSP2013-00003 – Sefton

Application to Reclassify: Farm & Agricultural Land to Open Space Land
APN: 390409 469380 0000
Parcel acres = 11.78; OSL acres= 10.78:
Staff Recommended PBR 71.75

ESTIMATED SHIFT IN TAXES IF APPROVED: $1,094.41

Whatcom County Planning Commission Recommendation:

Denial:

Based on a finding that the Sefton application did not contain enough benefit relative to the loss of revenue or shift in taxes to other tax payers that would occur if the application were to be approved.

B. Timber Land (OST)

1. OSP2013-00001 – Smith

Application to reclassify as Timber Land from Designated Forest Land
APN: 400507 113201 0000
Parcel acres = 19.3; OST acres= 19.3
Timber Management Plan Score = 14

Whatcom County Planning Commission Recommendation:

Approval: subject to the following conditions:

1. No less than 5 acres devoted primarily to the growth and harvest of forest products as defined in Title 76 RCW
2. Approved Timber Management Plan
3. Hold Harmless Agreement

2. OSP2013-00002 – Kennedy

New Application to reclassify as Timber Land from Fair Market Value
APN: 400618 474052 0000
Parcel acres = 9.58; OST acres = 6.7
Timber Management Plan Score = 14

**Whatcom County Planning Commission Recommendation:**

Denial:

Based on a finding that although the Timber Management Plan submitted as part of the application had received a score consistent with a staff recommendation of approval, the general consensus of the Planning Commission was that the land that was subject of application was not devoted primarily to the growth and harvest of timber for commercial purposes, as required by law.

2. The Whatcom County Council directs the Assessor to place the above referenced parcels into the appropriate open space current use classification.

3. Adjudication of invalidity of any of the sections, clauses, or provisions of this resolution shall not affect or impair the validity of the resolution as a whole or any part thereof other than the part so declared to be invalid.

**APPROVED this ______ day of ______________________, 2013**

**WHATCOM COUNTY COUNCIL**

**WHATCOM COUNTY, WASHINGTON**

**ATTEST:**

Dana Brown-Davis
Clerk of the Council

Kathy Kershner
Council Chair

**APPROVED AS TO FORM:**

Civil Deputy Prosecutor
WHATCOM COUNTY PLANNING COMMISSION
FINDINGS OF FACT, REASONS FOR ACTION, AND
RECOMMENDATIONS

Applications for Open Space Current Use Assessment
Master File Number OS2013-1

THE WHATCOM COUNTY PLANNING COMMISSION ENTERS THE FOLLOWING
FINDINGS OF FACT, REASONS FOR ACTION, AND RECOMMENDATIONS:

FINDINGS OF FACT AND REASONS FOR ACTION

1. In 2012, Whatcom County Planning and Development Services received
three applications to classify or reclassify land under the open space
current use program (Chapter 84.34. RCW) on lands located within the
jurisdiction of Whatcom County. These applications were processed as a
group under Master File Number OS2013-1.

2. Of the three applications referenced in OS2013-1: one is for Open Space
Land (OSL), and two applications are for the classification of Open
Space Timber Land (OST). Upon receipt of these applications, Planning
and Development Services staff evaluated the open space land
application with the Public Benefit Rating System (PBRS), and evaluated
applications for timber land with Whatcom County Timber Management
Plan Format and Criteria, and also for conformance with Subsection
84.34.041 of the Open Space Taxation Act (RCW 84.34).

3. Staff prepared a report for the Planning Commission with
recommendations on whether to approve in whole or in part or to deny
these applications based on review with the applicable evaluation
criteria and scores assigned. This report was presented to the Whatcom
County Planning Commission and to members of the public who were
present at the Whatcom County Planning Commission meeting work
session held on July 11, 2013.

4. At the July 11, 2013 Planning Commission Work Session, staff gave an
approximately one hour overview presentation on the Open Space
Current Use Program, its statutory and local authority, a brief overview
on the historical legislative context in which the Open Space Taxation
Act and other environmental laws that emerged in the 1970’s & 1980’s,
and outlined roles of the Planning Commission, County Council, County
Assessor’s Office, and Joint Granting Authority (for applications located
within incorporated areas). As part of this overview presentation, staff
noted that decisions made to approve or deny applications authorized
under the Open Space Taxation are reviewable (by Superior Court) only
for “arbitrary & capricious actions”.

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5. After conclusion of the staff overview on the open space current use program, staff then presented each of the individual applications referenced in Master File OS2013-1. The single application for the classification of open space land was presented first, followed by presentations on the timber land applications.

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9. During discussion on the specifics of the Sefton application, Planning Commissioners asked about surface conditions of the proposed ½ mile of walking trails, and staff replied that the trails were mowed. Commissioners also asked for clarification about what was being offered in terms of off-street parking. Staff indicated that the existing parking appeared ample, but the Applicants who were present indicated that they intended to improve the parking area by grading an area to the south of the driveway and adding gravel. Staff indicated that Commissioners could recommend that a site map and parking plan be stipulated as a condition of approval.

10. After much deliberation, Planning Commissioners came to the general consensus that the application had low benefit relative to the tax shift, and that the public benefit being offered by the Sefton application was not commensurate with the loss of revenue or shift in taxes to the other tax payers in the taxing district, and voted to deny the application in its entirety.

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13. Staff recommended approval on both the Smith, and Kennedy applications for Timber Land. Staff recommendations of approval were made after review of the Timber Management Plans submitted, site inspections to verify that forest conditions matched those identified in the Plans and for overall conformance with state law and county ordinances that apply to the review and staff recommendations of approval on applications for Open Space Timber Land. Both Timber Land applications received a score consistent with a staff recommendation of approval (7 points or above, up to a maximum of 14 points) with 14 points assigned to each application, respectively.

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Staff acknowledged that aerial photographs of record did depict what appeared to have formerly been some sort of private soccer field occupying land where trees of a commercial species were now planted in accordance with the Timber Management Plan, and with Forest Practice rules for re-stocking. Staff stated that the land subject of application contained five or more acres devoted primarily to the growth and harvest of timber for commercial purposes (6.7 acres); that the applicant had retained the services of a professional forester who prepared a Timber Management Plan that contained all of the elements of a Timber Management Plan; and the application scored points consistent with a staff recommendation of approval (14 points).

Planning Commissioners based their recommendation to deny the application on a finding that although the Timber Management Plan submitted had received a score consistent with a staff recommendation of approval, the general consensus of the Planning Commission was that the land that was subject of application was not devoted primarily to the growth and harvest of timber for commercial purposes, as required by law.

RECOMMENDATION

The Whatcom County Planning Commission forwards recommendations to the Whatcom County Council for the following open space current use classification applications as referenced under Master File Number OS2013-1:

A. Open Space Land (OSL)

1. OSP2013-00003 – Sefton

Application to Reclassify: Farm & Agricultural Land to Open Space Land
APN: 390409 469380 0000
Parcel acres = 11.78; OSL acres= 10.78:
Staff Recommended PBR 71.75

ESTIMATED SHIFT IN TAXES IF APPROVED: $1,094.41

Whatcom County Planning Commission Recommendation:

Denial:

Based on a finding that the Sefton application did not contain enough benefit relative to the loss of revenue or shift in taxes to other tax payers that would occur if the application were to be approved.
B. Timber Land (OST)

1. **OSP2013-00001 – Smith**
   Application to reclassify as Timber Land from Designated Forest Land
   APN: 400507 113201 0000
   Parcel acres = 19.3; OST acres = 19.3
   Timber Management Plan Score = 14

   **Whatcom County Planning Commission Recommendation:**
   Approval: subject to the following conditions:
   1. No less than 5 acres devoted primarily to the growth and harvest of forest products as defined in Title 76 RCW
   2. Approved Timber Management Plan
   3. Hold Harmless Agreement

2. **OSP2013-00002 – Kennedy**
   New Application to reclassify as Timber Land from Fair Market Value
   APN: 400618 474052 0000
   Parcel acres = 9.58; OST acres = 6.7
   Timber Management Plan Score = 14

   **Whatcom County Planning Commission Recommendation:**
   Denial:
   Based on a finding that although the Timber Management Plan submitted as part of the application had received a score consistent with a staff recommendation of approval, the general consensus of the Planning Commission was that the land that was subject of application was not devoted primarily to the growth and harvest of timber for commercial purposes, as required by law.

**WHATCOM COUNTY PLANNING COMMISSION**

[Signature]
Michelle Luke, Chairperson

[Signature]
J.E. “Sam” Ryan, Secretary

Date: 7-25-13

Commissioners present at the July 11, 2013 meeting when votes were taken to approve the above listed recommendations on one application for Open Space Land and two applications for Timber Land: David Onkels; Jeff Rainey;
Ken Bell; Ben Elenbaas; Gary Honcoop; Mary Beth Teigrob; Michelle Luke; Rod Erickson; Gerald Vekved.

Commissioners Absent: Mary Beth Teigrob.

Attachments:

EXEMPLARY FROM THE DRAFT RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 11, 2013

Regular Meeting

Work Session

Open Space Applications.

Erin gave a power point presentation of the Open Space program. She stated there has been a significant decrease in the number of applications received this year compared to previous years. She speculated this may be to people knowing that there is no guarantee of approval. There are, however, numerous amounts of continuance applications, especially for Timber Land.

Recently there was an audit by the Department of Revenue (DOR). There was a finding that affected PDS which was several parcels in the City of Bellingham did not get evaluated using the Public Benefit Rating System (PBRS) after the County adopted it in 1987. PDS will evaluate those properties.

Erin stated there does need to be more monitoring of the parcels in the program to see that they are conforming to the rules. She has approached management regarding this with some ideas of how this should be done.

Erin gave an overview of the history of the Open Space program which included dates and various environmental laws.

The role of the Planning Commission was reviewed. Over the years the role of the Planning Commission has changed. For Open Space Land and Open Space Farm and Ag Conservation Land State law says that these applications must be processed in the same manner as Comprehensive Plan amendments. As such, the applications must go before the Commission. At this time the Commission also reviews Timber Land applications as per County Code. Currently, there is proposed State legislation being acted upon which may give authority to the Assessor’s Office for review of Timber Land applications. When Open Space Land and Open Space Farm and Ag Conservation Land applications are being reviewed by the Commission the shift in taxes must be considered relative to the public benefit. When reviewing Timber Land applications items to be considered are the soil and timber conditions, the status of the current timber stand, harvest plan and wildlife. Anything the Commission recommends must be based on findings.

Currently total acres classified are:
- Open Space Land – 1,769
- Open Space Farm and Ag Conservation Land - 225
- Farm & Ag Land -106,178
- Timber Land – 4,701
- Designated Forest Land – 119,588
Number of Applications

- Open Space Land – 79
- Open Space Farm and Ag Conservation Land – 14
- Timber Land – 300

Review of Sefton Application – Open Space Land:

Erin stated this is a transfer from Farm & Ag Land. They no longer meet the income requirements to stay in that classification. There is 1/2 mile of maintained trails, wildlife viewing, parking, availability for groups and public access during posted hours. There would be a tax shift of approximately $1094. Staff recommended approval with a PBRS of 71.75.

Commissioner Bell asked if there was other open space in the area. Erin stated there is open space land to the north, west and south that are in the Farm & Ag classification.

