### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator: Joshua Fleischmann</td>
<td>7/14/2014</td>
<td></td>
<td>7/22/14</td>
<td>Natural Resources Committee</td>
</tr>
<tr>
<td>Division</td>
<td>7/14/2014</td>
<td></td>
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<tr>
<td>Dept. Head:</td>
<td>7/14/2014</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Prosecutor</td>
<td></td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Executive: Jack Louws</td>
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</table>

**TITLE OF DOCUMENT:** Forestry Advisory Committee No net-loss of forest land memorandum to County Council.

**ATTACHMENTS:**
1. Memo to Council
2. No net-loss of forest land memo

**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.)

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: Whatcom County Council
FROM: Joshua Fleischmann, Planner
THROUGH: Mark Personius, Long Range Planning Manager
DATE: July 14, 2014
SUBJECT: No net-loss of forest land

The Forestry Advisory Committee (FAC) was formed by the County Council with the purpose of providing review and recommendations to the Whatcom County Council on issues that affect the forestry industry.

Of primary concern to the FAC is the loss of forest lands, specifically working forests. The attached memo from the FAC details the concern of the committee with regards to the loss of forest land, how much land has been removed from the forest land base and measures that can be taken to achieve no net-loss of working forests.
WHATCOM COUNTY

FORESTRY ADVISORY COMMITTEE (FAC)

Members
Gerry Millman
Herb Barker
Aubrey Stargell
Gordon Iverson
Rod Lofdahl
Greg Zender
Phil Cloward
Sharon Westergreen
Gary Jones
Max Perry
David Klingbiel

July 22, 2014

To: The Honorable Whatcom County Council

From: Gerry Millman, Forestry Advisory Committee Chair

Subject: No net-loss of forest land

The Forestry Advisory Committee (FAC) was formed by the County Council, pursuant to Ordinance # 2013-014, with the purpose of providing review and recommendations to the Whatcom County Council on issues that affect the forestry industry. The committee has been meeting since October 2013. At the first meeting, the committee had a discussion about the concerns of the forestry industry. A primary concern of the committee was the loss of forest lands, specifically working forests.

It is the desire of this committee to emphasize the difference between "forest land" and "working forests". The Growth Management Act defines forest lands as "land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance". Forest lands, as defined by Whatcom County, are "land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing" (emphasis added).
While the GMA definition touches on it, neither of the above definitions really explains the concept of "forest land" in a way that directly informs the forestry industry. The forestry industry relies on a working forest – that is, a forest which is actively managed to provide a balance of social, ecologic, and economic products and values. A stand of trees does not make a working forest; it is the use of those trees that creates the working forest that is essential to the forestry industry.

For this reason, the County’s definition of forest land does not provide the Council with informative data about the health of one of the County’s key industries. This is apparent when looking at the actual numbers: by the County’s definition, there has been only minimal change in the private and public (National Forest, state forest land, and county park) forest land base in Whatcom County in the last 20 years. Why? Because there are still trees there. However, in reality, the working forest land base has been reduced by approximately 64 percent in the same time period.

The bulk of this loss resulted from the Northwest Forest Plan. However, the past two decades has seen further reduction in land available for timber harvesting due to many other statutory factors, including, but not limited to, the Endangered Species Act, zoning changes, changes in land use designations, and changes in forest and fish regulations. Also, many timber stands have become preserves in the last two decades and are removed from the working forest base. Even within the working forest, there is now some land that cannot be harvested due to the required buffers and the reality that the remaining ground is simply too steep for forestry activity. As a result of this shrinking land base, most of the available land in private ownership has been harvested and is in a period of regrowth, further reducing the available commercial timber within the County.

A viable forest resource economy is dependent upon the presence of forest related industries and activities, including, but not limited to, processors, equipment sales and repairs, supply stores, and trucking firms. Because

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1 Certainly forests can be managed for particular exclusive objectives, such as wildlife habitat, watershed protection, or lumber. A “working forest,” however, is managed for multiple benefits. For instance, a diverse, actively managed, working forest will inevitably result in a diverse, healthy wildlife population.

2 Whatcom County zoned Rural Forestry and Commercial Forestry land constitutes roughly 223,500 acres, while National Forest land (excluding wilderness and recreation areas) constitutes roughly 208,000 acres in Whatcom County, for a total of roughly 431,500. Under the Northwest Forest Plan, the roughly 208,000 acres of National Forest land has not been available for harvest. An additional ~17,347 acres has essentially been removed from available forest land by zoning changes (~35 acres), reconveyance (~9,000 acres), ownership by conservation groups (~3,201), County Parks (~3,469), other County ownership (~63), State Parks (~665), State Department of Fish and Wildlife (~361), and the City of Bellingham (~553) resulting in a roughly 52% decrease in land available to support the timber industry. Industry representatives estimate an additional 25% of the remaining land (~51,538 acres) is removed from the available forest land due to buffers for streams, steep slopes, etc. If all of these factors are taken into account, they would cumulatively account for an approximate 64% reduction in the forest land base.
these activities and related industries depend on a stable forest product economy dependent on maintaining a stable forest land base, the Forestry Advisory Committee asks the Whatcom County Council to adopt a policy of No Net-Loss of working Forestry Resource Lands, similar to the policies in support of Agricultural Resource Lands.

Measures that can be taken to achieve no-net-loss of working forests may include:

- County Council decisions that consider the impacts to working forests
- Land use policies that encourage active management plans on Rural Forest lands
- Mitigation for loss of forest lands from productivity
- Land use policies that recognize the multiple values of working forests and respect the rights and responsibilities of private and public forest landowners
- Education programs that emphasize recognition that wood is a renewable natural resource
- Public and institutional education programs that promote the benefits of working forests
- Champion the implementation of the Northwest Forest Plan and completion of individual forest plans in order to re-balance the social, economic, and ecological benefits and products on a national forest specific basis
- Create a process to ensure that timber management plans submitted as part of the Open Space Timber Land Current Use tax program are implemented, or remove property from program
- Oppose downzoning of designated forest lands

The Forestry Advisory Committee appreciates your consideration.
TITLE OF DOCUMENT: 2014 Supplemental Budget Request #13

ATTACHMENTS: Ordinance, Memoranda & Budget Modification Requests

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.)

Supplemental #13 requests funding from the General Fund:

1. To appropriate $15,201 in the Sheriff’s Office to fund ballistic armor plates from grant proceeds.
2. To appropriate $2,000 in the Sheriff’s Office to fund marijuana eradication operations from grant proceeds.

Mental Health / Chemical Dependency Fund:

3. To appropriate $589,943 in Health to fund enhanced and expanded Behavioral Health Services.
4. To appropriate $33,062 in Health to fund Mental Health Court staff position.

Trial Court Improvement Fund:

5. To appropriate $10,000 to fund transfer for Courtroom minor remodeling.

Administrative Services Fund:

6. To appropriate $10,000 in Facilities to fund minor remodeling in Superior Courtroom Dept. 2.
7. To re-appropriate $130,000 in Information Technology for pictometry project.
ORDINANCE NO.
AMENDMENT NO. 13 OF THE 2014 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 2014 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</td>
<td>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td>Mental Health / Chemical Dependency Fund</td>
<td>623,005</td>
<td>-</td>
<td>623,005</td>
</tr>
<tr>
<td>Trial Court Improvement Fund</td>
<td>10,000</td>
<td>-</td>
<td>10,000</td>
</tr>
<tr>
<td>Administrative Services Fund</td>
<td>140,000</td>
<td>(65,500)</td>
<td>74,500</td>
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<tr>
<td>Total Supplemental</td>
<td>790,206</td>
<td>(82,701)</td>
<td>707,505</td>
</tr>
</tbody>
</table>

In addition, Exhibit B to the 2013-2014 Budget Ordinance entitled “Authorized Positions” should be amended to provide for the following FTE change:

- Add 1 FTE Mental Health Court Program Manager in Health

ADOPTED this ___ day of ____________________, 2014.

ATTEST:

Dana Brown-Davis, Council Clerk

Carl Weimer, Chair of the Council

APPROVED AS TO FORM:

( ) Approved        ( ) Denied

Jack Louws, County Executive

Date: ____________________
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund ballistic armor plates from grant proceeds</td>
<td>15,201</td>
<td>(15,201)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund marijuana eradication operations from grant proceeds</td>
<td>2,000</td>
<td>(2,000)</td>
<td>-</td>
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<tr>
<td><strong>Total General Fund</strong></td>
<td></td>
<td>17,201</td>
<td>(17,201)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Mental Health / Chemical Dependency Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>To fund enhanced and expanded Behavioral Health Services</td>
<td>589,943</td>
<td>-</td>
<td>589,943</td>
</tr>
<tr>
<td>Health</td>
<td>To fund Mental Health Court staff position</td>
<td>33,062</td>
<td>-</td>
<td>33,062</td>
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<tr>
<td><strong>Total Mental Health / Chemical Dependency Fund</strong></td>
<td></td>
<td>623,005</td>
<td>-</td>
<td>623,005</td>
</tr>
<tr>
<td><strong>Trial Court Improvement Fund</strong></td>
<td>To fund transfer for Courtroom minor remodeling</td>
<td>10,000</td>
<td>-</td>
<td>10,000</td>
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<tr>
<td><strong>Administrative Services Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
<td>To fund minor remodeling in Superior Courtroom Dept 2</td>
<td>10,000</td>
<td>(10,000)</td>
<td>-</td>
</tr>
<tr>
<td>Information Technology</td>
<td>To re-appropriate funding for pictometry project</td>
<td>130,000</td>
<td>(55,500)</td>
<td>74,500</td>
</tr>
<tr>
<td><strong>Total Administrative Services Fund</strong></td>
<td></td>
<td>140,000</td>
<td>(65,500)</td>
<td>74,500</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td></td>
<td>790,206</td>
<td>(82,701)</td>
<td>707,505</td>
</tr>
</tbody>
</table>
Memorandum

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: June 9, 2014
SUBJECT: Supplemental Budget ID #1874
SO Grant COB 2014 JAG – Ballistic Armor Plates

The attached Supplemental Budget requests budget authority to use funds from the City of Bellingham 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) to purchase enhanced ballistic protection plates for Sheriff’s Office Special Response Team.

Background and Purpose
The continued trend of violent attacks on innocent citizens at schools and public venues around the country reaffirms that law enforcement personnel must be prepared and equipped to deal with armed suspects in order to effectively mitigate threats to the public. It is essential that the Whatcom County Sheriff’s Office Special Response Team (SRT) members have sufficient ballistic resistant armor plates to protect them from advanced weapons including high caliber rifles.

The City of Bellingham will administer 2014 Edward Byrne Memorial Justice Assistant Grant and provide the Sheriff’s Office with $15,201 to upgrade current ballistic protection plates and purchase enhanced ballistic protection plates in an effort to improve officer safety.

Funding Amount and Source
Funding of $15,201 will be provided by the City of Bellingham 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds, CFDA No. 16.738.

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

Thank you.
Supplemental Budget Request

Sheriff Administration

Supp’l ID # 1874

**Expenditure Type:** One-Time Year 2 2014
**Add’l FTE** □ **Add’l Space** □ **Priority** 1

**Name of Request:** SO Grant COB 2014 JAG - Ballistic Armor Plates

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**Costs:**

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<td>4333.1673 Byrne JAG Grant</td>
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<td>6320.001 Office &amp; Op Supplies</td>
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<td><strong>Request Total</strong></td>
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**1a. Description of request:**

The continued trend of violent attacks on innocent citizens at schools and public venues around the country reaffirms that law enforcement personnel must be prepared and equipped to deal with armed suspects in order to effectively mitigate threats to the public. It is essential that the Whatcom County Sheriff's Office Special Response Team (SRT) members have sufficient ballistic resistant armor plates to protect them from advanced weapons including high caliber rifles.

The Sheriff's Office will use grant funds to upgrade the current ballistic plates and purchase enhanced ballistic plates in an effort to improve officer safety.

**1b. Primary customers:**
Whatcom County Sheriff's Office SRT members.

**2. Problem to be solved:**
The Sheriff's Office requires budget authority to purchase body armor with 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds.

**3a. Options / Advantages:**
The Sheriff's Office will use grant funds rather than local funds to purchase ballistic protection plates.

**3b. Cost savings:**
Cost savings of $15,201

**4a. Outcomes:**
Enhanced ballistic protection plates will be purchased.

**4b. Measures:**

**5a. Other Departments/Agencies:**
The City of Bellingham will administer the grant and provide $15,201 to Whatcom County Sheriff's Office to purchase body armor.

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

**6. Funding Source:**
$15,201 from City of Bellingham 2014 Edward Byrne Memorial Justice Assistance Grant Program Funds, CFDA No. 16.738.

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

[Signature]

Date: 6/9/14

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Monday, June 09, 2014
The attached Supplemental Budget requests revenue and expenditure budget authority for Washington State Patrol Marijuana Eradication Grant 2014.

Background and Purpose
The Washington State Patrol awarded $2,000 to Whatcom County Sheriff’s Office for marijuana eradication in 2014. Funds will be used to purchase operating supplies and small tools and equipment needed by the Northwest Regional Gang and Drug Task Force for use in marijuana eradication operations.

Funding Amount and Source
$2,000 Federal Domestic Cannabis Eradication/Suppression Grant (CFDA No. 16.000) from Washington State Patrol.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Administration

Supp1/CID # 1376 Fund 1 Cost Center 1003513005 Originator: Dawn Pierce

Expenditure Type: One-Time Year 2 2014 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: WSP Marijuana Eradication Grant 2014

Department Head Signature (Required on Hard Copy Submission) Date

Wednesday, June 18, 2014 Rpt: Rpt Suppl Regular

1a. Description of request:
Federal funds support annual activities associated with locating and eradicating illicit cannabis plants. The allocation for 2014 will be used to purchase operating supplies and small tools and equipment needed by the Northwest Regional Gang and Drug Task Force for use in marijuana eradication operations.

1b. Primary customers:
Members of the Northwest Regional Gang and Drug Task Force and citizens of Whatcom County.

2. Problem to be solved:
There is evidence that trafficking in controlled substances exists and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of Washington. The Washington State Patrol (WSP) provides funding to law enforcement agencies to support the locating and eradication of illicit production of marijuana. Detection, deterrence, and eradication activities support the goals and objectives of the Justice Assistance Grant (JAG) funded Northwest Regional Gang and Drug Task Force and are part of our multi-faceted strategy for combating gang-drug criminal activity in Whatcom County.

3a. Options / Advantages:
Grant funds will pay for supplies and equipment that would otherwise have to be purchased with local dollars or not purchased at all.

3b. Cost savings:
$2,000.00

4a. Outcomes:
Items needed will be purchased by September 30, 2014.

4b. Measures:

5a. Other Departments/Agencies:
N/A

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

6. Funding Source:
Funding from the Washington State Patrol. These funds originate from the Federal Domestic Cannabis Eradication/Suppression Grant, CFDA No. 16.000.
Memorandum

TO: Jack Louws, Executive
FROM: Regina Delahunt, Director
DATE: June 23, 2014
RE: Supplemental Budget Request – Behavioral Health Fund

Two supplemental budget requests are attached for your consideration. One establishes the Mental Health Court, and the second increases the authorization for behavioral health contract services. A portion of the funding for these supplemental budgets is from available revenues within the Behavioral Health Fund, with the remainder from available accumulated fund balance in that fund. As of the beginning of 2014 a $5.4 million fund balance has built up since the fund was established in 2009. Of that total $3 million is in reserve for construction purposes (the triage center) and the remainder is available to fund services in the community. The attached spreadsheet shows the long-term plan for this fund. This plan assumes that this year the program will reach full implementation and over the next few years we will work to maintain a sustainable program.

Mental Health Court: The design of the Mental Health Court has been under development since early in 2013. The program will consist of a Mental Health Court Program Manager as a Health Department employee. The manager will oversee the ongoing operations of the mental health court, will coordinate to work of court team members, provide direct service to court participants, and will ensure the integrity and quality of the program. This request is for a new full time position and necessary office equipment and training costs.

Behavioral Health Contract Services: This request for funding is to continue implementation of the strategic plan developed by the Health Department and supported by the Behavioral Health Revenue Advisory Committee (BHRAC). The BHRAC provides oversight and guidance of the expenditures of the Chemical Dependency/Mental Health Program Fund. The BHRAC recommended an increase in programs and services to the previously designed PITA (Prevention, Intervention, Treatment, and Aftercare) Continuum of Care using fund balance that has accumulated during the early years of this revenue source. The Committee strongly recommended that these new services begin this year. Some of these new services reflect a shift in funding from other funds or programs. Housing fund revenues have decreased in recent months, yet the need to continue to support two of our housing programs that serve those with mental health issues remains critical. Therefore, behavioral health funds are replacing some of the housing funds no longer available for these programs. The state statute allows for these behavioral health funds to support housing programs for people living with mental illness and/or substance use disorders. The other funding shift increases local behavioral health funding to the Jail Behavioral Health program. The North Sound Mental Health Administration (NSMHA) reduced their portion of state funding to us for this program because the state legislature decreased their funding for the service. As a result, our local funds will backfill this loss and allow the County to maintain the current jail staffing model.

Please let me know if you have any additional questions.
## Fund No 124
Chemical Dpndcy/ Mental Hlth

<table>
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<tr>
<th></th>
<th>Bud Yr 2014</th>
<th>Bud Yr 2015</th>
<th>Bud Yr 2016</th>
<th>Bud Yr 2017</th>
<th>Bud Yr 2018</th>
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<td>4,537,350</td>
<td>4,215,647</td>
<td>3,972,911</td>
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<tr>
<td>2014 Revenues Budgeted</td>
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<td>4,107,834</td>
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<tr>
<td>Total With Fd Bal</td>
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<td>8,080,745</td>
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<tr>
<td>Assumes 2% increase each year</td>
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<td></td>
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<tr>
<td>no increase in 15-18</td>
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<tr>
<td>2014 Supplemental Budgets:</td>
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<tr>
<td>Mental Health Court</td>
<td>33,062</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Additional Contract Services</td>
<td>589,943</td>
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<tr>
<td>End Balance</td>
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<td>4,537,350</td>
<td>4,215,647</td>
<td>3,972,911</td>
<td>3,810,720</td>
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<td>Reserve for construction</td>
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</table>
Supplemental Budget Request

Health Human Services

Status: Pending

Fund 124 Cost Center 124100 Originator: Christy Fowler

Expenditure Type: One-Time Year 2 2014 Add'l FTE Add'l Space Priority 1

Name of Request: Behavioral Health

<table>
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<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
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<tbody>
<tr>
<td>6610</td>
<td>Contractual Services</td>
<td>$589,943</td>
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</tbody>
</table>

Request Total $589,943

1a. Description of request:

Enhanced and expanded services planned for the remainder of 2014 require an increase in budget spending authority. These additional services are part of the strategic plan created by the Health Department and supported by the Behavioral Health Revenue Advisory Committee that provides oversight and guidance of the expenditures of the Chemical Dependency/Mental Health Program Fund. These programs and services have been added since the original budget was approved. The Advisory Committee recommended an increase in programs and services to the previously designed PITA (Prevention, Intervention, Treatment, and Aftercare) Continuum of Care since a fund balance was available to support them and the community need for them was well established. The Committee strongly recommended that these new services begin this year. Some of these new services reflect a shift in funding from other funds or programs. Housing fund revenues have decreased in recent months, yet the need to continue to support two of our housing programs remains critical. Therefore, behavioral health funds are replacing some of the housing funds no longer available for these programs. The state statute allows for these behavioral health funds to support housing programs for people living with mental illness and/or substance use disorders. The other funding shift increases local behavioral health funding to the Jail Behavioral Health program. The North Sound Mental Health Administration (NSMHA) reduced their portion of state funding to us for this program because the state legislature decreased their funding for the service. As a result, our local funds will backfill this loss and allow the County to maintain the current jail staffing model. NSMHA has increased Medicaid funding to us in the General Fund to account for this loss to be directed to other activities not noted here.

1b. Primary customers:

The four general areas of focus include:
1) Individuals living with mental illness in need of housing assistance, primarily in the form of programs and supportive services that promote sustainable housing. The programs receiving these funds are City Gate program, managed by Pioneer Human Services, and SUN House, managed by SUN Community Services.
2) Youth and their families experiencing behavioral health challenges that negatively impact their academic and social success. Funds are added to the seven school district contracts to ensure on-site mental health services.
3) Individuals who are struggling with Substance Use Disorders and require intensive treatment to promote recovery efforts. Funds will be distributed to our contracted Substance Abuse Treatment agencies in order to expand the array of services needed to support recovery.
4) Individuals incarcerated in our jail whose untreated/under-treated mental illness exacerbates their criminal behaviors.