Commissioner Honcoop asked what type of trails there are. Erin stated they are mowed.

Commissioner Honcoop asked the size and type of proposed parking. The applicant stated it will be a large area in the northeast corner which will be graveled. Erin suggested a condition be the applicant submit a map of the proposed parking with specifications.

Commissioner Honcoop asked how the parking, trails, etc. will be required to be maintained. Erin stated that the conditions are outlined in the application evaluation and are recorded. In accordance with state law, the County Assessor is responsible for determining if an application conforms to the conditions under which classification was originally granted; although the Assessor routinely requests the assistance of PDS in overseeing applications for conformance with conditions.

The Commission questioned the public benefit of this land being in open space. Several felt the benefit was not there regarding this property.

Members of the Commission also commented on the lack of enforcement regarding notice to the public.

There was discussion of the program flaws. The Commission felt the PBRS needs to be examined by the Council.

Commissioner Rainey suggested because of the flaws in the open space system those currently in the program should be able to get out without a penalty.

Commissioner Honcoop asked who originally put the property in open space. Mr. Sefton stated it was one of the previous owners. The Seftons had to sign a continuance when they purchased the property.
Erin stated that if the Council chose not to approve this application the Seftons could apply for Open Space Farm and Ag Conservation Land or Timber Land.

Commissioner Bell stated he likes the fact that the applicants are going to seek out groups to use the land. That is one of the things that makes the application favorable to him.

**Commissioner Bell moved to recommend approval. Commissioner Erickson seconded.**

Commissioner Honcoop stated he does not see the public benefit if this is approved. He is not in favor of shifting the taxes to others.

Commissioner Rainey agreed with Commissioner Honcoop’s statement.

Commissioner Luke stated she did not like being put in the position of making a decision like this for a program that is not working. She asked staff what could be done to make the program work so the Commission doesn’t have to keep being put in the same position. Can a moratorium be put on applications?

Mark encouraged the Commission to again recommend the Council reevaluate the PBRS. Erin stated it was her opinion that a moratorium was not allowed.

**The vote on the motion failed.**

Erin asked the Commission to state a finding for the vote.

The Commission stated there is not enough public benefit for the amount of tax shift.

Review of Smith Application – Timber Land:

Erin stated this application is for a transfer from Designated Forest Land to Timber Land because the property is under 20 acres. The timber management plan is good. Staff recommended approval with a score of 14 out of 14 points.

**Commissioner Honcoop moved to recommend approval. Commissioner Rainey seconded. The motion carried.**

Review of Kennedy Application – Timber Land:

Erin stated this stand abuts Maple Creek. The application had an excellent timber management plan. The site has recently been planted. The area is split between a 5 acre planting and a 1.7 acre area next to the creek. The creek buffer was a concern in how the trees are dealt with that are in the buffer. The DOR stated if the applicant could they would harvest the trees, but because they can’t that is not a
factor in determining whether to approve the application or not. Staff recommended approval.

Commissioner Honcoop stated he would have a hard time approving the application. It doesn’t seem to meet the criteria. Erin stated under the scope of the program it does meet the criteria.

**Commissioner Onkels moved to recommend approval. Commissioner Elenbaas seconded. The motion failed.**

Erin asked for a finding.

The Commission agreed that although it meets the criteria they don’t believe commercial forestry is the primary use of the property.

The meeting was adjourned at 8:27 p.m.

Minutes prepared by B. Boxx.

**WHATCOM COUNTY PLANNING COMMISSION ATTEST:**

_________________________  _________________________
Michelle Luke, Chair         J.E. “Sam” Ryan, Secretary
WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

STAFF RECOMMENDATIONS TO THE WHATCOM COUNTY PLANNING
COMMISSION ON THREE APPLICATIONS FOR CLASSIFICATION OR
RECLASSIFICATION AS OPEN SPACE LAND OR TIMBER LAND
AS AUTHORIZED UNDER CHAPTER 84.34 RCW

MASTER FILE NUMBER OS2013-1

Introduction:

This report summarizes staff findings and recommendations on a total of three
applications for classification or reclassification as Open Space Land or Timber Land
as authorized under the Open Space Taxation Act, Chapter 84.34 RCW.

This report is prepared for the July 11, 2013 Whatcom County Planning Commission
meeting where Planning Commissioners will deliberate on the subject applications
respective of whether they should be approved in whole or in part, or denied. At
the conclusion of the Planning Commission work session, staff will forward
recommendations made by the Planning Commission to the Whatcom County
Council for their review in making a final decision on each application.

The report is composed of five parts:

1. Summary of three applications to classify or reclassify property pursuant to
   applicable state and local regulations;

2. Application review, staff findings, and staff recommendations;

3. Background information on the Open Space Taxation Act;

4. Identification of Staff, Planning Commission, and County Council Roles in
   application review, approval or denial;

5. Discussion outlining the evaluation criteria established for review of
   applications for Open Space Land, Farm & Agricultural Conservation Land,
   and Timber Land.
I. Application Summary

Open Space Land (OSL)

1. OSP2013-00003 – Sefton

   Application to reclassify as Open Space Land from Farm & Agricultural Land
   APN: 390409 469380 0000
   Parcel acres = 11.78; OSL acres = 10.78: Staff Recommended PBR 71.75
   ESTIMATED SHIFT IN TAXES IF APPROVED: $1,094.41

Timber Land (OST)

1. OSP2013-00001 – Smith

   Application to reclassify as Timber Land from Designated Forest Land
   APN: 400507 113201 0000
   Parcel acres = 19.3; OST acres = 19.3
   Timber Management Plan Score = 14

2. OSP2013-00002 – Kennedy

   New Application to reclassify as Timber Land from Fair Market Value
   APN: 400618 474052 0000
   Parcel acres = 9.58; OST acres = 6.7
   Timber Management Plan Score = 14

II. Application Review & Staff Findings

Staff findings referenced under Master File Number OS2013-1 are listed in summary below. Individual applications are grouped by classification starting with Open Space Land, and followed by Timber Land.

   All applications have been reviewed by staff, and have received a site inspection. Attached for reference at the end of this report are site evaluation worksheets, maps, and other supporting documents. A power point slide show of each property along with staff narrative will be presented at the July 11, 2013 Planning Commission Work Session.

A. Open Space Land (OSL)

Open Space Land (OSL)

2. OSP2013-00003 – Sefton

   Application to reclassify as Open Space Land from Farm & Agricultural Land
   APN: 390409 469380 0000
   Parcel acres = 11.78; OSL acres = 10.78: Staff Recommended PBR 71.75
   ESTIMATED SHIFT IN TAXES IF APPROVED: $1,094.41
Discussion: On December 21, 2012, Planning & Development Services Department received an application from property owners Royal V. & M. Sue Sefton to reclassify 10.78 acres of the 11.778 total parcel acres from the Open Space Farm and Agricultural Land Classification (OSAG) to Open Space Land (OSL).

The Sefton acreage is designated Agriculture under the Comprehensive Plan and is subject to zoning regulations located in Title 20, Chapter 20.20 - Agriculture District, with a density of one dwelling unit per 40 acres (AG). The property is located at 6799 Goodwin Road, south and southeast of the cities of Sumas, Everson and Nooksack. The property may be accessed by automobile directly off of Goodwin Road as it fronts the property.

The Sefton property formerly met requirements to be eligible for the Open Space Farm and Agricultural Land (OSAG) classification as defined in RCW 84.34.020(2). After a period of time they were unable to meet the income eligibility requirements for continuing the OSAG classification, therefore in December 21, 2012 the property owners applied to reclassify 10.78 acres of the property as Open Space Land. One acre is administratively segregated for a home site, which will be assessed at fair market value in the future.

The Sefton’s have developed the site with a residence and a few outbuildings, with the remainder of the property left in a natural vegetated condition. The property supports a deciduous and coniferous forest (former Christmas tree farm) and with the exception of one acre reserved for the home site, the subject property is in an undeveloped natural state that offers food and protection to a variety of wildlife including birds and terrestrial mammals. The site is part of the Sumas River Watershed and sits atop a critical aquifer recharge area, classified as Moderate. On either side of the property, (some distance away) adjacent parcels are part of a drainage system containing streams that support either a current known fish distribution or a historical fish population.

The property owners are offering public access during posted hours without the need for an appointment. Large educational groups or other types of groups are welcome by appointment or by prior arrangement. An approximately ½ mile loop trail is established on mown grassy trails that can be easily traversed for walking, picnicking, wildlife viewing, and horseback riding through the wooded areas. Because the property is some distance away from any urban skylight, the site features excellent night-time sky viewing opportunities. The property owners would like to extend an invitation to members of the public who are interested in astronomy, or “star gazing”, by appointment.

The property is accessible by way of a hard packed gravel driveway with parking directly off a public road (Goodwin Road). The proposed parking
area has plenty of room to maneuver large vehicles such as busses, trucks and horse trailers that enter or leave the site.

After evaluating this application with the Public Benefit Rating System, staff assigned it a Public Benefit Rating (PBR) of 71.75. Staff recommendation is to approve this application for the Open Space Land classification subject to conditions listed below.

Staff Recommendation:

Approval, subject to the following attached conditions:

1. Public Access as shown on maps of record
2. Posted Open Space Sign
4. Hold Harmless Agreement

B. Timber Land (OST)

Timber Management Plans submitted with the following applications to classify or re-classify as Timber Land, and following staff review of the timber management plan in accordance with approval criteria, and site inspection to ensure consistency between Plans and forest conditions, staff has assigned points from 0-14, with 7 and above corresponding with a staff recommendation of approval as noted on each of the applications listed below:

Timber Land (OST)

1. **OSP2013-00001 – Smith**
   Application to reclassify as Timber Land from Designated Forest Land
   APN: 400507 113201 0000
   Parcel acres = 19.3; OST acres= 19.3
   Timber Management Plan Score = 14

   Staff Recommendation:

   Approval, subject to the following attached conditions:

   1. No less than 5 acres devoted primarily to the growth of timber for commercial purposes.
   2. Approved Timber Management Plan
   3. Hold Harmless Agreement

2. **OSP2013-00002 – Kennedy**
   New Application to reclassify as Timber Land from Fair Market Value
APN: 400618 474052 0000
Parcel acres = 9.58; OST acres= 6.7
Timber Management Plan Score = 14
Staff Recommendation:

Approval, subject to the following attached conditions:

1. No less than 5 acres devoted primarily to the growth of timber for commercial purposes
2. Approved Timber Management Plan
3. Hold Harmless Agreement

III. Recommendations

Staff requests that the Whatcom County Planning Commission consider staff recommendations on applications referenced in Master File Number OS2013-1 as discussed in this report, subject to conditions and applicable scores as noted herein. Staff requests that the Whatcom County Planning Commission vote on motions to approve in whole or in part or deny recommendations on individual applications referenced under Master File Number OS2013-1.

IV. Background Information

The Open Space Taxation Act was passed by the Washington State legislature in 1970. In part, the law was created to provide a solution to and address a statewide concern that lands were being irrevocably converted to uses inconsistent with commercial agriculture, commercial forestry, and the conservation or preservation of farmland, shorelines, wetlands, scenic vistas, historical sites of importance, and recreational opportunities.