2. Problem to be solved:

These services are being added to the existing Continuum of Care in order to fill gaps in current

Monday, June 23, 2014
Supplemental Budget Request

**Health Human Services**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>124</td>
<td>124100</td>
<td>Christy Fowler</td>
</tr>
</tbody>
</table>

The shift in funding from housing to behavioral health solves the problem of jeopardizing the sustainability of two comprehensive housing programs.

### 3a. Options / Advantages:
These additional programs and services will increase access to treatment and improve behavioral health outcomes.

### 3b. Cost savings:
Long-term savings are variable depending upon the services provided.

### 4a. Outcomes:
Each Evidence-based program (EBP) has its own expected positive outcomes. Programs and services that are not specifically EBPs also provide outcome data as required by contract.

### 4b. Measures:
1. Decrease in number of days homeless and increase in housing stability, as well as improved behavioral health stability
2. Increase in youth and their families utilizing treatment in their community, and experiencing improved behavioral health and academic success
3. Increase in the number of people accessing comprehensive substance abuse treatment
4. Improvement in behavioral health stability of incarcerated individuals, and connection to behavioral health services upon release.

### 5a. Other Departments/Agencies:
The Affordable Care Act (ACA) has increased the number of Whatcom County citizens who have Medicaid or Commercial insurance to cover some of the services previously supported by this fund. The County has begun to experience some cost savings as Medicaid and Commercial Insurance support outpatient mental health treatment. These savings allow us to divert previously budgeted monies to other programs and services. A need to support behavioral health treatment with local funds will continue for those individuals who require comprehensive services not otherwise covered. The magnitude of local support needed is still unknown given the new roll-out of the ACA. Our 2015-2016 budget will reflect this significant shift in health care delivery and payment.

By design, the Health Department is planning to increase program costs to exceed expected revenue in 2014. The undedicated fund balance allows for this, and helps provide funding and stability to programs that are transitioning to Medicaid funding in the near future.

### 5b. Name the person in charge of implementation and what they are responsible for:
Anne Deacon, Human Services Manager, and other Human Services division staff.

### 6. Funding Source:
1/10th of 1% Sales Tax dedicated funding
Supplemental Budget Request

Status: Pending

Health Human Services

Expenditure Type: Ongoing Year 2 2014 Add'l FTE Add'l Space Priority 1

Name of Request: Mental Health Court

Department Head Signature (Required on Hard Copy Submission) Date

<table>
<thead>
<tr>
<th>Costs</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<td>6320</td>
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<td><strong>Request Total</strong></td>
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</table>

1a. Description of request:
The design of the Mental Health Court in Whatcom County is in its final stages, with implementation targeted for year end. An additional FTE, a Mental Health Court Program Manager, is being requested who will have the responsibility of managing the programmatic elements of the Mental Health Court, as well as provide direct service to the court participants.

1b. Primary customers:
Whatcom County citizens enrolled in the Mental Health Court

2. Problem to be solved:
This is a new program that requires a qualified professional to manage the ongoing operations, coordinate the work of the court team members, provide direct service, and ensure the integrity and quality of the program.

3a. Options / Advantages:
An effective Mental Health Court will increase public safety and reduce the use of our criminal justice systems as adult offenders with serious mental illness will receive comprehensive care and judicial oversight.

3b. Cost savings:
Current data from the Washington State Institute for Public Policy shows that $6.75 in benefits will result for every $1 spent per participant.

4a. Outcomes:
Increased public safety due to reduced criminal behavior. Decreased criminal justice costs.

4b. Measures:
In 2014 measures will include the recruitment, hiring and training of a Mental Health Court Program Manager; final design of the Mental Health Court program; and initial implementation of the Court.

5a. Other Departments/Agencies:
Other

Monday, June 23, 2014

Rpt: Rpt Suppl Regular

17
5b. Name the person in charge of implementation and what they are responsible for:
Anne Deacon, Human Services Manager, will be responsible for supervision of the Mental Health Court Program Manager and the oversight of the Mental Health Court program design and initial implementation.

6. Funding Source:
Chemical Dependency Mental Health Program Fund
Supplemental Budget Request

Non-Departmental

Supp't ID # 1880  Fund 135  Cost Center 135100  Originator: M Caldwell

Expenditure Type: One-Time  Year 2014  Add'l FTE  Add'l Space  Priority 1

Name of Request: Tran to fund Court minor remodeling

X

Department Head Signature (Required on Hard Copy Submission)  Date

<table>
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<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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1a. Description of request:

Trial Court Improvement Fund Balance will be the funding source for minor remodeling requested by Judge Garrett for her courtroom. See related supplemental #1871, Remodel Space for Judicial Assistant and Court Reporter.

1b. Primary customers:

Court personnel

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

TCIF fund balance

Wednesday, June 25, 2014
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Michael Russell, Facilities Manager
RE: Supplemental Budget Request
DATE: June 23, 2014

Enclosed for your review is the Supplemental Budget Request form for the minor remodel in Judge Garrett’s courtroom.

- **Background and Purpose**
  This purposed work is being done at Judge Garrett’s request to improve the security and efficiency within her courtroom. The remodel will include the judicial assistant and the court clerks areas.

- **Funding Amount and Source**
  The funding amount needed for this project is $10,000.00 and will come from the Trial Court Improvement Fund.

- **Differences from Previous Contract**
  This project is a one-time agreement.

Please contact Michael Russell at extension 50575, if you have any questions or concerns regarding this request.

Enclosures
1a. Description of request:

This minor remodel will address some security and efficiency concerns that Judge Garrett has within her courtroom. This work will include modifications to the two workspaces in Superior Courtroom Dept. 2, One for the judicial assistant and the other for the court reporter.

1b. Primary customers:

Superior Courtroom Dept. 2

2. Problem to be solved:

This minor remodel will address some security and efficiency concerns that Judge Garrett has within her courtroom.

3a. Options / Advantages:

This minor remodel will address some security and efficiency concerns that Judge Garrett has within her courtroom.

3b. Cost savings:

The cost savings will be in efficiencies gained by this remodel.

4a. Outcomes:

The completion of this work will help to address Judge Garrett's security and efficiency concerns she has with her courtroom.

4b. Measures:

The completion of this work will address efficiency and security concerns Judge Garrett has with her courtroom.

5a. Other Departments/Agencies:

Whatcom County Facilities Management

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

Michael Russell

6. Funding Source:

Trial Court Improvement Fund
To: Jack Louws, County Executive  
From: Perry L. Rice, IT Manager  
Date: June 23, 2014  
Re: Supplemental Budget Request – Re-appropriate Funds for Pictometry

- **Background and Purpose**

In 2012, Whatcom County entered into an agreement (Contract # 201210015) with Pictometry International Corporation (Pictometry) to acquire digital aerial imagery of western Whatcom County. After evaluating the imagery that Pictometry flew in Spring of 2013, Whatcom County notified Pictometry that the dataset was not acceptable due to too much foliage on the trees and shrubs and payment was withheld. Pictometry performed a reflight in Spring of 2014.

The purpose of this request is to reappropriate funds in order to pay for the dataset under contract now that the reflight has been completed.

- **Funding Amount and Source**

This supplemental request is to reappropriate $130,000 of the 2013 regional Pictometry budget to 2014. The source of the funding is as follows:

<table>
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<th>Funding Source</th>
<th>Amount</th>
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<td>Regional Partners</td>
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<td>Whatcom County – General Fund</td>
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<td>Whatcom County – Public Works – Flood</td>
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<td>Whatcom County – Public Works – Road</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$130,000</strong></td>
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Please contact Perry Rice at extension 52511 or Mike Pelela at extension 50112 if you have any questions or concerns regarding this request.
1a. Description of request:

In 2012, Whatcom County entered into an agreement (Contract # 201210015) with Pictometry International Corporation (Pictometry) to acquire ortho and oblique imagery of western Whatcom County to add to the existing 2004, 2008 and 2010 datasets. This is a regional cost sharing effort with 15 local government and tribal partners. Interlocal agreements are in place with all of our regional partners.

After evaluating the imagery that Pictometry flew in Spring of 2013, Whatcom County notified Pictometry that the dataset was not acceptable due to too much foliage on the trees and shrubs and payment was withheld. Pictometry performed a reflight in Spring of 2014.

The purpose of this request is to reappropriate funds in order to pay for the dataset under contract now that the reflight has been completed.

1b. Primary customers:

Primary Whatcom Co. Departments: Public Works & Planning and Development Services
Secondary Whatcom Co. Departments: Assessor’s Office, Health, Sheriff’s Office, Treasurer's Office
Regional Partners: Cities, Tribes and other local jurisdictions.

2. Problem to be solved:

Funding needs to be reappropriated in the 2014 budget. 2013 budget authority was not used since the imagery provided from the Spring 2013 flight was not accepted and payment was withheld. A partial reflight was completed in Spring 2014.

Whatcom County departments and regional partners depend on "current" aerial imagery for critical governmental operations:
- Landuse planning and enforcement
- Road construction planning and maintenance
- Asset management
- Property appraisals
- Law enforcement situational awareness
- Onsite septic system permitting
- Court exhibits
- Public presentations

Ideally, aerial imagery would be acquired every 2-3 years to support the above operations. As imagery ages, it becomes less useful.
Supplemental Budget Request  

**Administrative Services** | **Information Technology**  
---|---  
**SuppI ID #** 1737 | **Fund** 507  
**Cost Center** 507102 | **Originator:** Perry Rice  

| 3a. **Options / Advantages:** |  
| Whatcom County is under contract with Pictometry. |  

| 3b. **Cost savings:** |  
| The Whatcom Regional Pictometry cost sharing partnership is saving Whatcom County $80,000. |  

| 4a. **Outcomes:** |  
| Updated imagery from the Spring 2013 and Spring 2014 re-filigbt has been received from Pictometry. |  

| Staff in PDS & PW primarily, but also the Sheriff’s Office, Assessor’s Office, Health Department, Treasurer and AS will be provided with access to the imagery in 2014. Imagery will be provided to our regional partners on the same schedule. |  

| 4b. **Measures:** |  
| Updated ortho and oblique imagery delivered from vendor. |  

| Distributing the imagery to regional partners. |  

| Providing access to the imagery to county departments. |  

| 5a. **Other Departments/Agencies:** |  
| AS Division of Information Technology will assist users in PDS & PW (Also, Health, Sheriff’s Office, Assessor’s Office, Treasurer’s Office and other interested departments) with access to the imagery, software configuration and training. |  

| 5b. **Name the person in charge of implementation and what they are responsible for:** |  
| Whatcom County will be partnering with leads from the cities, tribes and other local jurisdictions. |  

| 6. **Funding Source:** |  
| Interlocal agreements with the cities, tribes and other local jurisdictions are in place for $80,000 in cost sharing. The remaining $50,000 is funded by transfers from the following funds: $20K GF, $15K Road, $15K Flood. Other local jurisdictions have already prepaid $24,500 and the county funds have entirely prepaid their $50,000. |
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>7/22/14</td>
<td>7/22/14</td>
<td>FCZD Board of Supervisors</td>
</tr>
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</table>

**TITLE OF DOCUMENT:**

Construction Inspection Services for Beachway Drive & Fern/Park Stormwater Improvements Project

**ATTACHMENTS:**
1. Memo
2. Contract Information Sheet
3. Contract and related exhibits

**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.)

Land Development and Engineering Services will provide construction inspection support services for the Beachway Drive & Fern/Park Stormwater Improvements project

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

THROUGH: Frank M. Abart, Public Works Director

FROM: Gray Stoyka, LHG, Natural Resources Manager
       Kirk N. Christensen, P.E., Stormwater Manager

RE: Contract for Construction Inspection Services for Beachway Drive & Fern/Park Stormwater Improvement project

DATE: June 23, 2014

Please find attached for your review and approval two (2) originals of a contract for services between Land Development and Engineering Services, LLC, and Whatcom County for construction inspection services related to the Beachway Drive & Fern/Park stormwater improvement project.

- **Background and Purpose**
  Land Development and Engineering Services will provide construction inspection services for the Beachway Drive & Fern/Park Stormwater Improvements project. Due to a busy construction season, County staff is not available to provide inspection services. The improvements include installation of stormwater facilities that are complex. Most of the construction is within the county right of way but a portion is located within easements on private properties.

  Land Development and Engineering Services was chosen through a competitive selection process.

- **Funding Amount and Source**
  This contract in the amount of $37,440 is funded by BBWARM Funds 2014 base budget (cost center 169250, work order 18593).

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

Attachments
**WHATCOM COUNTY CONTRACT**

**INFORMATION SHEET**

**Originating Department:** Public Works-Stormwater

**Contract or Grant Administrator:** Kraig Olason, Senior Planner

**Contractor's / Agency Name:** Land Development and Engineering Services, Inc

---

**Is this a New Contract?**

- Yes
- No

**Is this a grant agreement?**

- Yes
- No

If yes, grantor agency contract number(s) ________________ CFDA #

---

**Is this a 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 (RFQ 13-01) Cost Center: 169250

---

**Is this agreement excluded from E-Verify?**

- Yes
- No

If no, include Attachment D Contractor Declaration form.

---

**Professional services agreement for certified/licensed professional**

- Contract less than $100,000
- Contract work is for less than 120 days
- Interlocal Agreement (between Govt's)

---

**Contract Amount:**

$**37,440**

This Amendment Amount:

$  

Total Amended Amount:

$  

---

**Summary of Scope:**

Land Development and Engineering Services will provide construction inspection services for the Beachway Drive & Fern/Park Stormwater Improvement

---

**Term of Contract:**

Expiration Date: January 31, 2015

---

**Contract Routing:**

1. Prepared by: R. McConnell  
   Date: 06/27/14
2. Atty. review/signed: Daniel L. Gibson  
   Date: 07/01/14
3. AS Finance reviewed: bbennett  
   Date: 07/02/14
4. IT reviewed if IT related:  
   Date:
5. Contractor signed:  
   Date: 7-7-14
6. Submitted to Exec Office:  
   Date: 7-10-14
7. Council approved (if necessary):  
   Date:
8. Executive signed:  
   Date:
9. Original to Council:  
   Date:
CONTRACT FOR SERVICES
CONSTRUCTION INSPECTION SERVICES FOR
BEACHWAY DRIVE & FERN/PARK STORMWATER IMPROVEMENTS PROJECT

LAND DEVELOPMENT ENGINEERING & SURVEYING, INC., hereinafter called Contractor, and Whatcom County Flood Control Zone District, 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 10
- Exhibit B (Compensation), pp. 11 to 11
- 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 23rd day of July, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of January, 2015.

The general purpose or objective of this Agreement is to provide construction inspection services for the Beachway Drive and Fern/Park Stormwater Improvements Project in Birch Bay, 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 THIRTY-SEVEN THOUSAND, FOUR HUNDRED FORTY AND NO/100 DOLLARS ($37,440). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 24th day of July, 2014.

CONTRACTOR:

Land Development and Engineering Services, Inc.

Ramon Llanos, PE, Principal

STATE OF WASHINGTON )
) ss.
COUNTY OF WHATCOM  )

On this 24th day of July, 2014, before me personally appeared RAMON LLANOS to me known to be the PRINCIPAL of LAND DEVELOPMENT ENGINEERING & SURVEYING, INC., and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

TINA MOON
NOTARY PUBLIC in and for the State of Washington, residing at

My commission expires 12/12/2016.
WHATCOM COUNTY:
Recommended for Approval:

Frank M. Abart
Date
Public Works Director

Approved as to form:

Daniel L. Gibson
Date
Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County Flood Control Zone District:

By: __________________________
   Jack Louws, Whatcom County Executive
   Signator for the Flood Control Zone District

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 ____________________.

CONTRACTOR INFORMATION:

Land Development and Engineering Services, Inc.
Ramon Llanos, PE, Principal

Address:
5160 Industrial Place, Suite 108
Ferndale, WA 98264

Contact Name: Eugene Chebanenko
Contact Phone: 360.383-0620
Contact Email: Eugene@ldesinc.com
GENERAL CONDITIONS

Series 00-08: 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 County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:
The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no labor 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.

31.2 **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 commercial general liability insurance with the following minimums:
Property Damage - $500,000.00 per occurrence
Bodily injury - $1,000,000.00 per occurrence

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 noncontributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

a. Professional Liability - $1,000,000 per occurrence

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

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

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.
The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

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.
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.
Construction Services for
Beachway Drive & Fern/Park Stormwater Improvements Project

Background
This scope of work is for the construction phase of stormwater retrofit project. The project consists of installing a new high level system which will intercept upland water and convey it directly to Birch Bay as well as an upgraded low-level system which will convey stormwater to another outlet to Birch Bay. Work on the high-level system includes installation of a stormwater canister treatment vault, restoration of a portion of a stream, excavation, embankment and trench backfill, and stormwater piping. The low-level system includes incorporating existing street-side storm drains into an expanded system along Birch Bay Drive and Beachway Drive.

Purpose and Need for Construction Observation Services
It will be essential to have a capable onsite construction observer who can document work and ensure that the contractor executes the project per the bid documents.

Scope of Work
The work described above and in the following sections constitutes services to be provided by Land Development and Engineering Services, Inc. to the County.

Schedule and Budget
Construction phase services will be completed in a timely fashion as needed to keep the construction on schedule for completion by September 30, 2014. The attached Exhibit B (spreadsheet) gives the basis for the not-to-exceed estimate of $37,440 for this professional service. All work will be performed on a time and materials basis at the personnel and expense rates shown in Exhibit B.

Onsite Construction Observation Services
Work consists of onsite construction observation and related tasks including:

Subtask 1 Pre-Construction Activities
- Attend pre-construction meeting and project initiation/coordination meetings
- Review and become familiar with Bid Documents
- Coordinate with County staff and receive training on County record keeping requirements

Subtask 2 On-site construction observation (40 days)
- Daily reports
- Weekly reports
- Coordinate scheduling with Contractor and Engineer
• Attend project meetings
• Document Contractor employees and Subcontractor employees on site
• Document equipment on site
• Maintain a Project Diary
• Photo documentation – both preconstruction and during construction
• Document progress
• Document material quantities, sources, certification, testing
• Track Contractor’s schedule and Working Days
• Review all pay estimates
• Preparation of Force Account reports and other documentation as requested
• Maintain current “as-built” documentation in the field

Subtask 3 Project closeout procedures
• Assist with punch list and final acceptance of work
• Assist with record drawings
• Compile photo documentation and daily reports for electronic and print submittal

Subtask 4 Project Management
• Provide oversight for inspectors work products and performance
• Prepare monthly invoices and progress reports

DELIVERABLES FOR SCOPE OF WORK:

1. Daily & weekly reports
2. Construction observation photos
3. Project Diary
4. Submissions to Engineer as needed
## EXHIBIT "B"
(COMPENSATION)

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<th>Eng. Tech</th>
<th>PLS</th>
<th>Survey Tech</th>
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<td>$37,440</td>
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### Budget Narrative:
Contract amounts shall not exceed the total budget referenced (above). As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the hourly rates provided in the project budget (Exhibit B). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. Lodging and per diem shall not exceed the GSA rate for the location where services are provided. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Expense reimbursement requests must be accompanied by copies of paid invoices. Any work performed prior to the effective date or continuing after the completion date of the contract, unless otherwise agreed upon in writing, will be at the contractor's expense.
**CERTIFICATE OF LIABILITY INSURANCE**

**DATE (MM/DD/YYYY):** 4/8/2014

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFRMS 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**

Rice Insurance LLC  
1400 Broadway  
P.O. Box 639  
Bellingham, WA 98227

**INSURED**

Land Development Engineering & Surveying Inc  
5160 Industrial Place  
Ste 108  
Ferndale, WA 98248

**COVERAGES**

**CERTIFICATE NUMBER:** CL144923052  
**REVISION NUMBER:**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

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<td><strong>CANCELLATION</strong></td>
<td>Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.</td>
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**CERTIFICATE HOLDER**

Whatcom County Public Works-Stormwater  
201 Young Street #201  
Bellingham, WA 98225

**CANCELLATION**

**AUTHORIZED REPRESENTATIVE**

Jay Gossage/RMF

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

Additional Insured CG 8010 10/09 Attached
### ADDITIONAL COVERAGES

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BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

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SECTION II – LIABILITY COVERAGE is amended as follows:

1. BROAD FORM INSURED

SECTION II – LIABILITY COVERAGE, paragraph A.1. –WHO IS AN INSURED is amended to include the following as an insured:

d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, “insured” does not include any organization that:

(1) Is a partnership or joint venture; or
(2) Is an insured under any other automobile policy; or
(3) Has exhausted its Limit of Insurance under any other automobile policy.