The Open Space Taxation Act codified in Chapter 84.34 of the Revised Code of Washington (84.34 RCW) gives counties the authority to assess the value of property on the basis of its current use rather than what might be considered highest and best use i.e. fair market value. Lands classified as Open Space Land or Timber Land receive a greatly reduced assessed value; thereby providing a financial incentive to property owners to voluntarily conserve and preserve open space lands as defined by state law and further defined by county ordinance.

V. Classifications

There are three major classifications and one sub-classification authorized by the Open Space Taxation Act (Chapter 84.34 RCW):

1. Farm and Agricultural Land
2. Open Space Land
- Farm and Agricultural Conservation Land

3. Timber Land

Pursuant to Chapter 84.34 RCW, the County Assessor’s Office is charged with administration of applications for the classification of Farm and Agriculture Land (No. 1 above). In accordance with Whatcom County Code, Title 3, Chapter 3.28, Planning & Development Services Department is charged with administration of Open Space Land, Farm and Agricultural Conservation Land & Timber Land applications. Staff from both PDS and the Assessor’s Office work closely and function as a team in monitoring and maintaining existing agreements on approved applications, as well as processing new applications. Applications and fees for Open Space Land, Farm and Agricultural Conservation Land and Timber Land are received by Planning & Development Services Department.

Staff has initiated the practice of collecting applications received during the current year for processing during the next year, with any changes to assessed value effective the following year.

VI. Application Processing

A. Roles of Staff, Planning Commission, County Council & Assessor’s Office in Processing Applications for Open Space Current Use Taxation.

The applications that are the subject of this report are located within an unincorporated area. Please note that the County also receives and processes applications on lands within incorporated areas (cities), but in processing applications on lands within the cities, the granting authority is composed of members from both legislative bodies (both the county and the city).

When land that is the subject of application is located within an unincorporated area such as the applications that are the subject this report, Whatcom County planning staff evaluates each application in accordance with the appropriate evaluation criteria, and based on application scores, makes recommendations to the Whatcom County Planning Commission on whether to approve or deny the applications, who in turn make recommendations to the County Council as to whether individual applications should be approved in whole or in part or denied. Whatcom County Council is the granting authority, and pursuant to state law is charged with approving in whole or in part or denying each application.

Upon approval or denial, the County Assessor is notified, and makes adjustments on the basis of the approved current use assigned value of the parcel.

Of the three subject applications there is one application to reclassify as Open Space Land, and there are two applications to classify or reclassify property as Timber Land. Each classification has a distinct evaluation system. These
evaluation systems are discussed in more detail in Section VII, with emphasis on clarification of the Planning Commission role with respect to reviewing and making recommendations on the different types of applications.

Applications for Open Space Land are evaluated with the Whatcom County Space Policy & Public Benefit Rating System, 1995 (PBRS). Timber Land applications are evaluated for conformance with the Timber Management Plan Format & Criteria, 1995, & RCW 84.34.041. The PBRS is attached at the end of this report for reference. The PBRS authorizes the Planning Commission to make recommendations to the County Council on applications for Open Space Land after considering the potential loss of revenue or shift in taxes that would occur as a result of approval relative to the public benefit of the amenity being conserved or preserved. This is an important distinction both in terms of defining the role of the Planning Commission in making recommendations to the County Council on whether to approve or deny applications for Open Space Land, and in understanding how the Public Benefit Rating System is applied.

It should be noted that the Planning Commission is not charged with considering of the loss of revenue or shift in taxes when making recommendations on applications for Timber Land as this only applies to applications for Open Space Land. More discussion on both of these evaluation systems and review criteria follows in Section VII (A & B).

B. Public Hearing

A public hearing is required for both Open Space Land, and Timber Land. In past years, public hearings have typically been held before the Planning Commission, but recently due to Planning Commission schedule devoted to Growth Management Compliance issues and other pressing matters of importance, a decision has been made at the staff level to change the venue of public hearings on Open Space applications from the Planning Commission to County Council to be held at their regularly scheduled evening meetings. Given that there is no statute, rule or local ordinance to specify where a public hearing on these applications is required to be held, staff has made arrangements with the Clerk of the Council, who schedules a public hearing on the subject applications. This change will give the County Council an opportunity to hear from staff, receive Planning Commission recommendations, and also hear from the Public as they deliberate on each application.

VII. Evaluation Systems

Open Space Land and its sub-classification Farm and Agricultural Conservation Land are evaluated with the Whatcom County Public Benefit Rating System (PBRS). The PBRS was originally approved by Council in 1987 by resolution and then later adopted by ordinance in 1995 (WC Ord. 95-040).
Applications for Open Space Timber Land are evaluated with the Open Space Timber Management Plan Policy, as adopted by resolution (Res. 87-3) and modified in 1995 by (WC Ord. 95-040) in conformance with RCW 84.34.041.

A. Whatcom County Open Space Policy & Public Benefit Rating System

The Public Benefit Rating System is an evaluation tool consisting of natural resource, recreation, historical site, and agricultural land priority resource categories that correspond to a range of potential points that may be assigned relative to the amount of benefit that may be provided to the public as a result of approving each application. Generally, resources of importance identified in the PBRs include lands that preserve or conserve: farmland, streams or shorelines and associated buffers, critical areas, ground water protection areas, threatened or endangered wildlife and wildlife habitat, opportunities for public recreation, scenic views and vistas, historic property, and others.

Applications for Open Space Land are also evaluated on the quality of the applicant’s proposed public access. It is part of the Whatcom County Public Benefit Rating System Public Access Policy to require public access unless there is known habitat for an endangered species of wildlife, or where there is a known archeological site, or when the purpose of the open space is for wetland conservation.

In cases such as those listed above, when the County Council is acting as the granting authority, the requirement of public access may be waived at Council discretion. The Public Access Policy also contains a requirement that owners of property approved as Open Space Land post an Open Space sign that displays the rules of conduct for public access when public access is required.

Not all counties have adopted a Public Benefit Rating System. One reason a county may elect to adopt a PBRS is because decisions made by the granting authority (County Council), whether to approve or deny applications may only be appealed to Superior Court for arbitrary and capricious actions. The purpose of the Public Benefit Rating System is to assist the legislative authority in developing a measure of consistency in awarding reduction in assessed value according to a point system that corresponds to the relative importance of the resource being conserved.

Resources that have been identified as providing public benefit if conserved, and the corresponding range of potential points awarded for preserving or conserving those resources (i.e. the Public Benefit Rating System) were all adopted after consideration by the Planning Commission, and adopted by Council who heard from the public on this matter at a series of public hearings in the late 1980’s. The PBRS was originally approved by Council in 1987 by resolution and then later revised and adopted by ordinance in 1995.
(WC Ord. 95-040). The last revision to the PBRS in 1995 was to remove Open Space Timber Land from the Public Benefit Rating System; it removed a requirement of public access on Timber Land applications, and adopted the Timber Management Format and Criteria, based on state law (RCW 84.34.041); otherwise the PBRS has not changed in the last 25 years or so.

Even though the PBRS has a point system, at its core the PBRS is a **qualitative** as opposed to a **quantitative** system. Many observers, Planning Commissioners, Council Members, and members of the public alike, have indicated the PBRS may appear to be too subjective. In response, staff has begun a practice to address this point. Whenever staff reviews and evaluates an application for Open Space Land, research is conducted and past reviews are considered, so that there is some measure of consistency in scores assigned. When staff reviews a new group of applications, similar applications that have been evaluated and approved in the past are also considered by comparison so that for any particular group of applications reviewed, comparable points are being assigned to similar priority resources or amenities in the current group of applications being processed.

Listed below is a brief summary of some of the resources that have been identified in the County’s Public Benefit Rating System.

- Conserve or enhance natural, cultural or scenic resources; or
- Protect streams, stream corridors, wetlands, natural shorelines and aquifers; or
- Protect soil resources and unique or critical wildlife and native plant habitat; or
- Promote conservation principles by example or by offering educational opportunities; or
- Enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces; or
- Enhance recreational opportunities; or
- Preserve historic and archeology sites; or
- Affect any other factors relevant in weighing benefits to the general welfare of the public by preserving the current use of the property.

Once staff review has been completed and points are awarded, they are computed with a formula developed by the County Assessor resulting in a score that is called a Public Benefit Rating (PBR). A Public Benefit Rating of at least 45 points must be attained to receive a **staff recommendation of approval**. The PBR represents the degree of conformance with the county’s adopted Basic Value and Public Benefit Value criteria that are part of the PBRS. The Public Benefit Rating (PBR) is used as a factor applied to another computed value to arrive at a new current use per acre value for the property, once approved. Attached to this report for reference is a document that gives a hypothetical example describing this formula, and also contains a discussion of the shift or off-set in taxes resulting from approving an
application for Open Space Land. In addition, in Section II (A), staff has also included “estimated tax shift if approved” at the Public Benefit Rating assigned by staff.

*Special Note: The attached document entitled “Hypothetical Example of Applied Public Benefit Rating” uses a consolidated levy rate of 10 dollars per every one thousand dollars of assessed value. The consolidated levy rate is not always the same for every parcel, as it depends on which taxing districts apply to the land that is the subject of application. The staff report lists “hypothetical estimated tax shift, if approved” on the Sefton application. This “estimated tax shift” is based on an applied consolidated levy rate of $12.32 per every thousand dollars of assessed (current use) property value. Although parcel valuation information is based on information provided by the Assessor’s Office, it is only provided as a reference to assist decision makers with an understanding of the potential tax shift; however, only the Assessor’s office can give exact information about the change in taxation as it applies to any given approval.

Please find attached individual evaluation sheets that include a detailed description of the public benefit offered and assigned scores for each criterion.

B. Timber Management Plan Evaluation Criteria: Authority: RCW 84.34.041 & Whatcom County Ord. 95-040

Applications received for the classification of Timber Land must contain five or more acres (not including home site), primarily used for growth and harvest of commercial forest crops. In order for consideration, the applicant must submit a timber management plan that meets requirements as outlined in RCW 84.34.041 and those criteria adopted under Whatcom County Ordinance 95-040. These documents are attached to the end of this report for reference.

Timber Management Plans are rated by staff on how well they meet the criteria in the seven categories listed below and may receive up to 2 points for each category. Site visits are conducted to assess whether forest conditions described in the plan are consistent with what is on the ground. Approval is recommended for those properties receiving a score of (7) or more.

Please find attached individual evaluation sheets that include a detailed explanation of the scores given the individual applications for the Timber Land classification:

Listed below is a general outline of the Whatcom County Timber Management Plan Format & Criteria that is used by staff to evaluate timber management plans.
• Description of the current stand
• Description of soil resources, & how they support the growth of timber
• Forest health
• Harvest plan
• Thinning program
• Planting and restocking program
• Wildlife habitat enhancement

In addition, Timber Management Plans are also evaluated for whether the plan contains the following elements that constitute a timber management plan as outlined in the Open Space Taxation Act [(RCW 84.34.041 (1) (a-m)].

a. A legal description of, or assessor’s parcel numbers for, all land the applicant desires to be classified as timber land;

b. The date or dates of acquisition of the land;

c. A brief description of the timber on the land, or if the timber has been harvested, the owner’s plan for restocking;

d. Whether there is a forest management plan for the land;

e. If so, the nature and extent of implementation of the plan;

f. Whether the land is used for grazing;

g. Whether the land has been subdivided or a plat filed with respect to the land;

h. Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

i. Whether the land is subject to forest fire protection assessments pursuant to RCW 76.04.610;

j. Whether the land is subject to a lease, option, or other right that permits it to be used for a purpose other than growing and harvesting timber;

k. A summary of the past experience and activity of the applicant in growing and harvesting timber;

l. A summary of current and continuing activity of the applicant in growing and harvesting timber;
m. A statement that the applicant is aware of the potential tax liability involved when the land ceases to be classified as timber land.

**ATTACHMENTS**

2013 County-Wide Open Space Current Use Map; 2013 Open Space Application Vicinity Map; Individual Application Maps; Individual Application Evaluation Forms; Estimate If-Approved Current Use Value; Hypothetical Example of Applied Public Benefit Rating; Whatcom County Open Space Policies & Public Benefit Rating System; Whatcom County Property Tax Reduction Program Publication (May 5, 2013); 2013 Department of Revenue Open Space Taxation Act, Publication.

Report Prepared for the Whatcom County Planning Commission by:

Erin Osborn, Planner
WHATCOM COUNTY
Property Tax
Reduction Programs
Chapters 84.34 RCW, 84.33 RCW
**Open Space Land**  
**Public Benefit Rating System-Evaluation Form**

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<tr>
<th>Property Owner (s)</th>
<th>Classification: <strong>Open Space Land</strong></th>
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<td>Royal V. &amp; M. Sue Sefton</td>
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<tr>
<th>Street Address:</th>
<th>Status: <strong>Transfer From Farm Agriculture Land</strong></th>
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<td>6799 Goodwin Road</td>
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<th>Comprehensive Plan Designation Agriculture</th>
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<th>Historical Land Use:</th>
<th>Zoning Designation:</th>
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<td>Agriculture (Christmas Tree Farm), Residential</td>
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<th>Soil/Type Capabilities:</th>
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<tr>
<td># 31 Clipper silt loam, 0-2% % slopes, 12.4 % of parcel – Prime Agricultural Soil</td>
</tr>
<tr>
<td># 90 Kline gravelly sandy loam, 2-8% slopes, 87.6 % of parcel Not Prime Ag Soil</td>
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<th>Comments:</th>
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<tbody>
<tr>
<td>Available water capacity is low which affects crop productivity: pasture, hay or other crops.</td>
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Open Space Land Public Benefit Rating System-Evaluation Form  
PL4-83-012C  
Page 1 of 2  
Rev. June 2011
<table>
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<tr>
<th>Basic Value (BV)</th>
<th>Score</th>
<th>MAX</th>
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<tr>
<td><strong>Enhance Scenic Resources:</strong></td>
<td>Naturally vegetated 11.78 acre site serves as a visual buffer between areas of human habitation, and protects scenic views from County road. Parcel acreage will not be further developed subject to classification as Open Space Land.</td>
<td>8</td>
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<th>Public Benefit Value (PBV)</th>
<th>Score</th>
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<tbody>
<tr>
<td><strong>Public Access:</strong> Posted Open Space Sign; 7 days a week Public Access during posted hours or by appointment; Ample off-street parking fronting public road with room for horse trailers, large vans or busses. Horseback riding, walking trails, nature viewing.</td>
<td>40%</td>
<td>40%</td>
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</tbody>
</table>

| **Protect Streams/Shorelines:** | Predominantly vegetated and undeveloped site preserves hydrologic processes, and may serve to control stormwater run-off and erosion to nearby streams. | 6 | 10 |

| **Water Resource Protection:** | Site is designated as a Moderate Critical Aquifer Recharge Area (CARA) in the Sumas Creek Watershed. | 15% | 20% |

| **Protect Soils/Wildlife:** | Preserves, coniferous and deciduous tree species, native understory plants and shrubs, grassy areas, and ground cover; vegetation provides excellent cover and forage for a variety of terrestrial species and birds. | 7 | 10 |

| **Wildlife Habitat:** | Abundance of wildlife and diversity of species populate forested canopy and underbrush at edges of forested areas. | 12% | 20% |

| **Promote Conservation Principles:** | Posted Open Space Sign will communicate that site is under conservation, and local educational groups or school groups will be invited to visit property under conservation to view its wildlife and open spaces. | 5 | 10 |

| **Parcel Size** | Parcel is 11.78 acres Home site is 1.00 acre 10.78 application acres | 0% | >20 acres = +10% max; < 5 acres = -10% max |

| **Abutting Open Space** | Land classified Farm & Agricultural Land (OSAG) is located to the north, west & south of the subject parcel. | 3% | 5% |

| **Enhance Abutting Open Space:** | Biodiversity enhances ecosystem health of large tracts of land classified as Open Space Farm & Agricultural Land which are located in the immediate vicinity. | 5 | 10 |

| **Recreation Opportunities:** | Picnicking; wildlife observation; stargazing (by appointment); approximately ½ mile loop trail for walking, hiking, and horseback riding. Service dogs only, and horses are welcome! Educational groups are invited with prior arrangement, by appointment. | 10 | 10 |

| **Natural Areas** | Approximately 90% or more of the site is covered with natural vegetation. | 5% | 5% |

| **Historic / Archeological Significance** | None. | 0 | 10 |

| **Financial Advantage** | None. | 0% | 40% (+/-) |

| **Discretionary Value** | None. | 0% | 40% (+/-) |

### Total

<table>
<thead>
<tr>
<th>Total</th>
<th>41</th>
<th>70</th>
</tr>
</thead>
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### Total

| Total | 75% | 100% |

---

**The Public Benefit Rating is calculated using the following formula:**

Public Benefit Rating Formula: \[ BV + (BV \times PBV) = PBR \]

\[ BV + (11.78 \times 40\%) = 71.75 \]

---

**OSP2013-00003 Public Benefit Rating (PBR) = 71.75**

*Must receive at least 45 points for a staff recommendation of approval*
Open Space Land
OSP2013-00003 – Royal V. & M. Sue Sefton
Geo ID: 390409 469380 – OSAG to OSL
Parcel acres = 11.78; OSL acres= 10.78; PBR 71.75

Subject Parcel
Open Space Land - Proposed Public Access
OSP2013-00003 – Royal V. & M. Sue Sefton
Geo ID: 390409 469380 – OSAG to OSL
Parcel acres = 11.78; OSL acres = 10.78: PBR 71.75

Proposed Parking
Trail

Subject Parcel
### CYCLE 3

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<td>TOTAL ACRES</td>
<td>11.78</td>
</tr>
</tbody>
</table>

| PBR%          | 71.75%    |
| FM VALUE PER ACRE | 13,000   |
| CU VALUE PER ACRE  | 1,515    |

| *FM SITE= SQ FT X SITE = 0 |
| FM SITE= SQ FT |
| FM VALUE= 10.78 ACRES X 13,000 PER ACRE = 140,140 |
| FM VALUE= ACRES X PER ACRE = 0 |
| Total FM VALUE 140,140 |
| CU VALUE= 10.78 ACRES X 1,515 PER ACRE = 16,332 |
| DIFF 123,808 |
| PRB% 71.75% |
| SAVINGS 88,832 |

| FM VALUE 140,140 |
| SAVINGS 88,832 |
| NEW VALUE 51,308 / 10.78 Per acre = 4,760 |

| PROOF 51,308 |
Open Space Timber Land
Current Use Classification-Evaluation Form

File # OSP 2013-00001

<table>
<thead>
<tr>
<th>Property Owner (s)</th>
<th>Classification:</th>
<th>Status:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keith A. Smith</td>
<td>Timber Land</td>
<td>Transfer From Designated Forest Land</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Street Address:</th>
<th>Assessor’s Parcel No. (s):</th>
</tr>
</thead>
<tbody>
<tr>
<td>PO Box 1267</td>
<td>400507 113201 0000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sumas</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State:</th>
<th>Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>WA</td>
<td>98295</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Site Address:</th>
<th>Parcel Acre(s): 19.3 Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>4900 Block of Reese Hill Road</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subarea:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foothills</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Comp Plan Designation:</th>
<th>Historical Land Use:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Forestry</td>
<td>Forestry</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Application Acre(s)</th>
<th>Zoning Designation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.3 Acres</td>
<td>Rural Forestry</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shorelines:</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

Predominant Soil/Type Capabilities:

#8 - Barneston very gravelly loam, - 15-30% Slopes, 50 year site index – Douglas fir = 118
#18 - Blethen very gravelly loam, - 15-30% Slopes, 50 year site index – Douglas fir = 115
#139 - Sehome loam, 2-8% Slopes, 50 year site index – Douglas fir = 135

Comments: Very deep to moderately deep well drained soils. Productive woodland soils. Seedling mortality due to competing vegetation, and compaction and muddy conditions during harvest due to seasonal high water table are main concerns.
<table>
<thead>
<tr>
<th>Information Included</th>
<th>Points</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Stand Description</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Generally, the stand is one unit comprised of an uneven aged species, 20-50 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>old, including: conifers and hardwoods and approximately one acre forested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>wetland, and two logging roads: Douglas fir, western hemlock, red alder, western</td>
<td></td>
<td></td>
</tr>
<tr>
<td>red cedar and big leaf maple are the dominant species.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| **Soils Description**                                                               | 2      | 2   |
| Predominant soil types are Blethen gravelly loam and Sehome loam which are         |        |     |
| deep well drained soils found on the toe slopes of foothills. Soil productivity is  |        |     |
| high with 100 year mean site index for Douglas fir ranging from 149-158 (feet in   |        |     |
| height), with 50 year site index ranging 115-135 (feet in height). High seasonal    |        |     |
| water table and compaction and muddiness as limiting factors. Low pressure          |        |     |
| ground based logging system is recommended during wet conditions.                   |        |     |

| **Forest Health**                                                                   | 2      | 2   |
| Plan indicates that overall stands are free from insect and most fungal pathogens.  |        |     |
| Browse damage from conifer seedlings from deer could be expected as local          |        |     |
| populations increase. Current stands are mature and browsing not a problem, but    |        |     |
| newly planted trees should be monitored closely until seedlings reach 5 feet in     |        |     |
| height.                                                                             |        |     |

| **Harvest Plan**                                                                    | 2      | 2   |
| Plan indicates that this uneven aged stand contains trees that have already        |        |     |
| reached economic maturity and could be commercially harvested using clear cut      |        |     |
| method or selectively harvested at any time. Disadvantages and advantages to     |        |     |
| either option are clearly outlined in the Plan.                                    |        |     |

| **Thinning Program**                                                                | 2      | 2   |
| After re-planting, new stands will need to be monitored for invasive species      |        |     |
| (competing vegetation) using mechanical or chemical means. Pre-commercial thining  |        |     |
| should be done 15-20 years after seedlings are established, and 5 - 8 years for    |        |     |
| red alder. Commercial thinning may be started at about age 25, and                 |        |     |
| every 5-10 years thereafter.                                                      |        |     |

| **Planting/Restocking Program**                                                     | 2      | 2   |
| Stand is not considered fully stocked at this time and will require replanting in  |        |     |
| certain areas. Plan recommends replanting with shade tolerant species, depending   |        |     |
| on the type of harvest that takes place. After clear cut or selective harvest,     |        |     |
| replanting should be done within 3 years in accordance with WAC 222-34-010 at a    |        |     |
| density sufficient to yield 190 vigorous undamaged well distributed seedlings of    |        |     |
| commercial species per acre after the second growing season, i.e. approximately     |        |     |
| 300-350 Douglas fir 2-0 or larger bare root stock or larger. Plan recommends a     |        |     |
| mix of Douglas fir, western hemlock, and western red cedar in the wetter areas.     |        |     |

| **Wildlife Habitat Enhancement**                                                    | 2      | 2   |
| Plan identifies a variety of wildlife that are typically found in the area. Retention |        |     |
| of wildlife features in accordance with WAC 222-30-020 (11) is outlined in the Plan,|        |     |
| specifying the type of habitat feature that must remain on site following harvest.  |        |     |

| **Timber Management Plan must receive 7 or more points for a staff**               | 14     | 14  |
| recommendation of approval.                                                       |        |     |