Paragraph d. (2) of this provision does not apply to a policy written to apply specifically in excess of this policy.

e. Any organization you newly acquire or form, other than a partnership or joint venture, of which you own more than 50 percent of the voting stock. This automatic coverage is afforded only for 180 days from the date of acquisition or formation. However, coverage under this provision does not apply:

(1) If there is similar insurance or a self-insured retention plan available to that organization;
(2) If the Limits of Insurance of any other insurance policy have been exhausted; or
(3) To "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

2. EMPLOYEES AS INSUREDS

SECTION II – LIABILITY COVERAGE, paragraph A.1. –WHO IS AN INSURED is amended to include the following as an insured:

f. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".

g. An "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II – LIABILITY COVERAGE, paragraph A.1. –WHO IS AN INSURED is amended to include the following as an insured:

h. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured". However, such person or organization is an "insured":

(1) Only with respect to the operation, maintenance or use of a covered "auto";
(2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement, or the permit has been issued to you; and
(3) Only for the duration of that contract, agreement or permit

4. SUPPLEMENTARY PAYMENTS

SECTION II – LIABILITY COVERAGE, Coverage Extensions, 2.a. Supplementary Payments, paragraphs (2) and (4) are replaced by the following:

(2) Up to $3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
(4) All reasonable expenses incurred by the insured at our request, including actual loss of earnings up to $500 a day because of time off from work.

5. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II – LIABILITY, exclusion B.5. FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

SECTION III – PHYSICAL DAMAGE COVERAGE is amended as follows:

6. HIRED AUTO PHYSICAL DAMAGE

Paragraph A.4. Coverage Extensions of SECTION III – PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

a. You hire, rent or borrow; or
b. Your "employee" hires or rents under a written contract or agreement in that "employee's" name, but only if the damage occurs while the vehicle is being used in the conduct of your business, subject to the following limit and deductible:

A. The most we will pay for "loss" in any one "accident" or "loss" is the smallest of:

(1) $50,000; or

(2) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(3) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality, minus a deductible.

B. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.

C. Subject to the limit, deductible and excess provisions described in this provision, we will provide coverage equal to the broadest coverage applicable to any owned "auto" you own.

D. Subject to a maximum of $750 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss.

E. This coverage extension does not apply to:

(1) Any "auto" that is hired, rented or borrowed with a driver; or

(2) Any "auto" that is hired, rented or borrowed from your "employee".

For the purposes of this provision, SECTION V – DEFINITIONS is amended by adding the following:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

7. TOWING AND LABOR

SECTION III – PHYSICAL DAMAGE COVERAGE, paragraph A.2. Towing, is amended by the addition of the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

a. For private passenger type vehicles, we will pay up to $50 per disablement.

b. For "light trucks", we will pay up to $50 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.

c. For "medium trucks", we will pay up to $150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 – 20,000 pounds.

However, the labor must be performed at the place of disablement.

8. PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a., Coverage Extension of SECTION III – PHYSICAL DAMAGE COVERAGE, is amended to provide a limit of $50 per day and a maximum limit of $1,500
9. RENTAL REIMBURSEMENT

SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

a. We will pay up to $75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "accident" or "loss", to an "auto" for which we also pay a "loss" under Comprehensive, Specified Causes of Loss or Collision Coverages. We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."

b. Rental Reimbursement will be based on the rental of a comparable vehicle, which in many cases may be substantially less than $75 per day, and will only be allowed for the period of time it should take to repair or replace the vehicle with reasonable speed and similar quality, up to a maximum of 30 days.

c. We will also pay up to $500 for reasonable and necessary expenses incurred by you to remove and replace your tools and equipment from the covered "auto".

d. This coverage does not apply unless you have a business necessity that other "autos" available for your use and operation cannot fill.

e. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided under Paragraph 4. Coverage Extension.

f. No deductible applies to this coverage.

For the purposes of this endorsement provision, materials and equipment do not include "personal effects" as defined in provision 11.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay is $1,000.

11. PERSONAL EFFECTS COVERAGE

A. SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to $600 for "personal effects" stolen with the "auto."

The insurance provided under this provision is excess over any other collectible insurance.

B. SECTION V – DEFINITIONS is amended by adding the following:

For the purposes of this provision, "personal effects" mean tangible property that is worn or carried by an insured. “Personal effects” does not include tools, equipment, jewelry, money or securities.

12. ACCIDENTAL AIRBAG DEPLOYMENT

SECTION III – PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion for "loss" relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Any insurance we provide shall be excess over any other collectible insurance or reimbursement by manufacturer’s warranty. However, we agree to pay any deductible applicable to the other coverage or warranty.

13. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III – PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS, exception paragraph a. to exclusions 4.c. and 4.d. is deleted and replaced with the following:
Exclusion 4.c. and 4.d. do not apply to:

a. Electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment is permanently installed in the covered “auto” at the time of the “loss” and such equipment is designed to be solely operated by use of the power from the “auto’s” electrical system, in or upon the covered “auto” and physical damage coverages are provided for the covered “auto”; or

If the “loss” occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a $100 deductible.

14. LOAN / LEASE GAP COVERAGE

A. Paragraph C., LIMIT OF INSURANCE of SECTION III — PHYSICAL DAMAGE COVERAGE is amended by adding the following:

The most we will pay for a “total loss” to a covered “auto” owned by or leased to you in any one “accident” is the greater of the:

1. Balance due under the terms of the loan or lease to which the damaged covered “auto” is subject at the time of the “loss” less the amount of:
   a. Overdue payments and financial penalties associated with those payments as of the date of the “loss”,
   b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear,
   c. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease,
   d. Transfer or rollover balances from previous loans or leases,
   e. Final payment due under a “Balloon Loan”,
   f. The dollar amount of any unrepaired damage which occurred prior to the “total loss” of a covered “auto”,
   g. Security deposits not refunded by a lessor,
   h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered “auto”,
   i. Any amount representing taxes,
   j. Loan or lease termination fees; or

2. The actual cash value of the damage or stolen property as of the time of the “loss”.

An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the “loss”. This adjustment is not applicable in Texas.

B. ADDITIONAL CONDITIONS

This coverage applies only to the original loan for which the covered “auto” that incurred the loss serves as collateral, or lease written on the covered “auto” that incurred the loss.

C. SECTION V – DEFINITIONS is changed by adding the following:

As used in this endorsement provision, the following definitions apply:

“Total loss” means a “loss” in which the cost of repairs plus the salvage value exceeds the actual cash value.

A “balloon loan” is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.
15. GLASS REPAIR - WAIVER OF DEDUCTIBLE
Paragraph D. Deductible of SECTION III – PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:
No deductible applies to glass damage if the glass is repaired rather than replaced.

16. PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)
Paragraph D. Deductible of SECTION III – PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:
The deductible does not apply to "loss" caused by collision to such covered "auto" of the private passenger type or light weight truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as maximum loaded weight the "auto" is designed to carry while it is:
   a. In the charge of an "insured";
   b. Legally parked; and
   c. Unoccupied.
The "loss" must be reported to the police authorities within 24 hours of known damage.
The total amount of the damage to the covered "auto" must exceed the deductible shown in the Declarations.
This provision does not apply to any "loss" if the covered "auto" is in the charge of any person or organization engaged in the automobile business.

SECTION IV – BUSINESS AUTO CONDITIONS is amended as follows:

17. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS
SECTION IV– BUSINESS AUTO CONDITIONS, Paragraph B.2. is amended by adding the following:
If you unintentionally fail to disclose any hazards, exposures or material facts existing as of the inception date or renewal date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced.
However, you must report the undisclosed hazard of exposure as soon as practicable after its discovery, and we have the right to collect additional premium for any such hazard or exposure.

18. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS
SECTION IV – BUSINESS AUTO CONDITIONS, paragraph A.2.a. is replaced in its entirety by the following:
a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when it is known to:
   1. You, if you are an individual;
   2. A partner, if you are a partnership;
   3. Member, if you are a limited liability company;
   4. An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.
   To the extent possible, notice to us should include:
    (1) How, when and where the "accident" or "loss" took place;
    (2) The "insureds" name and address; and
    (3) The names and addresses of any injured persons and witnesses.

19. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US
SECTION IV – BUSINESS AUTO CONDITIONS, paragraph A.5., Transfer of Rights of Recovery Against Others to Us, is amended by the addition of the following:
If the person or organization has waived those rights before an "accident" or "loss", our rights are waived also.
20. HIRED AUTO COVERAGE TERRITORY

SECTION IV – BUSINESS AUTO CONDITIONS, paragraph B.7., Policy Period, Coverage Territory, is amended by the addition of the following:

f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the insured's responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

SECTION V – DEFINITIONS is amended as follows:

21. BODILY INJURY REDEFINED

Under SECTION V – DEFINITIONS, definition C. is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

COMMON POLICY CONDITIONS

22. EXTENDED CANCELLATION CONDITION

COMMON POLICY CONDITIONS, paragraph A.– CANCELLATION condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days prior notice of cancellation.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2, Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2, Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:
   a. Less than 52 feet long; and
   b. Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2, Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.

2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4, Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2, Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:
   a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

      Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:
      (i) Premises rented to you for a period of 7 or fewer consecutive days; or
      (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

      Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

      A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.
b. The last paragraph of subsection 2. Exclusions is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

2. Paragraph 6. under Section III - Limits Of Insurance is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:
   a. Any one premise:
      (1) While rented to you; or
      (2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or
   b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage) - Paragraph 9.a. of Definitions is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If Coverage C Medical Payments is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. Insuring Agreement of Section I - Coverage C - Medical Payments, Subparagraph (b) of Paragraph a. is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGE A AND B

1. Under Supplementary Payments - Coverages A and B, Paragraph 1.b. is replaced by the following:

b. Up to $3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under Section II - Who Is An Insured is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or
b. Premises or facilities rented by you or used by you; or

c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or

d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:

   (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;

   (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".

   (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:

      (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

      (b) The construction, erection, or removal of elevators; or

      (c) The ownership, maintenance, or use of any elevators covered by this insurance.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

   (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

   (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.

b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.

c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

d. "Bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate ADDITIONAL INSURED OWNERS, LESSEES OR CONTRACTORS endorsement issued by us and made a part of this policy.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

a. The following is added to Paragraph a. Primary Insurance:

If an additional insured’s policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured’s policy for damages we cover.

b. The following is added to Paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSURED- EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:

An additional insured under this endorsement will as soon as practicable:

a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;

b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in Section III - Limits of Insurance of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. WHO IS AN INSURED- INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOWSHIP/ MANAGERS/ EMPLOYEES

Paragraph 2.a.(1) of Section II - Who Is An Insured is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3 of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.
L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and

2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.
**TITLE OF DOCUMENT:**

Construction Support Services for Beachway Drive and Fern/Park Stormwater Improvements Project (Birch Bay)

**ATTACHMENTS:**

1. Memo
2. Contract Information Sheet
3. Contract and related exhibits

**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.)

Tetra Tech Inc. will provide construction support and survey services in Birch Bay for the Beachway Drive and Fern/Park Stormwater Improvements project including engineering oversight.
TO: The Honorable Jack Louws, County Executive  
Honorable Board of Supervisors of the Flood Control Zone District

FROM: Frank M. Abart, Public Works Director

THROUGH: Gary S. Stoyka, LHG, Natural Resources Program Manager  
Kirk N. Christensen, P.E., Stormwater Manager

RE: Construction Support Services Contract with Tetra Tech, Inc., for Beachway and Fern/Park Stormwater Improvements Project

DATE: July 9, 2014

Please find attached for your review and approval two (2) originals of a contract for services between Tetra Tech, Inc., and Whatcom County for construction support and survey services for the upcoming Beachway Drive and Fern/Park Stormwater Improvements project in Birch Bay.

- **Background and Purpose**
  Tetra Tech, Inc., will provide construction support and survey services in Birch Bay for the BBWARM District Beachway Drive and Fern/Park Stormwater Improvements project. This contract provides for engineering oversight through construction and project close-out.

  Tetra Tech was chosen through a competitive selection process (RFQ-13-01)

- **Funding Amount and Source**
  This contract in the amount of $50,924 will be funded by fees collected through the Birch Bay Watershed and Aquatic Resources Management District (cost center 169250, work order 18593).

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

Attachments
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works-Stormwater</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Kraig Olason, Senior Planner</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Tetra Tech, Inc.</td>
</tr>
</tbody>
</table>

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

- **Does contract require Council Approval?** Yes
  - **If No, include WCC**
  - *(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)*

- **Is this a grant agreement?** Yes
  - **If yes, grantor agency contract number(s):** __________________ CFDA # ______

- **Is this contract grant funded?** Yes
  - **If yes, associated Whatcom County grant contract number(s):** __________________

- **Is this contract the result of a RFP or Bid process?** Yes
  - **Contract**
  - **Direct letter invite (RFQ 13-01)**
  - **Cost Center:** 169250

- **Is this agreement excluded from E-Verify?** Yes
  - **If no, include Attachment D Contractor Declaration form.**

**Professional services agreement for certified/licensed professional**

- Contract for Commercial off the shelf items (COTS)
- Work related subcontract less than $25,000.
- Public Works - Local Agency/Federally Funded FHWA

**Contract Amount:** (sum of original contract amount and any prior amendments):

- **$50,924***
- **This Amendment Amount:**
- **$**
- **Total Amended Amount:**

**Summary of Scope:**

Tetra Tech, Inc., will provide construction support and survey services for the Beachway Drive & Fern/Park Stormwater Improvements project in Birch Bay.

**Term of Contract:** Expiration Date: December 31, 2015

**Contract Routing:**

1. Prepared by: R. McConnell  
2. Atty. review/signed:  
3. AS Finance reviewed: blennett  
4. IT reviewed if IT related:  
5. Contractor signed: ✓  
6. Submitted to Exec Office: ✓  
7. Council approved (if necessary):  
8. Executive signed:  
9. Original to Council:  

**Date:** 7/7/14  
**Date:** 7/10/14  
**Date:** 7/9/14  
**Date:** 7/10/14  
**Date:** 7/10/14  
**Date:** 7/10/14  
**Date:** 7/10/14  
**Date:** 7/10/14  
**Date:** 7/10/14  
**Date:** 7/10/14
Tetra Tech Inc., hereinafter called Contractor, and Whatcom County Flood Control Zone District, 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 10
- Exhibit B (Compensation), pp. 11 to 12
- 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 23rd day of July, 2014, 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 construction engineering oversight services for the Beachway Drive and Fern/Park 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 FIFTY THOUSAND, NINE HUNDRED TWENTY-FOUR AND NO/100 DOLLARS ($50,924). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 9th day of July, 2014.

CONTRACTOR:

Tetra Tech Inc.

Dave Servis, Vice President

STATE OF WASHINGTON

COUNTY OF KING

On this 9th day of July, 2014, before me personally appeared DAVE SERVIS to me known to be a VICE PRESIDENT of TETRA TECH, INC., and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

HUYEN D THOONG

State of Washington

My Appointment Expires Feb 6, 2018

Notary Public in and for the State of Washington, residing at Seattle, WA. My commission expires 02/06/2018.
WHATCOM COUNTY:
Recommended for Approval:

Frank M. Abart
Public Works Director

Approved as to form:

Daniel L. Gibbon
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  )
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 ______________________.

CONTRACTOR INFORMATION:

Tetra Tech Inc.
Dave Servis, Vice President
Address:
1420 Fifth Avenue, Suite 550
Seattle, WA 98101

Contact Name: Jerry Scheller
Contact Phone: 206-883-9414
Contact Fax: 206-883-9301
Contact Email: jerry.scheller@tetratech.com
GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

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

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

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

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

Series 30-39: Provisions Related to Administration of Agreement

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

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

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

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

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

31.1 **Ownership of Items Produced:**

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.

34.2 **Industrial Insurance Waiver:**

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 negligence 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.

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

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

37.1 **Administration of Contract:**
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.
The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County’s representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

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 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.

Contract for Construction Services: Beachway and Fern/Park Stormwater Improvements Project
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)

BEACHWAY DRIVE AND FERN/PARK STORMWATER IMPROVEMENTS PROJECT

Construction Services
June 24, 2014

The project includes engineering support for services during construction of the Beachway Drive and Fern/Park Stormwater Improvements project. This project includes the installation of the storm drain pipeline on Birch Bay Drive, Beachway Drive, Fern Street and Park Lane, two pipe outfalls to Birch Bay, Maple Street gully restoration, water quality treatment system, boat ramp removal and other associated project elements.

This scope of work describes the tasks and subtasks associated with engineering support services during construction of the Beachway Stormwater Improvements project. Survey support for, boundary survey and compiling as-built drawings are also included. This scope of services assumes a six month project duration. The following tasks include a description of the work involved and the associated deliverable(s) for each task.

TASK 1: CONSTRUCTION SUPPORT FOR STORM DRAIN PIPELINE

Engineering support for services during construction includes the following items:

1.1 Construction Oversight Assistance – Assist with review of contractor submittals including the following:
   - Implement and coordinate submittal process including submittal tracking, correspondence with contractor and maintenance of files.
   - Reviewing bid item submittals by contractor.
   - Review request for material authorization submitted by contractor.

1.2 RFI Review - Review 5 requests for information (RFI).

1.3 Modifications to Plans and Specifications – Prepare up to 2 modifications to plans and/or specifications.

1.4 Review daily inspector reports - Provide comments/concerns as applicable.

1.5 Construction Kickoff meeting - Two consultant representatives will attend a construction kick-off meeting.

1.6 Onsite Meetings - At least one Consultant representative will attend 6 onsite meetings with Whatcom County and Contractor staff. The schedule of the meeting will be determined during the construction period.

1.7 Phone Meetings - At least one consultant representative will participate by phone in 6, one-hour meetings, with Whatcom County and Contractor staff. The schedule of the meeting will be determined during the construction period.

1.8 Construction close-out meeting - At least one Consultant representative will attend a construction close-out meeting. The Consultant will review and provide comment on the punch-list developed by Whatcom County or the Project inspector.

Assumptions

- All administrative coordination and contract management activities with the Contractor will be performed by Whatcom County.
- The process for submitting Request For Approval of Material (RAM), RFI's, and change orders, will be discussed with the Contractor at the Pre-construction meeting.
- Reference to “Engineer” in the Project Specifications directing onsite Contractor operations during working periods are assumed to apply to Whatcom County or the project inspector.
- Engineering direction to the Contractor regarding engineering design issues will be through Whatcom County or the Project Inspector.
- Whatcom County or the Project Inspector will lead all meetings including developing the agenda and preparing meeting minutes.
• The processing time for RAM, RFI responses, and change orders will be determined with input from the contractor and Whatcom County at the pre-construction meeting.

Deliverables
• Review up to 40 contractor submittals for 72 bid items.
• Review up to 5 RFI submittals.
• Process and document up to 2 plan/specification modifications.
• Review and comment (as appropriate) on up to 40 daily inspector reports.
• Attend one construction kick-off meeting.
• Attend up to 6 on-site construction coordination meetings.
• Participate by phone in up to 6 construction coordination meetings.
• Attend one construction close-out meeting and a list of punchlist items based on visual inspection.

TASK 2: SURVEY SUPPORT FOR STORM DRAIN PIPELINE CONSTRUCTION
Survey support services for pre-construction and during construction will be provided by Wilson Engineering and includes the following items:

2.1 Prepare precise boundary resolutions for the purposes of locating property line for construction:
• Monument west property corner on the south side of Birch Bay Drive for Parcel No. 405124 343105 (Thompson)
• Parcel No. 405124 343105 (Thompson) – west property line
• Parcel No. 405124 433045 (Roberts) – east property line (optional). This property line only needs to be located if the property owner does not grant a temporary easement.

2.2 Provide temporary staking of property lines prior to construction

2.3 Prepare as-built drawings as described below:
• Rims and inverts of all constructed/installed concrete structures, and the inverts of the visible ends of any installed culverts will be surveyed.
• Contract drawings will be amended with the words “Record Drawings” and show the as-surveyed elevation, labeled “As-Built”, for the located elements next to the design data on the electronic plan set.
• Structures located more than 1 foot horizontally from the plan location will be edited to reflect the actual location of the structure.

2.3 Provide construction staking - Two days of unspecified construction-staking, with suitable office support and planning/calculation time will be provided at the direction of Whatcom County. It is assumed that construction staking would require only two single-day trips to the project site.

Deliverables
• One property corner monumentation
• Locate and stake two property boundaries.
• As-built drawings in AutoCAD and PDF format.
• Construction staking for two, one-day trips.

TASK 3: PROJECT MANAGEMENT
Provide ongoing project management and coordination with the project team.

• Coordinate labor, meeting key scheduling milestones, and maintaining budget.
• Prepare monthly progress reports which include a summary table comparing amount expended and remaining budget.

Deliverables
• Monthly invoices and progress reports.
# EXHIBIT "B" / COMPENSATION

## Price Proposal

**Birch Bay Beachway Stormwater Improvements**

**Construction Support**

*Provide services during construction.*

Submitted to: Whatcom County Public Works - Stormwater Division (Attn: Craig Olson)

**Contract Type**: T&M

### Project Phases / Tasks

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<th>Task 1</th>
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<th>Task 3</th>
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<td>Project Management</td>
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### Pricing by Resource

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<td>880</td>
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<tr>
<td>Construction Support for Storm Drain Construction</td>
<td>3.6%</td>
<td>12,045</td>
<td>880</td>
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<td>Task 3</td>
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<tr>
<td>Project Administration</td>
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<td>880</td>
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### Price Summary / Totals

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<td>Technology Use Fee</td>
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<td>Total Price</td>
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**Budget Narrative**

Contract amounts shall not exceed the total budget referenced (above). As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the hourly rates provided in the project budget (Exhibit B). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. Lodging and per diem shall not exceed the GSA rate for the location where services are provided. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Expense reimbursement requests must be accompanied by copies of paid invoices. Costs of alcoholic beverages are not eligible for reimbursement. Reimbursement for air travel (if applicable) will be at coach rates. Any work performed prior to the effective date or continuing after the completion date of the contract, unless otherwise agreed upon in writing, will be at the contractor’s expense.

**Contract for Services - Exhibit B, Compensation**

Construction Services for Beachway and Fern/Park Stormwater Improvements Project
EXHIBIT "B2"
(SUMMARY OF HOURLY RATES FOR TETRA TECH STAFF BY CLASSIFICATION TITLE)

The range of hourly billing rates by classification title are provided in the table below.

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<th>CLASSIFICATION TITLE</th>
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EXHIBIT "C"

CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER 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
Aon Risk Insurance Services West, Inc.
Los Angeles CA office
707 Wilshire Boulevard
Suite 2600
Los Angeles CA 90017-0460 USA

INSURED
Tetra Tech, Inc.
1420 5th Avenue, Suite 550
Seattle WA 98101 USA

CONTACT
ACORD CERTIFICATE MAY
THIS IS TO CERTIFY
EXCLUSIONS
INDICATED. NOTWITHSTANDING ANY
the terms and conditions of the policy, certain
IMPORTANT: If
certificate
REPRESENTATIVE OR
BELOW.
CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY
THIS CERTIFICATE IS ISSUED AS
- AUTOS - AUTOS PROPERTY
DESCRIPTION OF OPERATIONS
CERTIFICATE NUMBER
Tetra Tech, Inc.
A~RD
INSURED INSURER
NAME: West, Inc.
Los Angeles CA
707 Wilshire Boulevard

INSURER(S) AFFORDING COVERAGE
INSURER A: National Union Fire Ins Co of Pittsburgh 19445
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

COVERAGES
CERTIFICATE NUMBER: 570054492277
REVISION NUMBER:

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| A  | X   | AUTOMOBILE LIABILITY |                |     |    | CA 327 52 65 | 10/01/2013 | 10/01/2014 | $2,000,000 |
|    |     |                                |                |     |    |              |            |            | EACH OCCURRENCE |
|    |     |                                |                |     |    |              |            |            | AGGREGATE |

EXCLUDED? N/A

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Tetra Tech Project: Construction Services For Beachway Drive and Fern/ Park Stormwater Improvements Design Project. County Public Works-Stormwater is included as Additional Insured in accordance with the policy provisions of the General Liability nd Automobile Liability policies.

CERTIFICATE HOLDER

Whatcom County Public Works-Stormwater
Attn: Remy McConnell, CAP-OM
322 N. Commercial St., Suite 301
Bellingham WA 98225 USA

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

Aon Risk Insurance Services West Inc.

©1988-2014 ACORD CORPORATION. All rights reserved.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ENDORSEMENT

This endorsement, effective 12:01 A.M. 10/01/2013 forms a part of Policy No. GL 5142623

LIMITED ADVICE OF CANCELLATION PROVIDED VIA E-MAIL TO ENTITIES OTHER THAN THE FIRST NAMED INSURED

This policy is amended as follows:

In the event that the Insurer cancels this policy for any reason other than non-payment of premium, and

1. the cancellation effective date is prior to this policy's expiration date;

2. the First Named Insured is under an existing contractual obligation to notify a certificate holder when this policy is canceled (hereinafter, the "Certificate Holder(s)") and has provided to the Insurer, either directly or through its broker of record, the email address of a contact at each such entity; and

3. the Insurer received this information after the First Named Insured receives notice of cancellation of this policy and prior to this policy's cancellation effective date, via an electronic spreadsheet that is acceptable to the Insurer;

the Insurer will provide advice of cancellation (the "Advice") via e-mail to each such Certificate Holders within [30] days after the First Named Insured provides such information to the Insurer; provided, however, that if a specific number of days is not stated above, then the Advice will be provided to such Certificate Holder(s) as soon as reasonably practicable after the First Named Insured provides such information to the Insurer.

Proof of the Insurer emailing the Advice, using the information provided by the First Named Insured, will serve as proof that the Insurer has fully satisfied its obligations under this endorsement.

This endorsement does not affect, in any way, coverage provided under this policy or the cancellation of this policy or the effective date thereof, nor shall this endorsement invest any rights in any entity not insured under this policy.

The following Definitions apply to this endorsement:

1. First Named Insured means the Named Insured shown on the Declarations Page of this policy.

2. Insurer means the insurance company shown in the header on the Declarations page of this policy.

All other terms, conditions and exclusions shall remain the same.

Form 107414
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ENDORSEMENT

This endorsement, effective 12:01 A.M. 10/01/2013 forms a part of

Policy No. CA 327 52 65

LIMITED ADVICE OF CANCELLATION PROVIDED VIA E-MAIL
TO ENTITIES OTHER THAN THE FIRST NAMED INSURED

This policy is amended as follows:

In the event that the Insurer cancels this policy for any reason other than non-payment of premium, and

1. the cancellation effective date is prior to this policy’s expiration date;

2. the First Named Insured is under an existing contractual obligation to notify a certificate holder when this policy is canceled (hereinafter, the “Certificate Holder(s)” and has provided to the Insurer, either directly or through its broker of record, the email address of a contact at each such entity; and

3. the Insurer received this information after the First Named Insured receives notice of cancellation of this policy and prior to this policy’s cancellation effective date, via an electronic spreadsheet that is acceptable to the Insurer,

the Insurer will provide advice of cancellation (the “Advice”) via e-mail to each such Certificate Holders within [30] days after the First Named Insured provides such information to the Insurer; provided, however, that if a specific number of days is not stated above, then the Advice will be provided to such Certificate Holder(s) as soon as reasonably practicable after the First Named Insured provides such information to the Insurer.

Proof of the Insurer emailing the Advice, using the information provided by the First Named Insured, will serve as proof that the Insurer has fully satisfied its obligations under this endorsement.

This endorsement does not affect, in any way, coverage provided under this policy or the cancellation of this policy or the effective date thereof, nor shall this endorsement invest any rights in any entity not insured under this policy.

The following Definitions apply to this endorsement:

1. First Named Insured means the Named Insured shown on the Declarations Page of this policy.

2. Insurer means the insurance company shown in the header on the Declarations page of this policy.

All other terms, conditions and exclusions shall remain the same.

Form 107414

107414 (03/11)
CULTURAL RESOURCE INVESTIGATIONS FOR THE BEACHWAY DRIVE & FERN/PARK STORMWATER IMPROVEMENTS PROJECT

Rosario Archaeology, LLC, has been selected to provide cultural resource investigations for the Beachway Drive & Fern/Park Stormwater Improvements project. Services will include construction monitoring and monitoring report preparation. Provisions are also included to address inadvertent discoveries of artifacts should they occur.
TO: The Honorable Jack Louws, Whatcom County Executive, and Honorable the Board of Supervisors of the Flood Control Zone District

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary S. Stoyka, LHG, Natural Resources Program Manager
       Kirk N. Christensen, P.E., Stormwater Manager

RE: Contract for Cultural Resource Investigations of the Beachway Drive & Fern/Park Stormwater Improvements Project

DATE: July 9, 2014

Please find enclosed for your review and signature two (2) originals of a contract between Rosario Archaeology, LLC, M.A., and Whatcom County Flood Control Zone District for Cultural Resource Monitoring for Beachway Drive & Fern/Park Stormwater Improvements Project on behalf of the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District.

- **Background and Purpose**
  Construction of Beachway Drive & Fern/Park Stormwater Improvements is a priority capital project in the Birch Bay Watershed that we are planning to construct this summer. In order to move forward with construction, cultural resource monitoring of project excavations is required. A Monitoring Report is a permit requirement and must be submitted at the conclusion of the project. This contract also includes funds and tasks to cover any immediate response to discovery of artifacts.

  The attached scope provides a listing and budget for all tasks required. Rosario Archaeology, LLC, was chosen through a competitive selection process (12-18).

- **Funding Amount and Source**
  This contract in the amount of $34,874.40 will be funded by BBWARM's 2014 base budget (cost center 169250, work order 18593).

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

Enclosures
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works-Stormwater</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Kraig Olason, Senior Planner</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Rosario Archaeology, 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

If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #

**Does contract require Council Approval?**
- Yes
- No

If No, include WCC (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?**
- Yes
- No

If yes, grantor agency contract number(s) __________ CFDA # __________

**Is this contract grant funded?**
- Yes
- No

If yes, associated Whatcom County grant contract number(s) __________

**Is this the contract the result of a RFP or Bid process?**
- Yes
- No

If yes, RFP and Bid number(s) (RFP 12-18) __________

**Cost Center:** 169250

**Is this agreement excluded from E-Verify?**
- No
- Yes

If no, include Attachment D Contractor Declaration form.

### Professional services agreement for certified/licensed professional

- Contract less than $100,000
- Contract work is for less than 120 days
- Interlocal Agreement (between Gov't's)

**Contract Amount:** (sum of original contract amount and any prior amendments):

\[ \$34,874.40 \] **Total Amended Amount:**

\[ \$ \] **Summary of Scope:**

Rosario Archaeology, LLC, has been selected to provide cultural resource investigations for the Beachway Drive & Fern/Park Stormwater Improvements project. Services will include construction monitoring and monitoring report preparation.

**Term of Contract:**

Expiration Date: January 31, 2015

<table>
<thead>
<tr>
<th>Contract Routing</th>
<th>Prepared by: R. McConnell</th>
<th>Date: 06/27/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Atty. Review/signed: Daniel L. Gibson</td>
<td>Date: 07/01/14</td>
<td></td>
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<tr>
<td>3. AS Finance reviewed:</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
<tr>
<td>4. IT reviewed if IT related:</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
<tr>
<td>6. Submitted to Exec Office:</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td>Date: 07/10/14</td>
<td></td>
</tr>
</tbody>
</table>
CONTRACT FOR SERVICES  
Cultural Resource Investigations for the Beachway Drive & Fern/Park Stormwater Improvements Project

ROSARIO ARCHAEOLOGY, LLC, hereinafter called Contractor, and Whatcom County Flood Control Zone District, 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 9.
Exhibit B (Compensation), pp. 10 to 10.
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 23rd day of July, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of January, 2015.

The general purpose or objective of this Agreement is for: cultural resources investigations and construction monitoring for the Beachway Drive & Fern/Park Stormwater Improvements project in Birch Bay, 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 THIRTY-FOUR THOUSAND, EIGHT HUNDRED SEVENTY-FOUR AND 40/100 DOLLARS ($34,874.40). The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 7th day of July, 2014.

CONTRACTOR:

ROSARIO ARCHAEOLOGY, LLC

Mark J. Hovezak, M.A.  
Archaeologist/Owner

STATE OF WASHINGTON  
COUNTY OF Whatcom  
ss.

On this 7th day of July, 2014, before me personally appeared MARK J. HOVEZAK to me known to be the OWNER of ROSARIO ARCHAEOLOGY, LLC, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 9/14/15.

Notary Public  
State of Washington  
ALEXANDER G. POWELL  
My Appointment Expires Apr 14, 2015
WHATCOM COUNTY:
Recommended for Approval:

[Signature]
Frank M. Abart  Date
Public Works Director

Approved as to form:

[Signature]
Daniel L. Gibson  Date
Chief Civil Deputy Prosecutor

Approved:
Accepted for Whatcom County Flood Control Zone District:

By: _____________________________
Jack Louws, Whatcom County Executive
Signator for the Flood Control Zone District

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:

ROSARIO ARCHAEOLOGY, LLC
Mark J. Hovezak, M.A., Owner

Address:
3754 Greenville Street
Bellingham, WA 98226

Contact Phone:  360.756.5207 (Office)
                360.303.1998 (Field)

Contact Email:  alabamamark@msn.com
GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension: 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...
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 negligence 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 they do not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

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 of this Agreement; or apply any individual or business to any program provided by this Agreement. 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.

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

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

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.
The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

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 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)

Mark J. Hovezak, M.A.
Rosario Archaeology LLC
3754 Greenville Street, Bellingham, WA 98226
360.756.5207 (office) 360.303.1998 (field)
alabamamark@m.##m.com

Cultural Resource Investigations for the Beachway Drive & Fern/Park Stormwater Improvements Project in Birch Bay
Whatcom County, Washington

Cultural resource management (CRM) consulting services for the Birch Bay Stormwater Priority Retrofit Project – Area 1 (BBSPRP1), specifically in relation to the Beachway Drive & Fern/Park Stormwater Improvements project, consist of construction monitoring and monitoring report preparation, with an additional phase of work potentially necessary if archaeological discoveries are made during monitoring. The cost estimate is based on a 40-day project work schedule, as estimated by Tetra Tech.

In the case of an archaeological discovery, consultation with the U.S. Army Corps of Engineers (Corps) would determine next steps related to archaeological testing or data recovery in order to comply with cultural resource laws. The cost of these next steps will need to be addressed once the nature and extent of the discovery has been determined. As a guideline, the cost of 5 days of field work related to discovery of cultural resources has been included in the following cost estimate. The actual number of field days required for archaeological fieldwork cannot be determined, however, until the nature and extent of a discovery is understood. Likewise, the time/cost of archaeological analyses, reporting, curation preparation, and curation cannot be estimated without knowing the nature and extent of the discovery.

A cost estimate for archaeological services related to 40 days of construction monitoring is attached on the following page. The cost estimate provides a task-oriented budgetary structure for accomplishing project CRM objectives.

Budget Narrative
Contract amounts shall not exceed the total budget referenced on the next page. As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the hourly rates provided in the project budget (Exhibit B). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. Lodging and per diem shall not exceed the GSA rate for the location where services are provided. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Expense reimbursement requests must be accompanied by copies of paid invoices. Any work performed prior to the effective date or continuing after the completion date of the contract, unless otherwise agreed upon in writing, will be at the contractor’s expense.
# Whatcom Co. Public Works BBSPRP1 Cultural Resource Investigation Budget Estimate

<table>
<thead>
<tr>
<th>BUDGET ITEM</th>
<th>DESCRIPTION</th>
<th>RATE</th>
<th>UNIT</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>Task 1a</td>
<td>Archaeological monitoring field superv/mgmt (archaeologist)</td>
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<td>Task 1b</td>
<td>Construction monitoring (technician)</td>
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<td>Task 2a</td>
<td>Field data compilation and photo filing/cataloging/selection supervision (archaeologist)</td>
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<td>Task 2b</td>
<td>Field data compilation and photo filing/cataloging/selection (technician)</td>
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<td>Monitoring report draft supervision/edit/revise/submission (archaeologist)</td>
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<td>Expenses</td>
<td>Monitoring mileage [based on 30 trips projected over 20 field days @ 46 miles/trip]</td>
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<td></td>
<td>Monitoring Subtotal = $28,745.60</td>
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<tr>
<td>Task 4a</td>
<td>Archaeological data recovery (archaeologist) [estimated @ 5 10-hr days fieldwork]</td>
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<td>Task 4b</td>
<td>Archaeological data recovery (technician) [estimated @ 5 10-hr days fieldwork]</td>
<td>40</td>
<td>50</td>
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<td>Data Recovery mileage [based on 5 trips]</td>
<td>0.56</td>
<td>230</td>
<td>128.80</td>
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<td>Task 5a</td>
<td>Laboratory processing and analysis supervision/admin (archaeologist)</td>
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<td>Task 5b</td>
<td>Laboratory analyses (Subcontracted specialist eg. Faunal analyst, archaeobotanist, radiocarbon dating, etc.)</td>
<td>100</td>
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<td>Task 5c</td>
<td>Laboratory analysis (technician)</td>
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<td>Expenses</td>
<td>Shipping, mileage, packaging, etc.</td>
<td>0.56</td>
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<td>Task 6a</td>
<td>Data analyses, graph, table and data production supervision (archaeologist)</td>
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<td>Task 6b</td>
<td>Data analyses, graph, table and data production (technician)</td>
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<tr>
<td>Task 7a</td>
<td>Site form update and report preparation supervision (archaeologist)</td>
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<tr>
<td>Task 7b</td>
<td>Site form update and report preparation supervision (technician)</td>
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<tr>
<td>Task 8a</td>
<td>Supervision of documents, photographs and materials preparation for curation and delivering to Burke Museum (archaeologist)</td>
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<td>Task 8b</td>
<td>Preparation of documents, photographs and materials for curation and delivering to Burke Museum (technician)</td>
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<tr>
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<td>Phase IV curation</td>
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</table>

Data Recovery Fieldwork Subtotal = $6,128.80

PROJECT TOTAL = $34,874.40

Mileage rate is based on January 1, 2014 GSA POV Mileage Reimbursement Rate
BBSPRP1 = Birch Bay Stormwater Priority Retrofit Project - Area 1 Project
Project Total subject to change depending on actual field time necessary to complete project and on field findings

Contract for Services – Rosario Archaeology, LLC
Cultural Resource Investigations for the Beachway Drive & Fern/Park Stormwater Improvements Project
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERRS 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
Rice Insurance LLC
1400 Broadway
P.O. Box 639
Bellingham WA 98227

INSURED
Mark Hovezak
DBA: Rosario Archaeology
3754 Greenville St
Bellingham WA 98226

COVERAGES
CERTIFICATE NUMBER: CL1451232700

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR. LTR. | TYPE OF INSURANCE | DED/SUM/BUR | INS. WVD | POLICY NUMBER | POLICY BEF. (MM/DD/YYYY) | POLICY EXP. (MM/DD/YYYY) | LIMITS
--- | --- | --- | --- | --- | --- | --- | ---
A | GENERAL LIABILITY | | | X | 26CC1824088 | 4/20/2014 | 4/20/2015 | EACH OCCURRENCE: $1,000,000
| | | | | | | | DAMAGE TO RENTED PREMISES (6a occurrence): $1,000,000
| | | | | | | | MED EXP (Any one person): $10,000
| | | | | | | | PERSONAL & ADV INJURY: $1,000,000
| | | | | | | | GENERAL AGGREGATE: $2,000,000
| | | | | | | | PRODUCTS - COM/P/OP AGG: $2,000,000
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Per accident): $2,000,000
| | | | | | | | BODILY INJURY (Per person): $250,000
| | | | | | | | BODILY INJURY (Per accident): $2,000,000
| | | | | | | | PROPERTY DAMAGE (Per accident): $25,000
| | | | | | | | EACH OCCURRENCE: $25,000
| | | | | | | | AGGREGATE: $2,000,000
| | | | | | | | WC STATUTORY LIMITS: $50,000
| | | | | | | | OTHER PROGRAM LIMITS: $50,000
| | | | | | | | E.L. EACH ACCIDENT: $1,000,000
| | | | | | | | E.L. DISEASE - EA EMPLOYER: $1,000,000
| | | | | | | | E.L. DISEASE - POLICY LIMIT: $1,000,000
B | Professional Liability | | | | 824387768002 | 4/20/2014 | 4/20/2015 | Unit | 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES
(Attach ACORD 101, Additional Remarks Schedule. If more space is required)

Whatcom County Public Works is Additional Insured per the attached form CG7635 0207.