Total: 14

Staff Recommendation: ☑ Approval  ☐ Denial

OSP2013-00001  Timber Management Plan Score 14
Timberland

OSP2013-00001 – Keith A. Smith
Geo ID: 400507 113201 – DFL to OST
Parcel acres = 19.3; OST acres = 19.3
Timber Management Plan Score = 14
Timber Land
OSP2013-00001 – Keith A. Smith
Geo ID: 400507 113201 – DFL to OST
Parcel acres = 19.3; OST acres = 19.3
Timber Management Plan Score = 14

Subject Parcel
## Open Space Timber Land
### Current Use Classification-Evaluation Form

**File # OSP 2013-00002**

<table>
<thead>
<tr>
<th>Property Owner (s)</th>
<th>Classification: <strong>Timber Land</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>William Joseph Kennedy</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Street Address:</th>
<th>Assessor’s Parcel No. (s):</th>
</tr>
</thead>
<tbody>
<tr>
<td>7630 Bear Ridge Way</td>
<td>400618 474052 0000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City:</th>
<th>State: WA  Zip: 98266</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Site Address:</th>
<th>Subarea: Foothills</th>
</tr>
</thead>
<tbody>
<tr>
<td>7630 Bear Ridge Way</td>
<td></td>
</tr>
<tr>
<td>Maple Falls, WA</td>
<td></td>
</tr>
</tbody>
</table>

| Comp Plan Designation:    | Parcel Acre(s): 9.58 acres  |
| Rural                     |                             |

| Historical Land Use:      | Application Acre(s) 6.7 acres|
| Forestry & Residential Use|                             |

| Zoning Designation:       | Shorelines: Conservancy Maple Creek |
| Rural District – (R10A)   |                             |

**Predominant Soil/Type Capabilities:**
- # 187 – Winston silt loam, - 3-15% Slopes, 50 year site index – Douglas fir = 125
- # 19 – Blethen gravelly loam, 30 – 60% Slopes, 50 year site index – 115

**Comments:** Very deep well drained woodland soil. Seedling mortality due to competing vegetation, and rutting from wheeled equipment, during wet muddy harvest conditions are main concerns.
<table>
<thead>
<tr>
<th>Information Included</th>
<th>Points</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Stand Description</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Stand is composed of management areas consisting of both naturally regenerated and planted species. At the time of Plan submittal approximately 5.2 acres of the property were stocked with a mix of commercial species such as Douglas fir, western hemlock, red alder, western red cedar, Sitka spruce, and big leaf maple in the western stand approximately 40-50 years old; with the eastern portion of the property naturally regenerated with 10-20 year red alder, and western red cedar and western hemlock approximately 30 years of age. Since Plan submittal 1.5 acres were planted with two year old Douglas fir, western red cedar and grand fir for a total of 6.7 acres of timber on the site with 2.88 acres reserved for a home site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Soils Description</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Predominant soil types are Winston silt loam 3-15% slopes and Blethen gravelly loam 30-60% slopes; a very well-drained soil found on the toe slopes of foothills. Care must be taken to use low pressure ground equipment when harvest during wet season.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Forest Health</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Plan indicates that are no significant indications of insect infestation, fungal rots, or fire risk.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Harvest Plan</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>The 40-50 year old western portion of the stand is merchantable and could be harvested at any time subject to applicable stream buffer provisions on Maple Creek. The southeast portion could be ready for harvest in 10-20 years. The remaining forested areas need to grow for 30-40 years before harvest.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Thinning Program</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Both of the newer stands require pre-commercial thinning at 15-20 years after trees are well established. The southeast portions of western red cedar and western hemlock would be ready for pre-commercial thinning in about 10-20 years. The remaining forested areas would be ready for harvest in about 30-40 years, and the newly planted seedlings will be ready for a pre-commercial thinning in about 15 years. During interim growth periods, thinning should be done by competent operators with appropriate equipment to avoid damage to remaining trees. Commercial thinning should take place at around 35 years of age.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Planting/Restocking Program</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Replanting should be done within 3 years of harvest in accordance with WAC 222-34-010 with approximately 300-400 trees per acre spaced at 10-12’ apart. Douglas fir, western red cedar, and red alder are recommended for this site. After replanting it is recommended that competing vegetation is controlled by chemical or mechanical means to assure survival of seedlings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Wildlife Habitat Enhancement</strong></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Plan indicates that Maple Creek defines the property’s western boundary. This is a fish bearing stream that should be protected by a 170 foot buffer under current Forest Practices Rules, with harvest allowable within a portion of the outer buffer. A small pond on the site will also be protected by a minimum of fall-away, yard away harvest techniques under current Forest Practices. It is noted that Maple creek provides habitat for fish, amphibians, and associated wildlife species, and as the forest changes over time these wildlife niches will also change. Landowner objectives are consistent with wildlife habitat in accordance with Forest Practices.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Timber Management Plan must receive 7 or more points for a staff recommendation of approval.*

**Total:** 14 14

Staff Recommendation: [x] Approval   [ ] Denial

**OSP2013-00002** Timber Management Plan Score 14
Timber Land
OSP2013-00002 - William Joseph Kennedy
Geo ID: 400618 474052 - New OST
Parcel acres = 9.58; OST acres = 6.7
Timber Management Plan Score = 14

Zoning & Comprehensive Plan Designations
- Rural
- Commercial Forest
- Agriculture
- MRL
- Rural Forest
- Subject Parcel

Open Space Applications 2013
- Kennedy

NOT FOR PUBLICATION OR USE IN ANY DISTRICT COURT, STATE, OR FEDERAL COURT

Scale: 1" = 2000' 100' 200' 300' 500' 1000' 1500' 2000' 5000' 10000' 15000' 20000' 50000' 100000' 150000' 200000' 500000' 1000000'

Scale: 1" = 2000' 100' 200' 300' 500' 1000' 1500' 2000' 5000' 10000' 15000' 20000' 50000' 100000' 150000' 200000' 500000' 1000000'

328
Timber Land
OSP2013-00002 – William Joseph Kennedy
Geo ID: 406618 474052 – New OST
Parcel acres = 9.58; OST acres = 6.7
Timber Management Plan Score = 14

Subject Parcel
HYPOTHETICAL EXAMPLE OF APPLIED PUBLIC BENEFIT RATING
RESULTING IN NEW CURRENT USE VALUE AND “SHIFT” IN TAXES

UPON APPLICATION APPROVAL
TO CLASSIFY OR RE-CLASSIFY AS OPEN SPACE LAND

**TERMS:**
- FMVA = Fair Market Value per acre
- CUVA = Current Use Value per acre
- FMV = Fair Market Value per acre multiplied by # of acres
- CUV = Current Use Value per Acre multiplied by # of acres
- PBR = Public Benefit Rating
- DIFF = Difference between FMV and CUV
- SAVINGS = Savings is difference between Fair Market Value and Current Use Value multiplied by the PBR
- NEW VALUE is FMV-SAVINGS
- NEW VALUE X CONSOLIDATED LEVY RATE = NEW TAXES
- LEVY RATE = HYPOTHETICAL CONSOLIDATED LEVY RATE

**FORMULA:**
- FMV-CUV = DIFF
- DIFF X PBR = SAVINGS
- FMV-SAVINGS = NEW VALUE
- NEW VALUE X LEVY RATE = TAXES

**CALCULATION:**
- FMV - CUV = DIFF
  \[ 600,000 - 24,000 = 480,000 \]
- DIFF X PBR = SAVINGS
  \[ 480,000 \times .85 = 432,000 \]
- FMV-SAVINGS = NEW VALUE
  \[ 600,000 - 432,000 = \boxed{168,000} \]
- NEW VALUE X LEVY RATE = NEW TAXES ON LAND VALUED AT CURRENT USE
  \[ 168,000 \times .01 = 1,680 \]
- FMV taxes = 6,000
- Current Use Taxes = 1,680
- Shift = 4,320

**HYPOTHETICAL EXAMPLE:**
Application for Open Space Land  
= 20 acres – vacant raw land

**Variables:**
- Fair Market Value/acre = 30,000
- PBR = 85%
- CUVA = 1,200
- CUV = 20 \times 1,200 = 24,000
- LEVY RATE = 10 dollars per every thousand dollars of assessed value or .01
EXPLANATION OF TAX SHIFT:

LEVY RATE = 10 dollars per every thousand dollars of assessed value or .01

Fair Market Value TAX = 600,000 X .01 = $6,000.00 Taxes

Current Use Value TAX = 168,000 X .01 = $1,680.00 Taxes

- Difference between FMV Tax & CUV Tax $6,000-$1,680 = $4,320.00

- $4,320 in taxes that would otherwise be collected from this tax
  payer are "shifted" to other tax payers in the form of an increase in
  the levy rate applied to all assessed values on property within any
  given taxing district (as applicable) including the subject parcel acres
  that are approved for assessment at current use. The particular
  taxing district will still need to meet its budget, and in order to
  accomplish this, to offset reduction in value from properties classified
  under the current use programs (and other exemptions) will increase
  its levy rate to meet its budget.

- Generally, a tax code area is defined by geographic boundaries
  where most all of the parcels are subject to the same consolidated
  levy rate. However, not all parcels in a geographically defined tax
  code area are captured by the same taxing districts. For example, if
  in a particular tax code area there are two parcels of land that are
  contiguous, and one is developed, and one is raw unimproved land,
  and both are in the fire district’s boundaries, the improved land will
  be subject to a levy by the fire district, but the unimproved land will
  not be subject to a levy by the fire district.

- The example above illustrates why it is difficult to calculate the
  increase in taxes affecting tax payers whose land is assessed at fair
  market value, that would be imposed by the approval of a parcel at
  current use values.