CERTIFICATE HOLDER
Whatcom County Public Works
ATTN: Remy McConnell
322 N Commercial St
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
James Fritts/PRO

ACORD 25 (2010/05)
© 1988-2010 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

Per Written Contract

ADDITIONAL INSURED — BY WRITTEN CONTRACT, AGREEMENT OR PERMIT, OR SCHEDULE

The following paragraph is added to WHO IS AN INSURED (Section II):

4. Any person or organization shown in the Schedule or for whom you are required by written contract, agreement or permit to provide insurance is an insured, subject to the following additional provisions:

a. The contract, agreement or permit must be in effect during the policy period shown in the Declarations, and must have been executed prior to the "bodily injury", "property damage", or "personal and advertising injury".

b. The person or organization added as an insured by this endorsement is an insured only to the extent you are held liable due to:

(1) The ownership, maintenance or use of that part of premises you own, rent, lease or occupy, subject to the following additional provisions:

(a) This insurance does not apply to any "occurrence" which takes place after you cease to be a tenant in any premises leased to or rented to you;

(b) This insurance does not apply to any structural alterations, new construction or demolition operations performed by or on behalf of the person or organization added as an insured;

(2) Your ongoing operations for that insured, whether the work is performed by you or for you;

(3) The maintenance, operation or use by you of equipment leased to you by such person or organization, subject to the following additional provisions:

(a) This insurance does not apply to any "occurrence" which takes place after the equipment lease expires;
(b) This insurance does not apply to "bodily injury" or "property damage" arising out of the sole negligence of such person or organization;

(4) Permits issued by any state or political subdivision with respect to operations performed by you or on your behalf, subject to the following additional provision:

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of operations performed for the state or municipality.

c. The insurance with respect to any architect, engineer, or surveyor added as an insured by this endorsement does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

1. A watercraft while ashore on premises you own or rent;

2. A watercraft you do not own that is:
   (a) Less than 52 feet long; and
   (b) Not being used to carry persons or property for a charge;

3. Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

4. Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

5. "Bodily injury" or "property damage" arising out of:
   (a) the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
   (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

6. An aircraft you do not own provided it is not operated by any insured.

NON-OWNED WATERCRAFT AND NON-OWNED AIRCRAFT LIABILITY

Exclusion g. of COVERAGE A (Section I) is replaced by the following:

(g) "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

1. A watercraft while ashore on premises you own or rent;

2. A watercraft you do not own that is:
   (a) Less than 52 feet long; and
   (b) Not being used to carry persons or property for a charge;

3. Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

4. Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

5. "Bodily injury" or "property damage" arising out of:
   (a) the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
   (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

6. An aircraft you do not own provided it is not operated by any insured.

TENANTS' PROPERTY DAMAGE LIABILITY

When a Damage To Premises Rented To You Limit is shown in the Declarations, Exclusion j. of Coverage A, Section I is replaced by the following:

j. Damage To Property

"Property damage" to:

1. Property you own, rent, or occupy, including any costs or expenses incurred by you, or
any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another’s property;

(2) Premises you sell, give away or abandon, if the “property damage” arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations, or

(6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to “property damage” (other than damage by fire) to premises, including the contents of such premises, rented to you. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III — Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are “your work” and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a side-track agreement.

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

Paragraph 6. of LIMITS OF INSURANCE (Section III) is replaced by the following:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of “property damage” to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

The Damage To Premises Rented To You limit is the higher of the Each Occurrence Limit shown in the Declarations or the amount shown in the Declarations as Damage To Premises Rented To You Limit.

WHO IS AN INSURED — MANAGERS

The following is added to Paragraph 2.a. of WHO IS AN INSURED (Section II):

Paragraph (1) does not apply to executive officers, or to managers at the supervisory level or above.

SUPPLEMENTARY PAYMENTS — COVERAGE A AND B — BAIL BONDS — TIME OFF FROM WORK

Paragraph 1.b. of SUPPLEMENTARY PAYMENTS — COVERAGE A AND B is replaced by the following:

b. Up to $3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

Paragraph 1.d. of SUPPLEMENTARY PAYMENTS — COVERAGE A AND B is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to $500 a day because of time off from work.

EMPLOYEES AS INSUREDS — HEALTH CARE SERVICES

Provision 2.a.(1)(d) of WHO IS AN INSURED (Section II) is deleted, unless excluded by separate endorsement.

EXTENDED COVERAGE FOR NEWLY ACQUIRED ORGANIZATIONS

Provision 3.a. of WHO IS AN INSURED (Section II) is replaced by the following:

a. Coverage under this provision is afforded only until the end of the policy period.

EXTENDED “PROPERTY DAMAGE”

Exclusion a. of COVERAGE A (Section I) is replaced by the following:

a. “Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.
EXTENDED DEFINITION OF BODILY INJURY

Paragraph 3. of DEFINITIONS (Section V) is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

TRANSFER OF RIGHTS OF RECOVERY

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to a person or organization for whom you are required by written contract, agreement or permit to waive these rights of recovery.

AGGREGATE LIMITS OF INSURANCE — PER LOCATION

For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (Section I), and for all medical expenses caused by accidents under COVERAGE C (Section I), which can be attributed only to operations at a single "location":

Paragraphs 2.a. and 2.b. of Limits of Insurance (Section III) apply separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway, or right-of-way of a railroad.

INCREASED MEDICAL EXPENSE LIMIT

The Medical Expense Limit is amended to $10,000.

KNOWLEDGE OF OCCURRENCE

The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

Knowledge of an "occurrence", claim or "suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.

UNINTENTIONAL FAILURE TO DISCLOSE ALL HAZARDS

The following is added to Paragraph 6. Representations of COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

LIBERALIZATION CLAUSE

The following paragraph is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

10. If a revision to this Coverage Part, which would provide more coverage with no additional premium, becomes effective during the policy period in the state shown in the Declarations, your policy will automatically provide this additional coverage on the effective date of the revision.
**WHATCOM COUNTY COUNCIL AGENDA BILL**  
**NO.** 2014-263

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<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>Executive: J. Louws</td>
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<td>7/15/14</td>
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</table>

**TITLE OF DOCUMENT:**

Construction Contract Award: Beachway Drive & Fern/Park Stormwater Improvements Project

**ATTACHMENTS**

1. Memorandum to County Executive and County Council
2. Approval for Contract Award endorsed by the Executive
3. Project Exhibit: Summary and Vicinity Map
4. Project Cost Breakdown
5. Bid Tabulation
6. Low Bid Proposal

**SEPA review required?** ( X ) Yes ( ) No  
**SEPA review completed?** ( X ) Yes ( ) No  
**Should Clerk schedule a hearing?** ( ) Yes ( X ) No

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Approval of contract award to Len Honcoop Gravel, Inc., as low bidder in the amount of $520,923.39 for the Beachway Drive & Fern/Park Stormwater Improvements project in Birch Bay.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council)
TO: The Honorable Jack Louws, County Executive
   Honorable Board of Supervisors of the Whatcom County Flood Control Zone District

THROUGH: Frank M. Abart, Public Works Director

FROM: Gary Stoyka, LHG, Natural Resources Program Manager
       Kirk N. Christensen, P.E., Stormwater Manager

RE: Beachway Drive & Fern/Park Stormwater Improvements Project Construction
    Contract Award to Len Hencoop Gravel, Inc.

DATE: July 7, 2014

Please find enclosed for your review and approval a contract award package for the Beachway Drive & Fern/Park Stormwater Improvements project in Birch Bay. This packet consists of an agenda bill, project exhibit and vicinity map, project cost breakdown, bid tabulation, and the low bid proposal. Bid proposals for this project were opened at 2:30 p.m. on Tuesday, July 1, 2014.

- Requested Action
Public Works requests that the Whatcom County Council authorize the County Executive to enter into a contract for the subject project to the low bidder, Len Hencoop Gravel, Inc., (Hencoop) in the amount of $520,923.39 including all taxes. Please signify your approval to award this contract to Hencoop on the Approval for Contract Award page.

- Background and Purpose
Stormwater improvements in the Beachway Drive area of the Cottonwood neighborhood have been identified as a high priority in the Birch Bay Comprehensive Stormwater Plan. Improvements include channel restoration, storm filter cartridge vault, conveyance system upgrades and installation of two replacement outfalls.

- Funding Amount and Source
Expenditure for this project in the amount of $520,923.39 is authorized under BBWARM’s 2014 base budget for Birch Bay projects (cost center 169250, work order 18593).

Please contact Kraig at extension 50782 if you have any questions.

Enclosures

In accordance with W.C.C.3.08.230, I concur with this recommendation:

Brad Bennett, AS-Finance Director  2/10/14

Date
BEACHWAY DRIVE & FERN/PARK STORMWATER IMPROVEMENTS

APPROVAL FOR CONTRACT AWARD

Approval is hereby granted to award the Contract as follows:

Project: Beachway Drive & Fern/Park Stormwater Improvements
To: Len Honcoop Gravel, Inc.

in the amount of their bid proposal of $520,923.39 including all taxes.

Jack Louws
Whatcom County Executive
Approving Authority

Date
# BEACHWAY DRIVE & FERN/PARK STORMWATER IMPROVEMENTS

## Construction Year: 2014

### Project Summary:
This project is located in unincorporated Whatcom County in the Birch Bay Community in Section 24, T40, R1W in the Birch Bay watershed. Improvements will expand the area served by the stormwater conveyance system, improve conveyance capacity, relieve local flooding of the area and provide water quality treatment and stream restoration. Elements include replacement of two marine outfalls, establishment of two separate drainage systems: a high level system that takes upland water directly to the beach and a low-level system that conveys near shore stormwater to a separate outlet to the beach. A stormwater treatment vault will provide treatment to residential runoff. Stream restoration of a portion of the main upland drainage system and beach enhancement which consists of removal of a dilapidated boat launch structure is also included.

### Project Status:
Construction will begin in August and will be completed by September 30, 2014.

### Project Funding Sources:
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<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local</td>
<td>$756,593</td>
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</table>

### Environmental Permitting (Agencies/Permits):
- Land Disturbance and Clearing Permit-Whatcom County.
- Revocable Encroachment Permit-Whatcom County, Shorelines and Hydraulic Permit Approval (HPA), Corp Permit

### Right-of-Way Acquisition:
-0-

### County Forces:
N/A

---

[Map of project location with circled area highlighting the project location within Birch Bay community.]

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# Project Cost Break Down

**Beachway Drive & Fern/Park Stormwater Improvements**

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<thead>
<tr>
<th>Item</th>
<th>Whatcom County</th>
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<td>Design Engineering</td>
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<tr>
<td>Right-of-Way</td>
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<td>Construction Contract</td>
<td>$520,923</td>
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<td>Construction Engineering</td>
<td>$38,000</td>
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<td>Construction Inspection</td>
<td>$37,440</td>
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<td>Permitting, and Surveying</td>
<td>$33,000</td>
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<td>Archaeology</td>
<td>44,230</td>
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<td>Testing and Contingency</td>
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<td><strong>Total</strong></td>
<td><strong>$756,593</strong></td>
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<td>Mobilization</td>
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<td>Archaeological and Historical Salvage</td>
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<td>Stand-by-Time due to Archaeological Excavations</td>
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<td>Project Temporary Traffic Control</td>
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<td>Removal of Structures and Obstructions</td>
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<td>Gravel Borrow incl. haul</td>
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<td>Standing or Extra Excavation Class B incl. haul</td>
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**Total Schedule A - Public Property Items:** $341,347.60
### Schedule B - Private Property Items

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I hereby certify that the amounts tabulated herein are correct and accurately represent the amounts contained in the Engineer's estimate and the respective bid proposals opened at 2:30 P.M., July 1, 2014, for "Beachway Drive & Fern/Park Stormwater Improvements."

Kirk N. Christensen, P.E., Manager
Whatcom County Public Works-Stormwater

State of Washington

COUNTY OF WHATCOM

On this day personally appeared before me, Kirk N. Christensen, P.E., to me known to be the individual described herein and who executed the foregoing instrument this 7th day of July, 2014.

James P. Kanier
NOTARY PUBLIC
My commission expires 11-15-18
Gentlepersons:

This certifies that the Undersigned: has examined the location of the project site and the conditions of work; and has carefully read and thoroughly understands the Project Manual entitled: "Beachway Drive & Fern/Park Stormwater Improvements, Whatcom County, Washington," including the "Bid Procedures and Conditions," "Specifications and Conditions," "Contract Forms," and "Plans" governing the work embraced in this project, and the method by which payment will be made for said work. The Undersigned hereby proposes to undertake and complete the work embraced in this project in accordance with said contract documents, and agrees to accept as payment for said work, the schedule of lump sum and unit prices as set forth in the "Bid" below.

The Undersigned acknowledges that payment will be based on the actual work performed and material used as measured or provided for in accordance with the said contract documents, and that no additional compensation will be allowed for any taxes not included in each lump sum or unit price, and that the basis for payment will be the actual work performed and measured or provided for in accordance with the said Project Manual.
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<tr>
<th>ITEM NO.</th>
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BEACHWAY DRIVE & FERN/PARK STORMWATER IMPROVEMENTS
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**Schedule B**

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<td>per EA</td>
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<td>Description</td>
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<td>PSIPE KINNIKINNIK EACH (8-02)</td>
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<td>$280.62</td>
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<td>Unit Cost</td>
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<td>QUARRY SPALLS TON</td>
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<td>REPAIR EXISTING PUBLIC AND PRIVATE FACILITIES EST</td>
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**Total Schedule B**: \$84,226.53

**Bid Items 43 - 70**

**BID SUMMARY**

| Schedule A Total (including Sales Tax) | \$434,696.80 |
| Schedule B Total | \$84,226.53 |

**Total Bid: Schedule A and B**: \$518,923.39

Prospective bidders acknowledge and are responsible for obtaining a complete copy of 40 CFR Part 31 from the internet (see link below).  
[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=88e89f279d7c846f4231208c3827a3ee;rgn=div5;view=text;node=40%3A1.0.1.2.29;idno=40;cc=ecfr](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=88e89f279d7c846f4231208c3827a3ee;rgn=div5;view=text;node=40%3A1.0.1.2.29;idno=40;cc=ecfr)
NON-COLLUSION DECLARATION

BEACHWAY DRIVE & FERN/PARK STORMWATER IMPROVEMENTS

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:
That the undersigned person(s) firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

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

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

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

Firm Name: Len Hancoop Travel, Inc.
Address: 8911 Guadalupe Meridian
Lynden, WA 98264
Telephone: 360-354-4763
Contractor's WA Registration Number: LENHOGI12809
Contractor's WA UBI Number: 100-173-230
Contractor's WA Employment Security Department Number: 396042500
Contractor's WA Excise Tax Registration Number: 91-0940852

The Firm submitting this proposal is a: 
- Sole Proprietorship
- Partnership
- Corporation

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

President: Leonard M. Hancoop

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

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

CASHIER'S CHECK ☐ IN THE AMOUNT OF __________________________

CASH DOLLARS
☐ __________________________

CERTIFIED CHECK
COUNTY ☐ ($__________) PAYABLE TO WHATCOM

SURETY BOND ☒ IN THE AMOUNT OF 5% OF THE BID.

Receipt is hereby acknowledged by addendum(s) No.(s) 1, 2, & ______

SIGNATURE OF AUTHORIZED OFFICIAL(S)

(PROPOSAL MUST BE SIGNED) __________________________

Leonard M. Honcoop (Seal)

FIRM NAME: Len Honcoop, Gravel, Inc.

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this 1st day of July 2014, before me personally appeared

Leonard M. Honcoop to me personally known to be the person described

in and who executed the above instrument and who acknowledged to me the act of signing

thereof

This proposal form is not transferable and any alteration of the firm's name entered hereon
without prior written consent of Whatcom County will be cause for considering the proposal
irregular and for subsequent rejection of the bid.
KNOW ALL MEN BY THESE PRESENTS, that we, Len Honcoop Graveline of Lynden, Washington as principal, and the AMCO Insurance Company a corporation duly organized under the laws of the State of Iowa and having its principal place of business at Lynden in the State of Washington, as Surety, are held and firmly bound unto Whatcom County, a Municipal Corporation in the State of Washington, in the full and penal sum of five percent (5%) of the total bid amount appearing on the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, jointly and severally, firmly by these presents.

The condition of this bond is such that, whereas, the principal herein is herewith submitting his or its bid proposal for Beachway Drive & Fern/Park Stormwater Improvement bid proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the said bid proposal submitted by the said PRINCIPAL be accepted, and the contract be awarded to said PRINCIPAL, and if said PRINCIPAL shall duly make and enter into and execute said contract and shall furnish the performance bond as required by the bidding and contract documents within a period of seven (7) calendar days from and after said award, exclusive of the day of such award, then its obligation to pay the above-mentioned penal sum as liquidated damages shall be null and void, otherwise it shall remain and be in full force and effect.

SIGNED AND SEALED this 27th day of, June 2014.

Len Honcoop Graveline

Principal

By (Seal)

AMCO Insurance Company

Surety

By Daun K. Botta Pillo

Attorney-In-Fact

The Attorney-in-Fact who executes this bond on behalf of the surety company, must attach a copy of his power-of attorney as evidence of his authority.
Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation
Farmland Mutual Insurance Company, an Iowa corporation
Nationwide Agribusiness Insurance Company, an Iowa corporation
AMCO Insurance Company, an Iowa corporation
Allied Property and Casualty Insurance Company, an Iowa corporation
Depositors Insurance Company, an Iowa corporation

hereinafter referred to severally as the "Company" and collectively as the "Companies," each does hereby make, constitute and appoint:

PAUL D. KENNER
CHRISTINE M. KENNER
ROD J. STARKENBURG
DAUN K. BOTTAS PILLO
ROBERT N. HAGEDORN
ROBERTA L. GREEN
ANN M. WEBER
KAREN S. CRANE
MICHELE C. SMITH

LYNDEN WA

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

FIVE HUNDRED THOUSAND AND NO/100 DOLLARS

$500,000.00

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, agreements guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company:

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 13th day of February, 2014.

Terrance Williams, President and Chief Operating Officer of Nationwide Agribusiness Insurance Company and Farmland Mutual Insurance Company; and Vice President of Nationwide Mutual Insurance Company, AMCO Insurance Company, Allied Property and Casualty Insurance Company, and Depositors Insurance Company

ACKNOWLEDGMENT

STATE OF IOWA, COUNTY OF POLK: ss
On this 13th day of February, 2014, before me came the above-named officer for the Companies aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Companies aforesaid, that the seals affixed hereto are the corporate seals of said Companies, and the said corporate seals and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Companies.

Sandy Alitz
Notary Public
My Commission Expires March 24, 2017

CERTIFICATE

I, Robert W. Horner III, Secretary of the Companies, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Terrance Williams was on the date of the execution of the foregoing power of attorney the duly elected officer of the Companies, and the corporate seals and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary, and affixed the corporate seals of said Companies this 27th day of February, 2014.

Secretary

This Power of Attorney Expires: 05/18/15

BDJ 1/03-14) 00

06384
SIMILAR PROJECT’S REFERENCE FORM

The name of the Agency or Client for which the project was performed, including the address, phone number the name of the project manager:

Project Name: Cottonwood Neighborhood Damage Improvements
Agency or Client: Kitsap County Public Works
Project Manager’s Name: Craig Olson
Address: 322 N. Commercial St., Suite 301
Phone Number: 360-715-7450

Project Name: Silver Creek Improvements - West Tractary
Agency or Client: Kitsap County Public Works
Project Manager’s Name: Kirk Christensen
Address: 322 N. Commercial St, Suite 301
Phone Number: 360-715-7450

Project Name: Birch Bay Watershed Damage Improvements
Agency or Client: Kitsap County Public Works
Project Manager’s Name: Craig Olson
Address: 322 N. Commercial St, Suite 301
Phone Number: 360-715-7450
**Clearances**

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<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>Rud Brown</td>
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<td>Introduction</td>
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**Division Head:**

**Dept. Head:**

**Prosecutor:**

**Purchasing/Budget:**

**TITLE OF DOCUMENT:**

Ordinance amending WCC 2.03 Boards and Commissions

**ATTACHMENTS:**

**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.)

Ordinance amending Whatcom County code 2.03, Boards and Commissions - Appointment of noncouncilmembers to boards, commissions and committees.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

7/8/2014: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

AMENDING WHATCOM COUNTY CODE 2.03, BOARDS AND COMMISSIONS

WHEREAS, Whatcom County Code Section 2.03 sets forth guidelines for the appointment of councilmembers and non-councilmembers to boards, commissions, and committees; and

WHEREAS, citizens have indicated that the current application deadline in the County Code for Council-appointed boards, commissions, and committees does not allow sufficient time for the public to review the applications; and

WHEREAS, the current deadline in the County Code does not allow sufficient time for councilmembers to fully review and consider applications submitted after the publication of the Council packet; and

WHEREAS, the current deadline in the County Code does not allow sufficient time for councilmembers to contact and/or interview applicants pursuant to WCC 2.03.075 (A) and WCC 2.03.075 (B); and

WHEREAS, an amendment to Whatcom County Code 2.03 is necessary to change the application deadline for all applicants.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 2.03 is hereby amended as indicated in Exhibit A to this ordinance.

ADOPTED this _____ day of __________, 2014.

ATTEST:

__________________________
Dana Brown-Davis, Clerk of the Council

__________________________
Carl Weimer, Council Chair

APPROVED AS TO FORM:

☐ Approved ☐ Denied

__________________________
Civil Deputy Prosecutor

__________________________
Jack Louws, County Executive
EXHIBIT A

Chapter 2.03
BOARDS AND COMMISSIONS

2.03.060 Appointment of noncouncilmembers to boards, commissions and committees.
For appointment by the council of noncouncilmembers to those boards, commissions and committees performing either an administrative or a legislative function, the council shall publish vacancies on its website and include an application deadline of 4:00 p.m. on the day of the 10 a.m. on Tuesday of the week prior to the regularly scheduled council meeting at which nominations and possible vote to appoint are scheduled to occur. Councilmembers shall make nominations from the list of applicants at this same regularly scheduled council meeting. Nominations for appointment to any position having a residency requirement as to council district shall be made only by the councilmembers from the district or the councilmember at large. Appointment of the nominees shall occur by an affirmative roll-call vote by a majority of the entire council. In the case of only one applicant for a given vacancy, nomination and appointment by general consent may occur. (Ord. 2010-045 Exh. A; Ord. 2001-028 Exh. A; Ord. 95-006 Exh. A; Ord. 93-003 Attachment E (part); Ord. 91-030 (part)).
## TITLE OF DOCUMENT:
Resolution amending WCC 100.02 Flood Control Zone District Advisory Committee Vacancies and Whatcom County 100.06, Subzone advisory committee vacancies

## 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>
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</table>

**Summary Statement or Legal Notice Language:**
Resolution amending WCC 100.02 Flood Control Zone District Advisory Committee Vacancies and Whatcom County 100.06, Subzone advisory committee vacancies.

**Committee Action:**

**Council Action:**

7/8/2014: Introduced 7-0

**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.
RESOLUTION NO. _______
(RESOLUTION OF THE FCZD BOARD OF SUPERVISORS)

AMENDING WHATCOM COUNTY CODE 100.02, FLOOD CONTROL ZONE DISTRICT
ADVISORY COMMITTEE VACANCIES, AND WHATCOM COUNTY CODE 100.06,
SUBZONE ADVISORY COMMITTEE VACANCIES

WHEREAS, Whatcom County Code Sections 100.02.080 and 100.06.080 set forth
guidelines for the appointment of citizens to the Flood Control Zone District Advisory
Committee and all flood subzone advisory committees; and

WHEREAS, citizens have indicated that the current application deadline in the County
Code for Board of Supervisor-appointed advisory committees does not allow sufficient time
for the public to review the applications; and

WHEREAS, the current deadline in the County Code does not allow sufficient time for
board members to fully review and consider applications submitted after the publication of
the County Council packet; and

WHEREAS, amendments to Whatcom County Code Sections 100.02 and 100.06 by
the Whatcom County Council on behalf of the Whatcom County Flood Control Zone District
Board of Supervisors are necessary to change the application deadline for all advisory
committee applicants.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council, acting as the
Whatcom County Flood Control Zone District Board of Supervisors, that Whatcom County
Code 100.02 and 100.06 are hereby amended as indicated in Exhibit A to this resolution.

APPROVED this _____ day of __________, 2014.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL

Carl Weimer, Chair
Flood Control Zone District Board of Supervisors

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Page 1
EXHIBIT A

Chapter 100.02
FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE

100.02.080 Vacancies.

When a vacancy occurs as the result of a completed term, or due to the death, resignation, or unexcused absence from two consecutive regular meetings of the advisory committee, or if for any other reason a member is unable to fulfill the duties of membership, the vacancy will be filled by appointment of the Whatcom County flood control zone district board of supervisors.

Any person interested in serving on the advisory committee may be appointed by the board of supervisors to a list of alternate members for a period of six years. Alternate members shall be notified of each meeting of the advisory committee and encouraged to attend when possible.

When a mid-term vacancy occurs, the board may choose to solicit additional applications, or it may decide to fill the vacancy from the alternate list without soliciting additional applications if it determines that an alternate can fill the vacancy while maintaining the desired geographic and stakeholder diversity or the appropriate governmental representation on the committee.

When a vacancy occurs following a completed term, the board will solicit applications for the vacancy from the community as well as considering appointment from the alternate list.

The Whatcom County flood control zone district board of supervisors shall advertise a vacancy and include an application deadline of 4:00 p.m. on the day of 10 a.m. on Tuesday of the week prior to the regularly scheduled council meeting at which nominations and possible vote to appoint are scheduled to occur. Board members shall make nominations from the list of applicants and list of alternate members at this same regularly scheduled meeting. Appointment of the nominees shall occur by an affirmative roll-call vote by a majority of the entire board. In the case of only one applicant/alternate member for a given vacancy, nomination and appointment by general consent may occur. (Res. 2010-039 Exh. A; Res. 2009-027 Exh. A; Res. 2001-046; Res. 92-029 (part). Formerly 2.92.080).

Chapter 100.06
SUBZONE ADVISORY COMMITTEES

100.06.080 Vacancies.

When a vacancy occurs as the result of a completed term, or due to the death, resignation, or unexcused absence from two consecutive regular meetings of an advisory committee, or if for any other reason a member is unable to fulfill the duties of membership, the vacancy will be filled by appointment of the Whatcom County flood control zone district board of supervisors.

The Whatcom County flood control zone district board of supervisors shall advertise a vacancy and include an application deadline of 4:00 p.m. on the day of 10 a.m. on Tuesday of the week prior to the regularly scheduled council meeting at which nominations and possible vote to appoint are scheduled to occur. Board members shall make nominations
from the list of applicants and list of alternate members at this same regularly scheduled meeting. Appointment of the nominees shall occur by an affirmative roll-call vote by a majority of the entire board. In the case of only one applicant/alternate member for a given vacancy, nomination and appointment by general consent may occur.

If a position has remained vacant for more than 90 days due to a lack of qualified applications having been received, an applicant who has previously served on the advisory committee may be appointed to serve an additional term, notwithstanding any other provisions of this title. (Res. 2012-005 Exh. A; Res. 2010-039 Exh. A; Res. 2008-054 Exh. A).
**TITLE OF DOCUMENT:**
Resolution establishing policy for acronym use in documents submitted to Council

**ATTACHMENTS:**
Resolution

**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.)

This resolution establishes guidelines regarding the use of acronyms in documents prepared and submitted to the County Council.

**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.
RESOLUTION NO. ______

ESTABLISHING A POLICY FOR ACRONYM USE IN DOCUMENTS SUBMITTED TO THE COUNTY COUNCIL

WHEREAS, acronyms (words or abbreviations formed from the initial letters of a name or phrase) are commonly used in business and technical writing to avoid repetitive use of long, cumbersome names or phrases; and

WHEREAS, proper use of acronyms can enhance the reading process and foster greater comprehension and understanding of detailed information; and

WHEREAS, improper or over-use of acronyms can cause readers to become confused and disinterested; and

WHEREAS, unidentified or confusing acronyms can lead to a lack of clarity and may prevent citizens from becoming sufficiently aware of important issues, programs, and services; and

WHEREAS, transparency in government cannot occur without the use of plain language in all communications; and

WHEREAS, it is imperative that documents shared between Whatcom County agencies, departments, elected officials, and the public be clearly written and easily understood; and

WHEREAS, the County Council wishes to encourage the production and submission of documents that are concise and readable by establishing guidelines for the use of acronyms for all future paperwork submitted to the Council for review and action.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that documents prepared and submitted to the County Council shall adhere to the following guidelines for acronym use:

1. Acronyms will only be used for words or phrases that will be repeated numerous times throughout a document.

2. The first in-text reference to an acronym will be written out, followed by the acronym itself written in capital letters and enclosed by parentheses. Subsequent references to the acronym can be made by the capital letters alone.

3. Acronyms will be presented in full capital letters (e.g.: DOH for Department of Health).
4. If numerous acronyms are necessary in one document, an acronym glossary will be included.

BE IT FINALLY RESOLVED that a list of acronyms commonly used by Whatcom County is attached as Exhibit A to this resolution as reference (list not all-inclusive).

APPROVED this _____ day of ____________, 2014.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council
Carl Weimer, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ADA</td>
<td>Americans with Disabilities Act</td>
</tr>
<tr>
<td>ACIR</td>
<td>Advisory Commission on Intergovernmental Relations</td>
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<tr>
<td>AFW</td>
<td>Agriculture, Fish and Water Forum</td>
</tr>
<tr>
<td>AGO</td>
<td>Attorney General's Opinion (state)</td>
</tr>
<tr>
<td>AICP</td>
<td>American Institute of Certified Planners</td>
</tr>
<tr>
<td>ALS</td>
<td>Advanced Life-Support System</td>
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<tr>
<td>APA</td>
<td>American Planning Association</td>
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<tr>
<td>APWA</td>
<td>American Public Works Association</td>
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<tr>
<td>AS</td>
<td>Whatcom County Administrative Services Department</td>
</tr>
<tr>
<td>ASPA</td>
<td>American Society for Public Administration</td>
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<tr>
<td>ATSDR</td>
<td>Agency for Toxic Substances and Disease Registry</td>
</tr>
<tr>
<td>AWB</td>
<td>Association of Washington Business</td>
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<tr>
<td>AWC</td>
<td>Association of Washington Cities</td>
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<td>Association of Washington Cities Risk Management Service Agency</td>
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<td>B&amp;O</td>
<td>Business and Occupation Tax</td>
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<tr>
<td>BA</td>
<td>Biological Assessment</td>
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<tr>
<td>BARS</td>
<td>Budgeting, Accounting, and Reporting System (state requirements)</td>
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<tr>
<td>BAS</td>
<td>Best Available Science</td>
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<tr>
<td>BBLENS</td>
<td>Birch Bay, Blaine, Lynden, Everson, Nooksack, Sumas</td>
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<tr>
<td>BIA</td>
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<td>BIA</td>
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<td>BLM</td>
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<td>Bureau of Labor Statistics (Dept. of Labor)</td>
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<td>BMP</td>
<td>Best Management Practices</td>
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<td>Biological Opinion</td>
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<td>CFO</td>
<td>Conservation Farm Option</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations (federal agency rules)</td>
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<td>CFS</td>
<td>Cubic feet per second</td>
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<td>CIAW</td>
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<td>U.S. Army Corps of Engineers</td>
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<td>COG</td>
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<td>Draft Environmental Impact Statement</td>
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<td>DNR</td>
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<td>EDA</td>
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<td>Farmers Home Administration</td>
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<td>Family and Medical Leave Act (state and federal laws)</td>
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<td>Interagency Committee for Outdoor Recreation</td>
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<td>International City Management Association</td>
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<td>Interjurisdictional Coordinating Team</td>
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<td>Instream Flow Incremental Method</td>
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<td>IT</td>
<td>(Whatcom County Division of) Information Technology</td>
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<td>JARPA</td>
<td>Joint Aquatic Resource Permit Application</td>
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<td>Jobs for the Environment</td>
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<td>Joint Natural Resources Cabinet</td>
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<td>L&amp;I</td>
<td>Department of Labor and Industries</td>
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<td>LCREP</td>
<td>Lower Columbia River Estuary Program</td>
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<tr>
<td>ACRONYMS</td>
<td>Description</td>
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<td>-----------------------------------------------------------------------------</td>
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<td>LCSCI</td>
<td>Lower Columbia Steelhead Conservation Initiative</td>
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<td>LEED</td>
<td>Leadership in Energy &amp; Environmental Design</td>
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<td>Law Enforcement Officers and Fire Fighters Retirement System</td>
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<td>Local Government Personnel Institute, AWC</td>
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<td>LID</td>
<td>Local Improvement District</td>
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<td>Large Woody Debris</td>
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<td>Memorandum of Understanding</td>
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<td>Municipal Research and Services Center</td>
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<td>National Academy of Science</td>
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<tr>
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<td>National Environmental Policy Act</td>
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<td>National League of Cities</td>
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<td>NMFS</td>
<td>National Marine Fisheries Services</td>
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Rev 7/8/2014
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<td>Utilities and Transportation Commission</td>
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<td>Wastewater Treatment Plant</td>
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TITLE OF DOCUMENT:
Resolution Ordering the Cancellation of Unclaimed Funds more than Two Years Old
Whatcom County Jail Inmate Trust Fund Unclaimed Funds Prior to June 30, 2012

ATTACHMENTS:
Above mentioned resolution and list of Unclaimed Funds

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
The attached resolution will allow Administrative Services and the Treasurer's Office to cancel the unclaimed funds listed in Exhibit A and enable them to report and remit those funds to DOR Unclaimed Property Division.

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.
RESOLUTION NO. __________

ORDERING THE CANCELLATION OF UNCLAIMED FUNDS
MORE THAN TWO YEARS OLD

WHEREAS, RCW 63.29.130 states that property held by courts and
public agencies that remains unclaimed by the owner for more than two years is
presumed abandoned; and,

WHEREAS, the Whatcom County Sheriff's Office/Jail has provided a list
of Inmate Trust Fund balances prior to 06-30-12 that have not been claimed by the
owner.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County
Council that Administrative Services Finance and the Treasurer's Office are directed,
pursuant to RCW 63.29.130, to cancel the unclaimed funds listed in Exhibit A, and to
report and remit those funds to DOR Unclaimed Property Division.

APPROVED this _____ day of ________________, 2014.

ATTEST: WHATCOM COUNTY COUNCIL
Dana Brown-Davis, Council Clerk
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

APPROVED as to form:

Civil Deputy Prosecutor
## WHATCOM COUNTY JAIL-INMATE TRUST FUND
### UNCLAIMED FUNDS PRIOR TO JUNE 30, 2012

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<tr>
<th>Amount</th>
<th>Inmate #</th>
<th>Inmate Name</th>
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$0.35 A00021429 BEARD, DAN KEITH
$3.79 A00037674 BEARDSLEY, NATHAN ROBERT
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$0.35 A01892067 BEDFORD, DEREK KYLE
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(Above letters sent 3/26/13)

N = Letter Never Returned / No Response at all
R = Returned Letter / No Forwarding Address
C = Call Received, still active
S = New check sent
## TITLE OF DOCUMENT:
Washington Association of Sheriffs and Police Chiefs
Interagency Agreement

## ATTACHMENTS:
Washington Association of Sheriffs and Police Chiefs
Interagency Agreement RSO 14-15 Whatcom

### 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 Washington Association of Sheriffs and Police Chiefs has allocated funding to local law enforcement to verify the address and residency of all registered sex offenders and kidnapping offenders in accordance with RCW 9A.44.130. The amount allocated to Whatcom County is $143,090.49 for the period July 1, 2014 through June 30, 2015.
Enclosed for your review and signature are two (2) original contracts between Whatcom County and Washington Association of Sheriffs and Police Chiefs for Registered Sex Offender Verification Program funding.

- **Background and Purpose**
  Interagency agreement provides state funding for personnel to staff the registration program which tracks the addresses and residencies of all registered sex offenders and kidnapping offenders in Whatcom County in accordance with RCW 9A.44.130.

- **Funding Amount and Source**
  State funding of $143,090.49 is from Washington Association of Sheriffs and Police Chiefs.

- **Differences from Previous Contract**
  An increase in funding of $3,064.42 from previous year.

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

Enclosures
July 1, 2014

SHERIFF BILL ELFO
WHATCOM COUNTY SHERIFF'S OFFICE
311 GRAND AVE
BELLENGHAM, WA 98225

Dear Sheriff Elfo:

I am pleased to inform you that the Whatcom County Sheriff's Office will receive $143,090.49 for the Registered Sex Offender Address and Residency Verification Program. However, there is a slight change this year as a result of a review of the funding formula. For the first quarter, your agency will receive the same amount as the previous quarter. The revised amount will go into effect October 1, 2014. The changes are small so you should see little, if any, impact.

As you know, $4.8 million of state funding was allocated to local law enforcement for fiscal year 2014 to verify the address and residency of all registered sex offenders and kidnapping offenders under RCW 9A.44.130. The grant award is effective July 1, 2014 and expires on June 30, 2015.

The requirement of this program is for face-to-face verification of a registered sex offender’s address at the place of residency:

1. For level I offenders, once every twelve months
2. For level II offenders, once every six months
3. For level III offenders, once every three months

In addition, funding from this program should be used to send at least one staff person to one or more Offender Watch User Group meetings and/or the RSO Coordinator Conference during the year.

For the purposes of this program unclassified offenders and kidnapping offenders are considered at risk level I, unless the local jurisdiction sets a higher classification in the interest of public safety.

Attached is an award agreement which needs to be signed and returned to WASPC. The required quarterly reporting form is also included in this notification. Quarterly reports are to be submitted electronically, faxed, or by mail by the 10th of the month following the end of the quarter. Once the report is received, payment for a quarter of the total award will be sent.

If you have any questions please contact Dawn Larsen at 360-486-2419 or dlarsen@waspc.org.

Sincerely,

Mitch Barker
Executive Director
Originating Department: Whatcom County Sheriff's Office
Contract or Grant Administrator: Jeff Parks, Undersheriff
Contractor's / Agency Name: Washington Association of Sheriffs and Police Chiefs

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

Does contract require Council Approval? Yes [✓] No [ ]
Yes [✓] No If No, include WCC (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes [✓] No [ ]
Yes [✓] No If yes, grantor agency contract number(s) RSO 14-15 Whatcom CFDA # N/A

Is this contract grant funded? Yes [✓] No [ ]
Yes [✓] No If yes, associated Whatcom County grant contract number(s) __________________________

Is this contract the result of a RFP or Bid process? Yes [✓] No [ ]
Yes [✓] No If yes, RFP and Bid number(s) __________________________

Cost Center: 2978

Is this agreement excluded from E-Verify? No [ ] Yes [✓]
If no, include Attachment D Contractor Declaration form.

If yes, indicate exclusion(s) below:
☐ Professional services agreement for certified/licensed professional
☐ Contract less than $100,000.
☐ Contract work is for less than 120 days
☐ Interlocal Agreement (between Govt's)
☐ Contract for Commercial off the shelf items (COTS)
☐ Work related subcontract less than $25,000.
☐ Public Works - Local Agency/Federally Funded FHWA

Contract Amount: (sum of original contract amount and any prior amendments): $ 143,090.49
This Amendment Amount: $ __________________________
Total Amended Amount: $ 143,090.49

Summary of Scope:
State funding is allocated to local law enforcement to verify the address and residency of all registered sex offenders and kidnapping offenders under RCW 9A.44.130. These funds allow continued employment of one full time and one part time employee to assist with the registered sex and kidnapping offender tracking program within the Sheriff's Office.

Term of Contract: 07/01/14 Expiration Date: 06/30/15

Contract Routing:
1. Prepared by: DMP Date: 06/27/14
2. Attorney signoff: Date: 06/27/14
3. AS Finance reviewed: Date: 06/27/14
4. IT reviewed if IT related: Date: 06/27/14
5. Contractor signed: Date: 06/27/14
6. Submitted to Exec: Date: 06/27/14
7. Council approved if necessary: Date: 06/27/14
8. Executive signed: Date: 06/27/14
9. Original to Council: Date: 06/27/14

Last Edited 06/17/14

Whatcom County Contract No. 201407003
WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS
INTERAGENCY AGREEMENT
SPECIFIC TERMS AND CONDITIONS

Registered Sex Offender Address and Residency Verification Program

This AGREEMENT is entered into by and between the WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS (hereinafter referred to as WASPC) and the Whatcom County Sheriff's Office (hereinafter referred to as the RECIPIENT).