- To further illustrate: the compensating increase in a taxing district’s
  levy rate will also apply to land assessed at current use values within
  a taxing district’s boundaries, but since the assessed value per acre
  has been substantially reduced as compared to fair market value,
  the amount of compensatory tax to meet the district’s budget is
  proportionately much less from these parcels as compared to those
  from parcels assessed at fair market value.
Whatcom County

Open Space Policy and Criteria

and

Public Benefit Rating System, 1995
SUMMARY OF WHATCOM COUNTY OPEN SPACE POLICIES

I. Public Benefit Rating System: All applications for open space open space and open space-farm and agriculture conservation will be rated according to the Whatcom County Public Benefit Rating System described in the following pages. A Public Benefit Rating of at least 45 must be attained in order to be recommended for approval. In addition, the amount of tax reduction to be granted to open space applications will be based on the Public Benefit Rating. The greater the public benefit provided by keeping the property in open space use, the greater the tax reduction.

II. Public access: As a condition of approval, owners of open space parcels must agree to provide a certain degree of public access according to the Whatcom County Public Access Policy listed on Page 12. All applications shall be accompanied by the owner’s proposed rules of conduct and a description of how public access is to be managed, within the limitations outlined in the Whatcom County Public Access Policy. Note: On parcels where there is a documented occurrence of a State or Federal Endangered or Threatened species; Federal Proposed Endangered or Threatened Species; and State Sensitive or Monitor Species; or where there is a known or potentially significant archaeological site; or when the purpose of the open space is for wetland conservation, the public access requirement may be waived by the Council.

III. Open Space Sign: As a condition of approval, owners of open space parcels must agree to post a sign in a location visible to passing motorists, in accordance with the Whatcom County Open Space Sign Policy on Page 13 indicating the parcel’s open space status and the availability of public access. As with the public access requirement, the requirement for posting of a sign may be waived in some instances.

IV. Hold Harmless Agreement: All open space property owners must sign a hold harmless agreement, freeing Whatcom County of any liability which may arise as a result of open space approval. A copy of the hold harmless agreement is included on Page 14.
WHATCOM COUNTY OPEN SPACE POLICY AND CRITERIA
AND PUBLIC BENEFIT RATING SYSTEM

I. APPROVAL CRITERIA: OPEN SPACE/OPEN SPACE AND OPEN SPACE/FARM & AGRICULTURE CONSERVATION

Washington State law specifies that:
In determining whether an application made for open space current use taxation status should be approved or disapproved, pursuant to RCW 84.34.020, subsection (1)(b) (Open Space/Open Space) or subsection (c) (Open Space/Farm & Agriculture Conservation), the Whatcom County Planning Commission will consider in its recommendations to the County Council whether or not preservation of the current use of the land, when balanced against the resulting revenue loss or tax shift from granting the application will:

1. Conserve or enhance natural, cultural or scenic resources, or
2. Protect streams, stream corridors, wetlands, natural shorelines and aquifers, or
3. Protect soil resources and unique or critical wildlife and native plant habitat, or
4. Promote conservation principles by example or by offering educational opportunities, or
5. Enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces, or
6. Enhance recreation opportunities, or
7. Preserve historic and archaeological sites, or
8. Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property.

II. PUBLIC BENEFIT RATING SYSTEM

A. Based on the first seven (7) approval criteria listed above in conjunction with number eight (8) above, the Planning Department staff will assign each application for Open Space/Open Space and Open Space/Farm & Agriculture Conservation a PUBLIC BENEFIT RATING using the method described below.

B. A parcel must receive a PUBLIC BENEFIT RATING of at least forty five (45) to be recommended for approval.

C. The PUBLIC BENEFIT RATING will be used by the County Assessor’s office in determining the amount of tax reduction for Open Space/Open Space and Open Space/Farm & Agriculture Conservation parcels.
III. PUBLIC BENEFIT RATING CALCULATION

A. BASIC VALUE
The Planning and Development Services Department will review each Open Space/Open Space and Open Space/Farm & Agriculture Conservation application and will assign to each a BASIC VALUE that represents the degree of conformance with the BASIC VALUE CRITERIA listed in Section IV below.

B. PUBLIC BENEFIT VALUE
The BASIC VALUE will be increased (or decreased) by a percentage (PUBLIC BENEFIT VALUE) representing the benefit to the general welfare of preserving the current use of the property, based on conformance with the factors listed in section V below.

C. PUBLIC BENEFIT RATING FORMULA
The PUBLIC BENEFIT RATING will be calculated using the following formula:

\[ PBR = BV + (BV \times PBV), \]  

where:

\[ PBR = \text{PUBLIC BENEFIT RATING} \]
\[ BV = \text{BASIC VALUE} \]
\[ PBV = \text{PUBLIC BENEFIT VALUE} \]

IV. BASIC VALUE CRITERIA:

A. Open Space/Open Space
A maximum of ten points for open space/open space applications may be assigned for each of the 7 items based upon conformance with the criteria listed below.

1. Conserve or enhance natural, cultural or scenic resources.

Criteria for approval:

a. lands which possess unique scenic vistas available to the public or are within the visual corridor of scenic roads or highways;

b. lands which, when left in their natural state, would serve as buffers between areas of commercial or industrial activity and areas of human habitations;
c. lands which can serve to prevent the spread of high density residential development into less developed areas;
d. lands located adjacent to airports.

2. Protect streams, stream corridors, wetlands, natural shorelines and aquifers.
Criteria for approval:

a. lands within a 100 year floodplain;
b. lands within or adjacent to areas of domestic water supply;
c. lands near or adjacent to streams or rivers where, if alterations were to occur, a resulting loss of quality would also occur in the conditions of water and the general functioning of the regime;
d. lands which provide for preservation of bogs or swamps;
e. lands adjacent to bodies of water, both marine and fresh;
f. lands including and adjacent to wetlands and tidal areas (these lands would not necessarily be approved contingent upon public access agreement due to biological sensitivities).

3. Protect soil resources and unique or critical wildlife and native plant habitat.
Criteria for approval:

a. lands where slopes exceed 25% or areas where underlying geology and soils are known to produce unstable conditions;
b. lands where, if alterations were to occur, a resulting high risk of soil erosion would follow;
c. lands which represent habitats for unique or critical wildlife or native plants, or where there is a documented occurrence of a State or Federal Endangered Species; State or Federal Threatened Species; Federal Proposed Endangered or Threatened Species; or State Sensitive or Monitor Species as listed in the Washington Department of Wildlife Nongame Data System. On parcels where there this documentation, the Department shall automatically recommend approval with a recommendation that a sign and public access shall not be required.

4. Promote conservation principles by example or by offering educational opportunities.
Criteria for approval:

a. lands which are an example of application of conservation principles;
b. lands which offer opportunities for conservation education such as
5. **Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces;**

Criteria for approval:

a. land that the local County Park Board has identified for possible future park acquisition;

b. land designated in County Parks, Recreation and Open Space Study and other documents as significant park land, open space or conservation areas;

c. lands which, as open space, may help to provide for successful implementation of County Trail Plan;

d. lands which are near or adjacent to existing public parks, forests, wildlife preserves, nature reservations, sanctuaries, schools or other open space lands classified under RCW 84.33 or RCW 84.34;

6. **Enhance recreation opportunities.**

Criteria for approval:

a. lands possessing private recreational facilities which are available to the public without charge;

b. lands which provide opportunities for passive recreational activities such as, but not limited to, hiking, horseback riding, hunting, fishing, bird watching, and nature observation;

7. **Preserve historic and archaeological sites.**

Criteria for approval:

a. areas or sites which have been identified as significant on local, state or national Historic Registers;

b. areas or sites of known or potential archaeological significance. On parcels where there is a known or potentially significant archaeological site, the Department shall automatically recommend approval with a recommendation that a sign and public access shall not be required.

**B. Open Space/Farm & Agriculture Conservation**

Only parcels consistent with RCW 84.34.020(8)(a)(b) may be considered for Open Space/Farm & Agriculture Conservation.
A maximum of fifteen (15) points for Open Space/Farm & Agriculture Conservation applications may be assigned for each of the first two (2) items listed below, and a maximum of five (5) points may be assigned for the remaining eight (8) items listed below based upon conformance with the criteria listed.

1. **Traditional or potential farmland.**
   
   **Criteria for approval:** lands which have historically been used for agriculture; and/or lands that have not been devoted to a use inconsistent with agricultural uses.

2. **Soil Value**
   
   **Criteria for approval:**
   
   a. lands which contain prime farmland as defined by the U.S. Department of Agriculture; or
   
   b. lands which contain capability classification I-IV according to the US Department of Agriculture Land Capability Classification system.

3. **Comprehensive Plan Designation**
   
   **Criteria for approval:** Lands which are designated Agriculture or Incentive Agriculture in the Whatcom County Comprehensive Plan.

4. **Conserve or enhance natural, cultural or scenic resources.**
   
   **Criteria for approval:**
   
   a. lands which possess unique scenic vistas available to the public or are within the visual corridor of scenic roads or highways;
   
   b. lands which, when left in their natural state, would serve as buffers between areas of commercial or industrial activity and areas of human habitations;
   
   c. lands which can serve to prevent the spread of high density residential development into less developed areas;
   
   d. lands located adjacent to airports.
5. **Protect streams, stream corridors, wetlands, natural shorelines and aquifers.**

   **Criteria for approval:**
   a. lands within a 100-year floodplain;
   b. lands within or adjacent to areas of domestic water supply;
   c. lands near or adjacent to streams or rivers where, if alterations were to occur, a resulting loss of quality would also occur in the conditions of water and the general functioning of the regime;
   d. lands which provide for preservation of bogs or swamps;
   e. lands adjacent to bodies of water, both marine and fresh;
   f. lands including and adjacent to wetlands and tidal areas (these lands would not necessarily be approved contingent upon public access agreement due to biological sensitivities).

6. **Protect soil resources and unique or critical wildlife and native plant habitat.**

   **Criteria for approval:**
   a. lands where slopes exceed 25% or areas where underlying geology and soils are known to produce unsuitable conditions;
   b. lands where, if alterations were to occur, a resulting high risk of soil erosion would follow;
   c. lands which represent habitats for unique or critical wildlife or native plants, or where there is a documented occurrence of a State or Federal Endangered Species; State or Federal Threatened Species; Federal Proposed Endangered or Threatened Species; or State Sensitive or Monitor Species as listed in the Washington Department of Wildlife Nongame Data System. On these parcels the Department shall automatically recommend approval with a recommendation that a sign and public access shall not be required.

7. **Promote conservation principles by example or by offering educational opportunities.**

   **Criteria for approval:**
   a. lands which are an example of application of conservation principles;
   b. lands which offer opportunities for conservation education
such as interpretive centers or trails.

8. **Enhance the value to the public of abutting or neighboring parks, forests, agricultural lands, wildlife preserves, nature reservations or sanctuaries or other open spaces.**

**Criteria for approval:**

a. land that the local County Park Board has identified for possible future park acquisition;

b. land designated in County Parks, Recreation and Open Space Studies and other documents as significant park land, open space or conservation areas;

c. lands which, as open space, may help to provide for successful implementation of County Trail Plan;

d. lands which are near or adjacent to existing public parks, forests, wildlife preserves, nature reservations, sanctuaries, schools or other open space lands classified under RCW 84.33 or RCW 84.34;

9. **Enhance recreation opportunities.**

**Criteria for approval:**

a. lands possessing private recreational facilities which are available to the public without charge;

b. lands which provide opportunities for passive recreational activities such as but not limited to hiking, horseback riding, hunting, fishing, bird watching, and nature observation;

10. **Preserve historic and archaeological sites.**

**Criteria for approval:**

a. areas or sites which have been identified as significant on local, state or national Historic Registers;

b. areas or sites of known or potential archaeological significance. On parcels where there is a known or potentially significant archaeological site, the Department shall automatically recommend approval with a recommendation that a sign and public access shall not be required.
V. PUBLIC BENEFIT VALUE CRITERIA
The following list of open space characteristics have been determined to have a high priority in providing (or detracting from) benefit to the general welfare will be used to determine the PUBLIC BENEFIT VALUE for each Open Space/Open Space and Open Space/Farm & Agriculture Conservation application. The total PUBLIC BENEFIT VALUE will increase (or decrease) the BASIC VALUE by a certain percentage. It is possible to attain a PUBLIC BENEFIT VALUE of up to 140%, resulting in a maximum possible increase of 140%.