1. Award Recipient Name and Address:
   Whatcom County Sheriff's Office
   311 Grand Ave
   Bellingham, WA 98225

2. Contact: Bill Elfo
   Title: Sheriff
   Telephone: 360-676-6650

3. Project Title
   Registered Sex Offender Verification

4. Award Period:
   07/01/14 - 06/30/15

5. Grant No:
   RSO 14-15 Whatcom

6. Funding Authority:
   WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

7. Amt. Approved
   $143,090.49

FUNDING SOURCE
Funding for this AGREEMENT is provided to WASPC from the State of Washington. Funding awarded the RECIPIENT shall not exceed the amount shown on the award letter.

SCOPE OF SERVICES
The RECIPIENT shall use the funds awarded to meet the requirements identified in the award letter. The required quarterly report will be submitted within ten days of the end of the quarter. Funds will be disbursed in equal amounts by the end of the reporting month. Delays in report submittal or project related activities may result in disbursement of funds delay.

IN WITNESS WHEREOF, WASPC and RECIPIENT acknowledge and accept the terms of this AGREEMENT and attachments hereto, and in witness whereof have executed this AGREEMENT as of the date and year written below. The rights and obligations of both parties to this AGREEMENT are governed by the information on this Award Sheet and Letter and other documents incorporated herein.

FOR WASPC:

Name: Mitch Barker
Title: Executive Director
Date: June 1, 2014

FOR THE RECIPIENT:

Name: __________________________
Title: __________________________
Date: __________________________
WHATCOM COUNTY:
Recommended for Approval:

[Signature]
Sheriff

Approved as to form:

[Signature]
Prosecuting Attorney

[Signature]
Jack Louws, Whatcom County Executive

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON
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 _____________________.
WASPC requires three individuals be designated to the positions of Authorized Official, Project Director and Financial Officer for the purposes of administering a grant. The Project Director and the Financial Officer may not be the same person, however, under extenuating circumstances, one person may otherwise fill two positions.

**Applicant Agency:** Whatcom County Sheriff's Office

### PROJECT MANAGER

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### FINANCIAL OFFICER/GRANT ADMIN.

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**Public Safety Building, 311 Grand Avenue**

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<tbody>
<tr>
<td>360-676-6650</td>
<td>360-738-2494</td>
<td><a href="mailto:jparks@co.whatcom.wa.us">jparks@co.whatcom.wa.us</a></td>
</tr>
</tbody>
</table>

### THE AUTHORIZED OFFICIAL IS THE CHIEF EXECUTIVE OFFICER, OR DESIGNEE OF THE AGENCY.

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Title</th>
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<tbody>
<tr>
<td>Elfo</td>
<td>Bill</td>
<td>Sheriff</td>
</tr>
</tbody>
</table>

**Public Safety Building, 311 Grand Avenue**

<table>
<thead>
<tr>
<th>Business Mailing Address</th>
<th>City</th>
<th>State</th>
<th>Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bellingham</td>
<td>WA</td>
<td>98225</td>
<td></td>
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<thead>
<tr>
<th>Telephone</th>
<th>Fax</th>
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<tbody>
<tr>
<td>360-676-6650</td>
<td>360-738-2494</td>
<td><a href="mailto:belfo@co.whatcom.wa.us">belfo@co.whatcom.wa.us</a></td>
</tr>
</tbody>
</table>
WASPC requires three individuals be designated to the positions of Authorized Official, Project Director and Financial Officer for the purposes of administering a grant. The Project Director and the Financial Officer may not be the same person, however, under extenuating circumstances, one person may otherwise fill two positions.

**Applicant Agency:** Whatcom County Sheriff's Office

<table>
<thead>
<tr>
<th>Pierce Accountant</th>
<th>Dawn Financial Accountant</th>
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<tbody>
<tr>
<td>Last Name</td>
<td>First Name</td>
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<tr>
<td>Public Safety Building, 311 Grand Avenue</td>
<td>Bellingham</td>
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<tr>
<td>Business Mailing Address</td>
<td>City</td>
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<tr>
<td>360-676-6650</td>
<td>360-738-2494</td>
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<td>Telephone</td>
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**FINANCIAL OFFICER/GRANT ADMIN.**

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<th>Last Name</th>
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<td>Title</td>
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<tr>
<td>WA</td>
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<td>Business Mailing Address</td>
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<td>Email</td>
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</table>
Registered Sex Offender
Address Verification Quarterly Grant Report

<table>
<thead>
<tr>
<th>Agency:</th>
<th>1st Qtr</th>
<th>2nd Qtr</th>
<th>3rd Qtr</th>
<th>4th Qtr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contact:</td>
<td>Number:</td>
<td>Email:</td>
<td></td>
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<table>
<thead>
<tr>
<th>Monthly</th>
<th>Level I</th>
<th>Level II</th>
<th>Level III</th>
<th>Unknown</th>
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</thead>
<tbody>
<tr>
<td>Months:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yr:</td>
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</tbody>
</table>

- Number of registered sex offenders at the beginning of the quarter
- Number of face-to-face address verifications made for quarter
- Number of face-to-face address verifications made year-to-date
- Number of sex offenders registering as homeless
- Number of false homeless reportings*

*reporting as homeless but living at a residence, in another county, etc.-anecdotal

- Number of registered sex offenders not at reported address
- Number of resulting arrests for failure to register
- Number of resulting prosecutions for failure to register
- Number of arrests on new sex offense charges
- Number of arrests on unrelated warrants or charges

Any addition comments:

Please submit completed report at the end of each quarter (quarters end March 31, June 30, September 30, and December 31) and are due no later than the 10th of the following month. Once the report is received a check for 25% of your total award will be automatically sent to your agency. Reports can be emailed to Dawn Larsen at dlarsen@waspc.org, mailed to Washington Association of Sheriffs & Police Chiefs, 3060 Willamette Drive NE Lacey, WA 98516, or faxed to (360) 486-2381.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td>Debbie Bailey</td>
<td>ABB</td>
<td>7/9/14</td>
<td>7/22/14</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td>Gary Stoyka</td>
<td>B</td>
<td>7/1/14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head:</td>
<td>Frank Abart</td>
<td>2014</td>
<td>7/1/14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor</td>
<td>Dan Gibson:</td>
<td>G</td>
<td>7/10/14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td>Brad Bennett</td>
<td>B</td>
<td>7/10/14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td>Jack Louws</td>
<td>2</td>
<td>7/14/14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**

Comprehensive Solid And Hazardous Waste Management Plan

**ATTACHMENTS:**

1. Memorandum
2. Contract

**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.)

Contract to update the Comprehensive Solid and Hazardous Waste Management Plan, as required by the Washington State Department of Ecology.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

THROUGH: Frank Abart, Director

FROM: Gary Stoyka, Natural Resources Manager

RE: Comprehensive Solid and Hazardous Waste Management Plan

DATE: July 9, 2014

Enclosed are two (2) originals of the contract to update the Comprehensive Solid and Hazardous Waste Management Plan between Maul, Foster & Alongi, Inc. and Whatcom County for your review and signature.

- **Background and Purpose**
  The Department of Ecology requires that Comprehensive Solid Waste Management Plans be updated every five years to remain current. The last plan is dated 2008. Additionally, it is requested that the Hazardous Waste Management Plan be updated and included as part of the same document. Maul, Foster, & Alongi has been chosen to complete this project as part of an open bidding process (RFP 14-32).

- **Funding Amount and Source**
  This project was approved and supplemental budget authority granted for an expense of up to $175,000 at a meeting of the Solid Waste Executive Committee on September 25, 2013. Maul, Foster & Alongi has been contracted to provide the service for $87,981 including contingency.

- **Differences from Previous Contract**
  This is a new contract for professional services.

Please contact Debbie Bailey at extension 50292, if you have any questions or concerns regarding the terms of this agreement,

Encl.
### Whatcom County Contract Information Sheet

**Originating Department:** Public Works/Solid Waste Division  
**Contract or Grant Administrator:** Debbie Bailey  
**Contractor's / Agency Name:** Maul, Foster & Alongi, Inc.

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

**Does contract require Council Approval?** Yes _X_ No ____  
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

**Is this contract the result of a RFP or Bid process?** Yes _X_ No ____  
**Contract**  
**Yes _X_ No ____  
**If yes, RFP and Bid number(s) RFP 14-32  
**Cost Center: 140100

**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 work is for less than 120 days  
- [ ] Contract less than $100,000.  
- [ ] 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)  
$87,981.00  
**This Amendment Amount:**  
$  
**Total Amended Amount:**  
$10,000  
**RENEWALS:** Council approval is not required when exercising an option to renew that is provided in the original contract.

**Summary of Scope:**  
Contractor will update the Comprehensive Solid Waste Management Plan as well as the Hazardous Waste Management Plan, melding them into one document, and meeting all the requirements of the 2010 Department of Ecology’s Guidelines.

**Term of Contract:** One year  
**Expiration Date:** 6/30/15

**Contract Routing Steps & Signoff:** [sign or initial][indicate date transmitted]  
1. Prepared by: DB  
   **Date** 7/02/14  
2. Attorney reviewed: KNF  
   **Date** 7/7/14  
3. AS Finance reviewed: bbennett  
   **Date** 7/9/14  
4. IT reviewed if IT related:  
   **Date** 7-10-14  
5. Attorney signoff:  
   **Date**  
6. Contractor signed:  
   **Date**  
7. Submitted to Exec Office:  
   **Date**  
8. Council approved (if necessary):  
   **Date**  
9. Executive signed:  
   **Date**  
10. Original to Council  
   **Date**

Last Edited: 060414

159
Maul, Foster & Alongi, Inc., hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 2 to 6,
- Exhibit A (Scope of Work), pp. 7 to 9,
- Exhibit B (Compensation), pp. 10 to 10,
- 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 22nd day of July, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2015.

The general purpose or objective of this Agreement is to: update the Comprehensive Solid and Hazardous Waste Management Plan, 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 $87,981.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this__ day of July, 2014.

CONTRACTOR:

Maul, Foster & Alongi, Inc.

STATE OF WASHINGTON )
COUNTY OF ____ ) ss.

On this__ day of __July__, 2014 before me personally appeared Justin Clary to me known to be the Project Manager of Maul, Foster & Alongi, Inc. and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

MARY C. MATYAS
NOTARY PUBLIC
State of Washington
Commission Expires 08-04-2016

Contract for Services Agreement
CS&HW Management Plan
WHATCOM COUNTY:
Recommended for Approval:

Frank Abart, Director

Approved as to form:

Date

Dan Gibson, Chief Civil Deputy Prosecuting Attorney

Approved:
Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM )

On this _____ day of July, 2014 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:

Maul, Foster & Alongi, Inc.

Justin Clary, PE, Director of Puget Sound Operations

Address:
1329 North State St., Ste 301
Bellingham, WA 98225

Contact Name: Justin Clary, PE, Director of Puget Sound Operations

Contact Phone: (360) 594-6262

Contact FAX: (360) 594-6270

Contact Email: jclary@maulfoster.com
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: Three months

11.1 Termination for Default: Not Applicable

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: Not Applicable

Series 20-29: Provisions Related to Consideration and Payments

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

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:
The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.
The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

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

23.1 **Labor Standards:** Not Applicable

**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.

31.2 **Patent/Copyright Infringement:** Not Applicable

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
j udicial 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: Not Applicable

34.2 Industrial Insurance Waiver:
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: Not Applicable

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: Not Applicable

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

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

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

Gary Stoyka, Natural Resources Manager, 322 N. Commercial St. Ste. 210, Bellingham WA 98226

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: Not Applicable

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.

Contract for Services Agreement
CS&HW Management Plan
Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:
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.
Maul Foster & Alongi, Inc. (the “Contractor”) will assist Whatcom County (the “County”) in completing a comprehensive revision to the Whatcom County Comprehensive Solid and Hazardous Waste Management Plan (CSHWMP), incorporating all elements required under Revised Code of Washington (RCW) 70.95.090. Work to be performed and associated deliverables to be provided are defined under the following tasks.

**Task 1. Visionary Process and Preliminary Assessment**

The Contractor will assist the County in initial project scoping, including preparing a project management and communications plan. The Contractor and County will jointly develop a vision and schedule for revising the CSHWMP that meets Washington State Department of Ecology (Ecology) requirements and synthesizes three existing documents (1991 Hazardous Waste Plan, 1999 Comprehensive Solid Waste Management Plan and 2008 CSHWMP) into one overarching CSHWMP.

A kickoff meeting with County staff will further define the priority issues and topics on which the CSHWMP should focus. During a subsequent meeting with the Whatcom County Solid Waste Advisory Committee (SWAC) and/or a subcommittee of the SWAC, the Contractor will present and solicit input on the overall project, the outline for the unified CSHWMP, and the project schedule. Additional SWAC or sub-SWAC meetings may be held to facilitate an initial analysis of the 2008 programmatic and facility objectives and to understand their current status or challenges in implementation. During this time, the Contractor will also initiate discussion with the Ecology program manager regarding the proposed objectives for the updated Plan to ensure that the planning process considers the current objectives of the state.

**Task 1 Meetings:**
- County/Contractor Kickoff Meeting
- SWAC meeting (1) to review outline, schedule, and summarize initial analysis

**Task 1 Deliverables:**
- Project Management and Communication Memorandum
- Memorandum summarizing priority issues and vision, schedule, and outline for the unified CSHWMP
- Memorandum of likely modifications to 2008 CSHWMP programmatic and facility objectives
- Project kick-off meeting minutes

**Task 2. Data Gathering**

The Contractor will refine and incorporate information presented in the existing waste management planning documents into the unified outline developed during Task 1. The Contractor will also evaluate how the goals set out in the Washington State Beyond Waste Plan are being met by the existing plans, and what elements of the state plan should be considered.

Using information gathered during the review of the existing plans, the Contractor will interview County staff and solid waste industry representatives to update or redefine the descriptions of specific elements of the existing solid waste system. These reviews will address the primary elements required under RCW 70.95:

- Waste Reduction, Reuse, and Recycling
- Composting
- Special Waste
- Collection, Transfer, and Disposal
- Education
• Administration and Enforcement

The Contractor will work with County staff, local waste haulers, and other solid waste system operators to obtain up-to-date waste system statistics and regional demographics information necessary to develop the description of the size of the waste stream, define reuse and recycling operations, and provide a basis for projecting the growth of the waste stream into the future. County will make staff available to the Contractor to allow for efficiencies in time and cost by taking advantage of the staff's familiarity and access to critical data sources. The Contractor will also review the Whatcom County Comprehensive Plan to supplement demographic information or relevant growth goals.

Task 2 Meetings:
• SWAC/Sub-committee meeting (1)

Task 2 Deliverables:
• Memorandum of waste system description, statistics (material types and volumes), and regional demographics

Task 3. Summary of Existing Solid Waste System
The Contractor will prepare an update describing each of the solid waste topics contained in the 1991 Hazardous Waste Management Plan, the 1999 Comprehensive Solid Waste Management Plan and the 2008 CSHWMP. The section update will streamline the description of the system components, while also clarifying the discussion so that the document can be more accessible to the public. The update will also provide an assessment of the state of each system component, detailing strengths, weaknesses, needs, and opportunities identified by stakeholders and service providers during Task 2. Data and initial findings will be presented in a format that allows stakeholders to develop a common understanding of the state of the solid waste system. The chapter updates will not address recommendations at this point in the update process, but will serve as the basis for goal-setting exercises with County staff and the SWAC.

An assessment of the capacity of existing facilities and their operations will be included in the appropriate chapters.

Task 3 Meetings:
• SWAC/Sub-committee meetings (2)

Task 3 Deliverables:
• Chapter summaries of existing system and assessment of needs

Task 4. Development of System Goals and Actions
Based on the assessment provided in Task 3, the Contractor will use the strengths, weaknesses, needs, and opportunities associated with the existing solid waste management system to develop several system goals with County staff and members of the SWAC. The goals for the program will define what the solid waste system should strive for over the long term. The process will start with a detailed analysis of the goals stated in the 2008 CSHWMP and the recommendations of the preliminary analysis conducted in Task 1.

In a series of meetings on specific topics, the Contractor will work with County staff and a subcommittee of the SWAC to develop a list of implementable actions that contribute to achieving the goals that have been established. The list of actions will include those identified in the 2008 CSHWMP and suggested actions based on the Contractor's experience with similar programs, as well as input from stakeholders. Based on the topical discussions, the subcommittee will recommend a list of actions for consideration by the full SWAC and the County.

The actions resulting from this analysis will enable the CSHWMP to meet the six- and 20-year planning capital facility requirements outlined by the state's Growth Management Act; to undertake initiatives consistent with
Ecology's Beyond Waste Plan; and to be responsive to the vision and goals of the County. The updated CSHWMP will include the current mechanism defined by the County to allow for flexibility in the CSHWMP for changes in action or schedule that are approved by the SWAC outside the planning process. An additional element of this task will be the designation of recyclable materials and defining the process for amending this list in accordance with Ecology guidelines.

Task 4 Meetings:
- SWAC Meeting (1)
- SWAC Subcommittee Meetings (3)

Task 4 Deliverables:
- Recommendations chapter describing program goals and proposed actions

Task 5. Preparation of Documents
Before adoption, the CSHWMP will require review and approval from several state and local agencies, including Ecology, the Washington Utilities and Transportation Commission (WUTC), and the State Environmental Policy Act (SEPA) lead agency.

The Contractor will prepare an update of the existing SEPA Checklist and Non-Project Review Form. The Contractor will also prepare a cost assessment questionnaire for submittal to the WUTC.

As a final step, the Contractor will compile the chapters that were prepared under Tasks 3 and 4. The final document will include all maps, figures, tables, and appendices developed under the prior tasks. The CSHWMP will be made available for public review and Ecology preliminary and final draft reviews consistent with state requirements. The CSHWMP will be distributed primarily in electronic format, with a limited number of hard copies provided to the County and Ecology (assuming five for County use; Ecology requires three copies).

Task 5 Meetings:
- County Council Meeting (1)

Task 5 Deliverables:
- SEPA Checklist and Non-Project Review Form
- WUTC cost assessment questionnaire
- Final CSHWMP (electronic format and up to 25 hard copies)
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. Mileage will be reimbursed at the current IRS rate. Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

### Maul Foster & Alongi, Inc. Project Staff Billing Rates

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neil Alongi, PE</td>
<td>Principal Engineer</td>
<td>$200/hour</td>
</tr>
<tr>
<td>James Darling</td>
<td>Principal Planner</td>
<td>$200/hour</td>
</tr>
<tr>
<td>Justin Clary, PE</td>
<td>Project Manager</td>
<td>$160/hour</td>
</tr>
<tr>
<td>Erik Bakkom, PE</td>
<td>Senior Engineer</td>
<td>$160/hour</td>
</tr>
<tr>
<td>Jacqueline Gruber</td>
<td>Staff Planner</td>
<td>$95/hour</td>
</tr>
<tr>
<td>Mary Matyas</td>
<td>Administrative Assistant</td>
<td>$70/hour</td>
</tr>
</tbody>
</table>
**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**
Durham and Bates Agencies, Inc.
720 SW Washington St., Ste250
Portland, OR 97205

**INSURED**
Maul Foster & Alongi, Inc.
400 East Mill Plain Blvd., Suite 400
Vancouver, WA 98665-3320

**DATE:** 7/2/2014

**COVERAGES CERTIFICATE NUMBER:**

<table>
<thead>
<tr>
<th>INSURER</th>
<th>COVERAGE</th>
<th>DESCRIPTION OF OPERATIONS</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>OCCUR</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY CLAIMS-MADE</td>
<td>OCCUR</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>B</td>
<td>ANY AUTO</td>
<td>OCCUR</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>B</td>
<td>ANY AUTO</td>
<td>CLAIMS-MADE</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

**EXCLUSIONS**

This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies described herein subject to all the terms, conditions and exclusions of such policies. Limits shown may have been reduced by paid claims.

**IMPORTANT:** It is the responsibility of the certificate holder to verify all coverage and policy limits.

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101):**

Whatcom County - General Liability - Additional Insured - Owner, Lessees or Contractors - Scheduled Person or Organization form CG2010 (7/04) and Additional Insured - Owner, Lessees or Contractors - Completed Operations form CG2037 (7/04), Automatic Waiver of Subrogation Endorsement form ECC-320-0712, Automatic Primary and Non-Contributory Insurance Endorsement - ECC-548-0712; all attached.