A. PUBLIC ACCESS (Maximum 40% increase)
1. Shoreline access
2. Recreation access
3. Public road frontage
4. Availability of off-street parking
5. Quality of access in terms of accessibility and owner’s Proposed rules of conduct and access management

B. WATER RESOURCE PROTECTION (Maximum 20% increase)
1. Watershed of domestic water supply
2. Aquifer recharge area
3. Preservation of hydrologic processes:
   - streams and natural drainage courses
   - wetlands, swamps, bogs
   - lakes

C. WILDLIFE HABITAT (Maximum 20% increase)
1. State or Federal Endangered Species; State or Federal Threatened Species; Federal Proposed Endangered or Threatened Species; or State Sensitive or Monitor Species.
2. Abundance and diversity of wildlife (associated with "edge" type habitat and areas of vegetative and topographic diversity).

D. PARCEL SIZE
1. Twenty (20) acres or larger (Maximum 10% increase)
2. Smaller than five (5) nominal acres (Maximum 10% decrease for OS Open Space applications; Required 40% decrease for OS Farm and Agriculture Conservation applications)

E. LINKAGE WITH OTHER OPEN SPACES (Maximum 5%
F. NATURAL AREAS (Maximum 5% increase)
Based on how much of parcel is in natural cover and not developed with homesite, outbuildings, and clearings.

G. FINANCIAL ADVANTAGE (Maximum 40% decrease)
The use to which the land is put derives a financial advantage for its owners.

H. DISCRETIONARY VALUE (Maximum 40% increase) (Minimum 40% decrease)
Discretionary value may be added or subtracted where land provides or detracts from public benefits other than those specifically listed above. If discretionary value is added or subtracted, the provision of or detraction from public benefits shall be set forth in detail on the supplemental application form and on the scoring sheet.
PUBLIC ACCESS

All applications for Open Space/Open Space and Open Space Farm & Agriculture Conservation shall be accompanied by the owners' proposed rules of conduct and a description of how public access is to be managed, within the limitations outlined below.

The term "Public Access" is limited and defined as the right of any individual to request permission to enter and visit the premises on foot for legitimate recreational purposes such as bird watching, scenic observation, scientific investigation, picnicking during daylight hours, and strolling and general relaxation on the premises. This right is subject to the execution by the visitor of:

1. An agreement to abide by any reasonable rules of personal conduct required by the owners while on the premises, and

2. A general release of the owner from liability for any injury suffered by the visitor while on the premises. Permission will be granted without discrimination, EXCEPT in the case of a person in disorderly or apparently intoxicated condition in which case permission will be denied. Any permission previously granted shall become automatically revoked, and the visitor deemed to be a trespasser upon the premises.

Owners retain and reserve the power to officially post and enforce rules not inconsistent with the foregoing provisions and conditions for public entry upon the premises.

DATED this ________ day of ________, 2000

SIGNED:

__________________________________________

owner

__________________________________________

owner
OPEN SPACE SIGN POLICY

As a condition of approval of your open space application, you must post a two foot (2’ x 2’) sign on your property to indicate open space status, public access, and the Open Space Agreement number within one month of executing the Open Space Agreement.

The sign must be located on the property’s road frontage in as conspicuous a location as possible.

Construction of the sign will be the responsibility of the applicant and will be in accordance with the specifications on file with the Planning and Development Services Department. It is the property owner’s responsibility to assure that the sign remains in place during the period of the open space agreement.

This policy affects all Open Space/Open Space and Open Space/Farm and Agricultural Conservation applications.
Whatcom County Council

AFFIDAVIT OF POSTING OF
OPEN SPACE SIGN
PURSUANT TO WHATCOM COUNTY
OPEN SPACE SIGN POLICY AND SPECIFICATION

__________________________________________, being first duly sworn upon
oath, deposes and says:

That I have posted a two foot by two foot Open Space Sign in accordance
with the Whatcom County Open Space Sign Policy and the Whatcom
County Open Space Sign Specification, in a conspicuous location, visible to
passing motorists, indicating the Open Space status of the following Open
Space parcel(s):
Assessor’s Parcel Number(s): ____________________________

I understand that it is the property owner’s responsibility to assure that the
sign(s) remains in place during the period of the Open Space Agreement;
that posting of the Open Space sign is subject to verification by County
personnel; and that failure to maintain the sign is a violation of the Open
Space Agreement and may result in withdrawal of Open Space status with
attendant taxes and penalties payable pursuant to RCW 84.34.

__________________________
Signature of Property Owner or other person posting property

I certify that I know or have satisfactory evidence that ____________________________
signed this instrument and acknowledged it to be his/her free and voluntary act for the uses
and purposes mentioned in this instrument.

Dated ____________________________
Signature of ____________________________
Notary Public ____________________________

Title ____________________________
My Appointment ____________________________
Expires ____________________________
WHATCOM COUNTY OPEN SPACE SIGN SPECIFICATION

As a condition of approval of your Open Space application, you must post at least one Open Space sign on the property's road frontage in a conspicuous location, visible to passing motorists. It shall be the property owner's responsibility to assure that the sign remains in place during the period of the Open Space Agreement.

A typical sign and mounting are illustrated below. The sign shall be purchased from the Whatcom County Planning and Development Department for $5.00 plus tax of .39 cents. The sign shall be permanently attached to a weather-resistant solid backing at least two feet by two feet in size. You may also post reasonable rules of personal conduct while on the premises, pursuant to Whatcom County Public Access Policy. Such rules shall be approved by the Planning Department prior to posting.

TYPICAL SIGN AND MOUNTING

THIS PROPERTY IS DESIGNATED OPEN SPACE

PURSUANT TO THE PROVISIONS OF RCW 84.34. PUBLIC ACCESS IS PERMITTED FOR RECREATIONAL PURPOSES SUBJECT TO THE TERMS AND CONDITIONS OF WHATCOM COUNTY OPEN SPACE AGREEMENT NO.

(space for posting rules)

2" x 2" posts

1/4 inch plywood

ground level

TOP OF SIGN

2 feet

4 feet
HOLD HARMLESS AGREEMENT

Owner Name

Owner Name

In consideration for Whatcom County's approval of the attached Open Space Application, with any conditions that may be imposed, hereby agree to defend, indemnify and hold harmless Whatcom County, its officers and employees from any claim that may arise against Whatcom County as a result of the approval of the attached application with conditions.

This agreement shall become binding only after the Whatcom County Council has approved the attached application.

Parcel number(s):


DATED: This _______ day of _____________________, 2008

SIGNED:

Owner Name

Owner Name
The information and instructions in this publication are to be used when applying for assessment on the basis of current use under the "open space laws," chapter 84.34 RCW and chapter 458-30 WAC.

What is the Open Space Taxation Act?
The Open Space Taxation Act, enacted in 1970, allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use. The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.

Lands qualifying for current use classification
The law provides three classifications:
Open space land
Farm and agricultural land
Timber land

Open space land is defined as any of the following:

1. Any land area designated as open space land by an official comprehensive land use plan adopted by any city or county and zoned accordingly.
2. Any land area in which the preservation in its present use would:
   a. Conserve and enhance natural or scenic resources.
   b. Protect streams or water supply.
   c. Promote conservation of soils, wetlands, beaches or tidal marshes. (As a condition of granting open space classification, the legislative body may not require public access on land classified for the purpose of promoting conservation of wetlands.)
   d. Enhance the value to the public of neighbouring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space.
   e. Enhance recreation opportunities.
   f. Preserve historic sites.
   g. Preserve visual quality along highway, road, and street corridors or scenic vistas.
   h. Retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative authority granting the open space classification.

3. Any land meeting the definition of "farm and agricultural conservation land," which means either:
   a. Land previously classified under farm and agriculture classification that no longer meets the criteria and is reclassified under open space land; or
   b. "Traditional farmland," not classified, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

This fact sheet provides general information regarding the Open Space Taxation Act. The information is current at the date of publication. Please note subsequent law changes may supersede or invalidate some of this information.
Farm and agricultural land is defined as any of the following:

1. Any parcel of land that is 20 or more acres, or multiple parcels of land that are contiguous and total 20 or more acres, and are:
   a. Devoted primarily to the production of livestock or agricultural commodities for commercial purposes.
   b. Enrolled in the federal conservation reserve program (CRP) or its successor administered by the United States Department of Agriculture.

2. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has produced a gross income equivalent to:
   a. Prior to January 1, 1993, $100 or more per acre per year for three of the five calendar years preceding the date of application for classification.
   b. On or after January 1, 1993, $200 or more per acre per year for three of the five calendar years preceding the date of application for classification.

3. Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has standing crops with an expectation of harvest within:
   a. Seven years and a demonstrable investment in the production of those crops equivalent to $100 or more per acre in the current or previous calendar year.
   b. Fifteen years for short rotation hardwoods and a demonstrable investment in the production of those crops equivalent to $100 or more per acre in the current or previous calendar year.

4. For parcels of land five acres or more but less than 20 acres, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs.

5. Any parcel of land less than five acres devoted primarily to agricultural uses and has produced a gross income of:
   a. Prior to January 1, 1993, $1,000 or more per year for three of the five calendar years preceding the date of application for classification.
   b. On or after January 1, 1993, $1,500 or more per year for three of the five calendar years preceding the date of application for classification.

6. "Farm and agricultural land" also includes any of the following:
   a. Incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.

b. Land on which appurtenances necessary for production, preparation, or sale of agricultural products exist in conjunction with the lands producing such products.

c. Any non-contiguous parcel one to five acres, that is an integral part of the farming operation.

d. Land on which housing for employees or the principal place of residence of the farm operator or owner is sited provided the use of the housing or residence is integral to the use of the classified land for agricultural purposes and provided that the classified parcel(s) is 20 or more acres.

e. Land that is used primarily for equestrian-related activities including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed. Depending on the number of classified acres, the land may be subject to minimum income requirements.

Timber land is defined as the following:
Any parcel of land five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than 10 percent of the land may be used for such incidental uses.

It also includes the land which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.
Who may apply?
An owner or contract purchaser may apply for current use assessment under the open space law. However, all owners or contract purchasers must sign the application for classification, and any resulting agreement.

When may I apply?
Applications may be made for classification at any time during the year from January 1 through December 31. Current use valuation assessment begins on January 1 in the year following the year the application was filed.

Where do I get the application?
Application forms for the farm and agriculture land classification are available from the county assessor’s office. Application forms for the open space and timber land classifications are available from either the county assessor’s office or by contacting the county legislative authority. Application forms are also available on the Department of Revenue’s web site at dor.wa.gov.

Where do I file the application?
An application for open space classification is filed with the county legislative authority.
An application for farm and agricultural land classification is filed with the assessor of the county where the property is located.
An application for timber land classification is filed with the county legislative authority. Timber land applications require that a timber management plan also be filed.

Is there an application fee?
The city or county legislative authority may, at their discretion, establish a processing fee to accompany each application. This fee must be in an amount that reasonably covers the processing costs of the application.

What happens after I file my application for the open space classification?
Applications for classification or reclassification as “open space land” are made to the appropriate agency or official called the “granting authority.” If the land is located in the county’s unincorporated area, the county legislative authority is the granting authority on the application. If the land is located within an incorporated area of the county, the application is acted upon by a joint county/city legislative authority consisting of three members of the county legislative authority and three members of the city legislative authority.

If the application is subject to a comprehensive plan that has been adopted by any city or county it shall be processed in the same manner in which an amendment to the comprehensive plan is processed. If the application is not subject to a comprehensive land use plan, a public hearing on the application will be conducted, but a notice announcing the hearing must be published at least 10 days prior to the hearing.

The granting authority either approves or rejects the application in whole or in part within six months of receiving the application. In determining whether an application made for classification or reclassification should be approved or denied, the granting authority may consider the benefits to the general welfare of preserving the current use of the property.

They may require that certain conditions be met including but not limited to the granting of easements.

If the application is approved, in whole or in part, the granting authority will, within five days of the approval date, send an Open Space Taxation Agreement to the applicant for signature showing the land classification and conditions imposed. The applicant may accept or reject the agreement. If the applicant accepts, he or she must sign and return the agreement to the granting authority within 30 days after receipt.

The approval or denial of the application for classification or reclassification is a legislative determination and is reviewable only for arbitrary and capricious actions. Appeal can be made only to the superior court of the county where the application was filed.

Within 10 days of receiving notice of classification of the land from the granting authority, the assessor submits the notice to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

Current use valuation will begin on January 1 of the year following the year the application was filed. The criteria for classification continue to apply after classification has been granted.
How does a public benefit rating system work?
If the county legislative authority has established a public benefit rating system (PBRS) for the open space classification, the criteria contained within the rating system govern the eligibility of the lands described in each application filed for that classification and the current use valuation of that land.

When a county creates or amends a PBRS, all classified open space land will be rated under the new system. A parcel that no longer qualifies for classification will not be removed from classification, but will be rated according to the PBRS. Within 30 days after receiving notification of the new value established by the PBRS, the owner may request removal of classification of the parcel without imposition of additional tax, interest, and penalty.

What happens after I file my application for farm and agricultural land classification?
The assessor will act on each application for classification or reclassification of farm and agricultural land with due regard to all relevant evidence, and may approve the application in whole or in part. Upon application for classification or reclassification, the assessor may require applicants to provide data regarding the use of such land, including the productivity of typical crops, sales receipts, federal income tax returns, other related income and expense data, and any other information relevant to the application.

The application will be considered approved unless the assessor notifies the applicant in writing prior to May 1 of the year following the year the application was made.

Within 10 days of the approval, the assessor submits the notice of approval to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property.

What is an “advisory committee”?
The county legislative authority must appoint a five member committee representing the active farming community within the county. This committee will serve in an advisory capacity to the assessor in implementing assessment guidelines as established by the Department of Revenue for the assessment of open space, farm and agricultural lands, and timber lands.

How do I appeal a denial of my farm and agricultural land application?
The owner may appeal the assessor’s denial to the board of equalization in the county where the property is located. The appeal must be filed with the board on or before July 1 of the year of the determination or within 30 days after the mailing of the notice of denial, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

What happens after I file my application for timber land classification?
Applications for current use timber land classification or reclassification are made to the county legislative authority. A timber management plan is required at the time of application or when a sale or transfer of timber land occurs and a notice of continuance is signed.

The application is acted upon after a public hearing in a manner similar to open space land classification within six months of receiving the application.

Approval or denial of an application is a legislative determination and is reviewable only for arbitrary and capricious action. Appeal can be made only to the superior court of the county where the application was filed.

The application form requires information about forest management, restocking, fire protection, insect and disease control, weed control, and any other summary of experience and activity that supports the growth and harvest of timber for commercial purposes.
Are there additional requirements once the application for classification or reclassification has been approved?
The owner of classified land must continue to meet the criteria established for classification, or the assessor may remove the land from the current use classification.

How is the value of classified land determined?
The assessor is required to maintain two values for each parcel that is classified. The first is the value that would be placed on the land if it was not classified. This is commonly referred to as the "fair market value." The second is the current use land value based on its present use, not potential use, as classified by the granting authority.

Open space land located within a county that has adopted a public benefit rating system will be valued according to the criteria of the rating system.

In the absence of a rating system, the valuation will be no less than the lowest per acre value of classified farm and agricultural land in the county.

In determining the current use value of farm and agricultural land, the assessor considers the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years. This earning or productive capacity is the "net cash rental" and is capitalized by a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes.

Timber land is valued according to a schedule prepared by the Department of Revenue for the Timber Tax law, chapter 84.33 RCW.

When are taxes due on classified lands?
Land which is classified as open space, farm and agricultural, or timber land is assessed at its current use value and placed on the assessment rolls in the year following the year of application. Taxes on classified land are due and payable in the year following the year the land was valued at its current use and placed on the assessment rolls.

How long does the classification last?
The land continues in current use classification until a request for removal is made by the owner, the use of land no longer complies, or the ownership has changed and the new owner has not signed a Notice of Continuance. The notice of removal is recorded with the county auditor in the same manner as the recording of state tax liens on real property. Additional tax, interest, and penalties will apply if the land is removed and the removal does not meet one of the exceptions listed in RCW 84.34.108(6).

How do I withdraw from classification?
If intending to withdraw all or a portion of the land from classification after 10 years, the owner must give the county assessor two years prior notice. This notice can be filed after the eighth assessment year of the initial 10-year classification period. If a portion of a parcel is removed from classification, the remaining portion must meet the requirements of original classification unless the remaining parcel has different income criteria.

What happens after I file a request to withdraw?
Upon receipt of a request for withdrawal, the assessor notifies the granting authority that originally approved the classification, and, when two years have elapsed, the assessor withdraws the land from classification. The land withdrawn from classification is subject to an additional tax equal to the difference between the tax paid on the current use value and the tax that would have been paid on that land had it not been classified. The additional tax is payable for the last seven years, plus interest at the same rate as charged on delinquent property taxes.
What happens if the classified land is sold or transferred?
When classified land is sold or transferred, the seller or transferor becomes liable at the time of sale for the additional tax, interest, and penalty unless the new owner(s) signs the Notice of Continuance which is attached to or shown on the real estate excise tax affidavit. The county auditor cannot accept an instrument of conveyance on any classified land unless the Notice of Continuance has been signed or the additional tax, interest, and penalty has been paid. The assessor determines if the land qualifies for continued classification.

How are taxes assessed if my property is classified for only part of a year?
Assessed valuation before and after removal of classification will be listed and allocated according to that part of the year to which each assessed valuation applies.

If the assessor removes my land from classification, may I appeal?
Within 30 days after the land is removed from classification, the assessor must notify the owner in writing explaining the reasons for removal. The owner may file an appeal of the removal from classification to the county board of equalization on or before July 1 of the year of the determination, or within 30 days of the date the notice was mailed by the assessor, or within a time limit of up to 60 days adopted by the county legislative authority, whichever is later.

What if the additional taxes are not paid?
Any additional tax, applicable interest, and penalty become a lien on the land at the time the land is removed from classification. This lien has priority over any other encumbrance on the land. Such a lien may be foreclosed upon expiration of the same period after delinquency in the same manner as delinquent real property taxes.

What is done with the additional tax, interest, and penalty I pay on classified land?
Upon collection, the additional tax is distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. The applicable interest and penalties are distributed to the county’s current expense fund.

Upon removal from classification, what taxes are due?
At the time the land is removed from classification, it becomes subject to any additional tax, applicable interest, and penalty that are due and payable to the county treasurer within 30 days after the owner is notified.
Under what circumstances can my property be removed from classification without additional tax, interest, and penalty?
The additional tax, applicable interest, and penalty are not imposed if the removal from classification results solely from one of these actions:

1. Land is transferred to a government entity in exchange for other land located within the state of Washington.

2. Land is taken through the exercise of the power of eminent domain, or land is sold or transferred to an entity having the power of eminent domain after receiving notification in writing or by other official action that they anticipated such action.

3. Land use changes because of a natural disaster.

4. The present use of the land is disallowed because of an official action by an agency of the state, county, or city.

5. Land is transferred to a church that qualifies for an exemption under RCW 84.36.020.

6. Property interests are acquired by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for conservation purposes.

7. Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f), on which housing for employees and/or principal place of residence is sited.

8. Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.

9. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.

10. The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040.

11. The sale or transfer of land within two years after the death of an owner who held at least a 50 percent interest in the land if the land has been assessed and valued as designated forest land under chapter 84.33 RCW, or classified under chapter 84.34 RCW continuously since 1993.

12. Removal of land because it was classified in error, by the granting authority, through no fault of the owner.

How do I change the classification of my property?
Land may be reclassified, upon request by the owner, subject to all applicable qualifications for each classification, without additional tax, interest, and penalty for the following:

1. Land classified as farm and agricultural land may be reclassified to timber land; timber land may be reclassified to farm and agricultural land.

2. Land classified as either farm and agricultural land or timber land under chapter 84.34 RCW, or forest land under chapter 84.33 RCW may be reclassified to open space land.

3. Land classified as farm and agricultural land or timber land may be reclassified to forest land under chapter 84.33 RCW.

4. Land previously classified as farm and agricultural land may be reclassified to open space land as "farm and agricultural conservation land" and subsequently be reclassified back to farm and agricultural land.

Applications for reclassification are acted upon in the same manner as approvals for initial classification. The county assessor approves all applications for farm and agricultural classifications and reclassifications. The granting authority approves all land classifications or reclassifications for timber land and open space land. Land less than 20 acres being reclassified into farm and agricultural land from open space "farm and agricultural conservation land," timber land, or forest land may have the income requirements deferred for a period of up to five years from the date of the reclassification.
Is supporting information required for continued classification?
The assessor may require the owner of classified land to submit data regarding the use of the land, productivity of typical crops, income and expense data, and similar information regarding continued eligibility.

Laws and Rules
It is helpful to read the complete laws, Revised Code of Washington, chapter 84.33 and 84.34 (RCW) and rules, Washington Administrative Code, chapter 458-30 (WAC) to understand requirements of the classifications and the tax liabilities incurred.

Need More Information?
Requirements and the manner for making the application for current use is available at the county assessor’s office.

For general information contact:
- Department of Revenue,
  Property Tax Division
  P. O. Box 47471
  Olympia, Washington 98504-7471
  (360) 534-1400
- Website dor.wa.gov
- Telephone Information Center
  1-800-647-7706
- To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715.
- Teletype (TTY) users please call 1-800-451-7985.
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