**CERTIFICATE HOLDER**

Whatcom County Public Works
Solid Waste Division
322 N. Commercial Street, Suite 210
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**

Signature
Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization

This endorsement, effective 4/25/2014 attaches to and forms a part of Policy Number FEI-ECC-14566-01. This endorsement changes the Policy. Please read it carefully.

In consideration of an additional premium of $Applied, this endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) or Organization(s):</th>
<th>Location(s) Of Covered Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any person(s) or organization(s) whom the Named Insured agrees, in a written contract, to name as an additional insured. However, this status exists only for the project specified in that contract.</td>
<td>Those project locations where this endorsement is required by contract.</td>
</tr>
</tbody>
</table>

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
   1. Your acts or omissions; or
   2. The acts or omissions of those acting on your behalf;
      in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to "bodily injury" or "property damage" occurring after:
   1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
   2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
Additional Insured – Owners, Lessees or Contractors – Completed Operations

This endorsement, effective 4/25/2014 attaches to and forms a part of Policy Number FEI-ECC-14566-01. This endorsement changes the Policy. Please read it carefully.

In consideration of an additional premium of $Applied, this endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) or Organization(s):</th>
<th>Location And Description Of Completed Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any person(s) or organization(s) whom the Named Insured agrees, in a written contract, to name as an additional insured. However, this status exists only for the project specified in that contract.</td>
<td>Those project locations where this endorsement is required by contract.</td>
</tr>
</tbody>
</table>

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".
Automatic Waiver of Subrogation Endorsement

This endorsement, effective 4/25/2014, attaches to and forms a part of Policy Number FEI-ECC-14566-01. This endorsement changes the Policy. Please read it carefully.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

Any person(s) or organization(s) to whom the Named Insured agrees, in a written contract, to provide a waiver of subrogation. However, this status exists only for the project specified in that contract.

The Company waives any right of recovery it may have against the person or organization shown in the above Schedule because of payments the Company makes for injury or damage arising out of the insured’s work done under a contract with that person or organization. The waiver applies only to the person or organization in the above Schedule.

Under no circumstances shall this endorsement act to extend the policy period, change the scope of coverage or increase the Aggregate Limits of Insurance shown in the Declarations.
Automatic Primary and Non-Contributory Insurance Endorsement
Designated Work Or Project(s)

This endorsement, effective 4/25/2014 attaches to and forms a part of Policy Number FEI-ECC-14566-01. This endorsement changes the Policy. Please read it carefully.

SCHEDULE

Name of Person or Organization:

Any person(s) or organization(s) whom the Named Insured agrees, in a written contract, to provide Primary and/or Non-contributory status of this insurance. However, this status exists only for the project specified in that contract.

In consideration of an additional premium of $\text{Applied} and notwithstanding anything contained in this policy to the contrary, it is hereby agreed that this policy shall be considered primary to any similar insurance held by third parties in respect to work performed by you under any written contractual agreement with such third party. It is further agreed that any other insurance which the person(s) or organization(s) named in the schedule may have is excess and non-contributory to this insurance.
**TITLE OF DOCUMENT:**
Professional services contract with RH2 Engineering, Inc. to update the Whatcom County Coordinated Water System Plan – Regional Supplement.

**ATTACHMENTS:**
Memorandum
Contract

<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>

**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.)

Professional services contract with RH2 Engineering, Inc. to update the 2000 Whatcom County Coordinated Water System Plan – Regional Supplement and facilitate meetings of the Water Utility Coordinating Committee.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
TO: The Honorable Jack Louws, County Executive
   The Honorable Flood Control Zone District Board of Supervisors

THROUGH: Frank M. Abart, Director

FROM: Gary S. Stoyka, Natural Resources Program Manager

RE: Contract to update the Whatcom County Coordinated Water System Plan

DATE: July 1, 2014

Requested Action
Enclosed are two (2) originals of the contract between Whatcom County and RH2 Engineering, Inc. for your review and signature.

Background and Purpose
The work in this contract consists of updating the Whatcom County Coordinated Water System Plan (CWSP) in accordance with RCW 70.116 and WAC 246-293. The current CWSP was adopted in 2000. Much has changed with regard to water system issues in the past 14 years, particularly with respect to population growth. The objectives of this update are: (1) to coordinate acquisition, treatment, and delivery of water among the various public water purveyors consistent with local, state and federal laws and regulations, and in the best interest of the served public; (2) integrate public water system needs into a regional water supply plan addressing other beneficial uses in Whatcom County; and, (3) inform the preparation of the Whatcom County Comprehensive Plan update relative to water supply. As part of the update process, the County will, pursuant to RCW 70.116, convene the Water Utility Coordinating Committee (WUCC). The contractor will facilitate the WUCC meetings. Once the CWSP is approved by the WUCC, the contractor will conduct the required SEPA analysis before assisting in the submittal of the CWSP to the County Council and state Department of Health for approval. Because the full scope of the update has yet to be determined, it was decided to do the work in two stages: (1) preliminary data collection and analysis and scoping, and (2) the main update. This contract is for the main update based on the scoping that was done in the first stage.

Funding Amount and Source
The estimated budget for this contract is $174,176.00. This work will be conducted between 2014 and 2015. The 2014 Natural Resources budget, approved by the Flood Control Zone District Board of Supervisors on November 26, 2013, includes $150,000 for this contract (less $18,991 that was appropriated for the Phase I contract). The remaining $43,167 will not be expended until 2015 and will be included in the 2015 Flood Control Zone District budget (Fund 169). There are sufficient funds in the Flood Control Zone District Fund (Fund 169) to fund the work to be conducted in 2014 under this contract.

Please contact Gary Stoyka at extension 50618, if you have any questions or concerns regarding the terms of this agreement.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Gary Stoyka</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>RH2 Engineering, Inc.</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
- Yes _X_ 
- No __

**If not, is this an Amendment or Renewal to an Existing Contract?**
- Yes _X_ 
- No __

**If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #**

---

**Does contract require Council Approval?**
- Yes _X_ 
- No __

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

---

**Is this a grant agreement?**
- Yes _X_ 
- No __

**If yes, grantor agency contract number(s) **

**CFDA #**

---

**Is this contract grant funded?**
- Yes _X_ 
- No __

**If yes, associated Whatcom County grant contract number(s) **

---

**Is this contract the result of a RFP or Bid process?**
- Yes _X_ 
- No __

**If yes, RFP and Bid number(s) **

**RFQ 14-04**

**Cost Center: 169121**

---

**If yes, indicate exclusion(s) below:**
- X Professional services agreement for certified/licensed professional work is for less than 120 days
- Contract work is for less than $100,000.
- Contract less than $25,000.
- Interlocal Agreement (between Govt’s)
- Public Works - Local Agency/Federally Funded FHWA

---

<table>
<thead>
<tr>
<th>Contract Amount: (sum of original contract amount and any prior amendments)</th>
<th>$ 174,776.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>This Amendment Amount:</td>
<td>$ __________</td>
</tr>
<tr>
<td>Total Amended Amount:</td>
<td>$ __________</td>
</tr>
</tbody>
</table>

**Summary of Scope:** RH2 Engineering, Inc. will update the Whatcom County Coordinated Water System Plan in accordance with RCW 70.116 and WAC 246-293 and will facilitate meetings of the Water Utility Coordinating Committee.

**Term of Contract: 17 months**

**Expiration Date: December 30, 2015**

---

**Contract Routing Steps & Signoff:**
1. Prepared by: Gary S. Stoyka  Date 07/01/14  [electronic]
2. Attorney reviewed: Daniel L. Gibson  Date 07/01/14  [electronic]
3. AS Finance reviewed: Brad Bennett  Date 07/03/14  [electronic]
4. IT reviewed if IT related  Date  [electronic]  [electronic]  hard copy printed
5. Corrections made:  Date 7-3-14  [summary via electronic; hardcopies]
6. Attorney signoff: Daniel L. Gibson  Date 07/01/14  [electronic]
7. Contractor signed:  Date 7-10-14  [summary via electronic; hardcopies]
8. Submitted to Exec Office  Date 7-10-14  [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  

---
RH2 Engineering, Inc., hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 8,
Exhibit A (Scope of Work), pp. 9 to 14,
Exhibit B (Compensation), pp. 15 to 19,
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 1st day of August, 2014, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of December, 2015.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $174,776.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 3rd day of July, 2014.

CONTRACTOR:

RH2 ENGINEERING, INC.

Richard L. Ballard, Director

(Title)

STATE OF WASHINGTON

COUNTY OF Snohomish

On this 3rd day of July, 2014, Before me personally appeared Richard L. Ballard, to me known to be the Director (title) of RH2 Engineering, Inc (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Notary Public
State of Washington
ANGELA T ELY
MY COMMISSION EXPIRES
November 20, 2017

WHATCOM COUNTY:
Recommended for Approval:

[Signature]
Department Director
Date

Approved as to form:

[Signature]
Prosecuting Attorney
Date

Approved:
Accepted for Whatcom County:

By: ______________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  
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 ______________________.

CONTRACTOR INFORMATION:

RH2 Engineering, Inc.  
(Type in Name of Contractor/Firm)

Richard L. Ballard, Director  
(Type in Name & Title of Signatory Authorized by Firm Bylaws, if applicable)

Address:
22722 - 29th Drive SE, Suite 210
Bothell, WA 98021

Mailing Address:
same

Contact Name: Jim Bucknell
Contact Phone: 425-951-5424
Contact FAX: 
Contact Email: j bucknell@rh2.com

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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: Not Applicable

11.3 Termination for Public Convenience: Not Applicable

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

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

23.1 Labor Standards: Not Applicable

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.
31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from loss or expense directly resulting from claims made against the County, to the extent such loss or expense results from information supplied by the Contractor that 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 insurance with the following minimums:
Commercial General Liability, for bodily injury - $1,000,000.00 per occurrence, and for property damage - $500,000.00 per occurrence.

A Certificate of insurance that also identifies the County as an additional insured, together with appropriate endorsements, is attached hereto as Exhibit "C." This insurance shall be primary and noncontributory, and shall waive all rights of subrogation.

The County insurance shall not serve as a source of contribution.

a. Professional Liability - $1,000,000.00 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.

34.2 Industrial Insurance Waiver:
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 negligence 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: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

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

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

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

Gary S. Stoyka, Whatcom County Public Works Department, 322 N. Commercial St., Ste.110, 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:
The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more if the primary contract is for $100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit. Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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: Not Applicable

41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:
a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:
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.
The update of the CWSP was split into two phases, Phase 1 and Phase 2. Phase 1 was designed for RH2 to assist the County in preparing for and facilitating the pre-scoping meeting. This phase also included tasks to allow RH2 to continue to work on the project while the pre-scoping meeting was being organized and as the overall project scope (Phase 2) is being developed. The Preliminary Data Collection and Analysis tasks included in Phase 1 will continue in Phase 2. To reduce hours needed to update the CWSP, RH2 will rely on the accuracy and completeness of any data, information, or materials provided by the County or others in relation to the project.

**Task 1 – Update Glossary of Acronyms and Terms**

**Objective:** Update the glossary of acronyms and terms used in the CWSP to account for new terms and revised definitions.

**Approach:**

1.1 Add and update acronyms, terms and definitions to the list.

1.2 Perform quality assurance/quality control (QA/QC) review.

**Assumptions:** Definitions for terms will be from resolution, statute, or rule when available.

**RH2 Deliverables:**

- Updated list of acronyms, terms, and definitions.

**Task 2 – CWSP Process**

**Objective:** Update Section 2 of the CWSP.

**Approach:**

2.1 Review whether changes have been made to either the Public Water System Coordination Act (Chapter 70.116 of the Revised Code of Washington (RCW)) or the Water System Coordination Act (Chapter 146-293 of the Washington Administrative Code (WAC)) since the last update and document the results.

2.2 Update subsection 2.1 (CWSP History in Whatcom County), including sub-subsections, and results of the appeal to the Court of Appeals.

2.3 Include discussion on the current round of Growth Management Hearings Board (GMHB) appeals.

2.4 Update Table 2-1 describing timeline of CWSP actions in Whatcom County.

2.5 Update subsection 2.2 (CWSP Update Preparation), including sub-subsections, based on the current effort.

2.6 Update Table 2-2 containing subcommittees and members.

2.7 Expand on the water system service areas discussion by describing the difference between future, retail, and wholesale service areas.

2.8 Update subsection 2.3 (Regional Supplement) based on the current effort.

2.9 Update Water Utility Coordinating Committee (WUCC) membership water systems Table 2-3 depending on current number of connections, status of mapping, and declarations.

2.10 Remove existing Exhibit 2-2, which discussed legislative changes to the Public Water System Coordination Act.

2.11 Perform QA/QC review.

**Assumptions:** County staff will provide the language for Task 2.2 and 2.3. County staff will assist with Task 2.4.

**RH2 Deliverables:**

- Section 2 – The CWSP Process for WUCC review and comment.

**Task 3 – Population, Water Demand, and Expanding Systems**

**Objective:** Update Section 3 of the CWSP. Subsections will be updated based on current population and updated demand forecasts.

**Approach:**

3.1 Obtain historical and existing water demand data from water systems.

3.2 Obtain updated population forecasts from work being done for the County Comprehensive Plan update.

3.3 Update the population forecast tables and discussion based on the data received.
3.4 Review water system plans and metering data to update the current and forecasted per capita water consumption.

3.5 Update the water demand projections based on the updated population and per capita water consumption values from or from supplemental data provided by the water systems. Estimate projections based on data from similar systems where appropriate.

3.6 Update the inventory of existing water systems and operating permit colors, based on current information.

3.7 Generally discuss water use trends and possible future scenarios and how water demand may be affected in the 20 to 50 year horizon.

3.8 Perform QA/QC review.

Assumptions: County staff will provide the population forecasts identified in Subtask 3.2. Preliminary water use/demand data will be available from existing individual water system comprehensive plans or metering data from Ecology. Predictions beyond the 20-year planning horizon of the County Comprehensive Plan will not be prepared, and the discussion in Subtask 3.7 will focus on trends and possible future scenarios that may affect water demand, but will not quantify those future demands.

**RH2 Deliverables:**

- Section 3 – Population, Water Demand, and Expanding Systems for WUCC review and comment.

**Task 4 – Water Utility Service Areas**

**Objective:** Update Section 4 of the CWSP.

**Approach:**

4.1 Identify which Group A water systems have provided service area boundary declarations to the County. Water systems will confirm that their service area declarations and mapped boundaries are still accurate. If not, they may pursue correction through the existing Service Area Boundary Amendment Procedure (Exhibit 4-3 CWSP), so that the updated service area can be included in this CWSP update.

4.2 Contact Group A water systems that have not provided service area boundary declarations and request they provide a Declaration of Water Utility Service Area, including a map. Create a geographic information system (GIS) shapefile of the water system service area provided.

4.3 Identify service area overlaps, contact the systems involved and determine if the overlap is either contested or not contested, and determine the long-term plan for the overlapping area.

4.4 Document the long-term plans for overlapping area, such as status quo, eventual absorption by surrounding system, schedule, and actions that need to be taken.

4.5 Request the retail, future, and wholesale service areas of expanding Group A systems from those systems and create a new map displaying those boundaries.

4.6 Perform QA/QC review.

Assumptions: The County will provide RH2 with the most recent GIS files of designated service areas. RH2 will work with the County’s GIS data during the CWSP update process to update existing figures and create new figures. At the end of the CWSP update process, RH2 will provide the GIS files to the County, which will be the final repository for the official GIS-based service area boundaries. It is assumed that not all systems complied with the 2000 CWSP requirement to submit their service area boundary maps to the County. It is assumed that 20 of the 209 water systems identified on the Preliminary CWSP Designated Water Service Areas Map from May 2014 will need to amend their service area (Task 4.1). It is assumed that all Group A systems contacted under Task 4.2 will be willing to provide a declaration and hard-copy map that will be digitized by RH2. Water systems with overlapping boundaries will be willing to discuss the situation and long-term plans. The County is currently mapping existing Group B water systems and will provide the GIS layers to RH2 as the work progresses and incorporate the boundaries in the updated Designated Water Service Areas map.

**RH2 Deliverables:**

- Section 4 – Water Utility Service Areas, for WUCC review and comment.

**Task 5 – Minimum Design Standards**

**Objective:** Update Section 5 of the CWSP.

**Approach:**

5.1 Convene a WUCC subcommittee to review the existing design standards and develop and justify recommended changes. Review design standards for both rural and urban service areas and include in the updated plan.

5.2 Meet with WUCC subcommittee, WCHD, PDS, and Whatcom County Fire Marshal to determine if updates to the minimum fire flow requirements are needed and develop new minimum requirements for review by the WUCC. Update the fire protection standards discussion as necessary.
5.3 Add new discussion of the Water Use Efficiency Standards, including how various sizes of Group A and Group B public water systems are affected.

5.4 Summarize the issues related to the provision of fire hydrants in Lane vs. Seattle and other similar cases with an emphasis on the legislation passed by the Washington State Legislature in the 2014 session and how it affects public water systems in Whatcom County.

5.5 Perform QA/QC review.

Assumptions: RH2 will participate in up to four (4) meetings with the subcommittee.

RH2 Deliverables:
- Attendance at four (4) meetings with the WUCC subcommittee.
- Chapter 5 – Minimum Design Standards for WUCC review and comment.

Task 6 – Utility Service Review Procedures

Objective: Update Section 6 of the CWSP.

Approach:

6.1 Review the existing utility service procedures and determine which portions have been effectively implemented. Identify procedures that are insufficient. Recommend areas where improvements to the procedures could be considered by the County.

6.2 Coordinate with the County to obtain updated utility service review procedures. Review and comment on proposed changes to the procedures.

6.3 Update Exhibit 6-1 based on the results of Subtask 6.1.

6.4 Perform QA/QC review.

Assumptions: PDS and WCHD staff will coordinate internally to update the utility service review procedures for incorporation into the CWSP by RH2.

RH2 Deliverables:
- Draft Utility Service Review Procedures and diagram for WUCC review and comment.
- Chapter 6 – Utility Service Review Procedures for WUCC review and comment.

Task 7 – Satellite Management Agency and Receivership

Objective: Update Section 7 of the CWSP.

Approach:

7.1 Update subsection 7.1 (WDOH Satellite Management Agency (SMA) Requirements) language and remove bill language from discussion. Replace with citations for RCW and WAC.

7.2 Update subsection 7.2 (Current SMA Status) to add approved SMAs in the County and clarify their management and ownership.

7.3 Discuss the pros and cons of SMAs with management and operations authority only versus those with the added option of ownership.

7.4 Update subsection 7.3 (Receivership of Failing Systems) to add language clarifying what receivership means to customers of public water systems, including the financial and legal obligations that may remain.

7.5 Discuss options to provide technical and financial assistance to failing public water systems with the intent of reducing the number of systems that will ultimately pursue this course of action.

7.6 Perform QA/QC review.

Assumptions: Information from Subtask 7.3 will be obtained via interview with other counties and WDOH. The receivership discussion in Subtask 7.4 will be reviewed by staff from the Whatcom County Prosecutor’s Office for accuracy.

RH2 Deliverables:
- Section 7 – Satellite Management Agency and Receivership for WUCC review and comment.

Task 8 – Regional Resource Issues

Objective: Update Section 8 of the CWSP.

Approach:
Regional Objective:

8.1 Update subsection 8.0 (Introduction) to include a discussion of WDOH Sentry and Ecology Water Resource Explorer databases.

8.2 Update subsection 8.1 (Lummi Indian Nation) to include the Lummi Peninsula Settlement and identify which public water systems on the Lummi Reservation are affected by the settlement and/or the CWSP update.

8.3 Update subsection 8.2 (Water Rights) to discuss the Municipal Water Law and how it affects public water systems in the County.

8.4 Discuss options for water rights processing, including change applications, Hillis priority processing, cost reimbursement, coordinated cost reimbursement, and Chapter 173-501 WAC.

8.5 Compare and contrast existing and forecasted water demands for public water systems (from Task 3) with their existing water rights and develop a GIS map displaying the suitability of water rights to serve existing and future (20-year) demand. A water rights summary table will be included in Appendix B.

8.6 Update subsubsection 8.4.2 (Surface Water and GWI Sources) to include a GIS map of groundwater sources currently known to be under the influence of surface water and discuss the implications for public water systems.

8.7 Update subsubsection 8.4.3 (Nitrate) to expand discussion of nitrate contamination in the north county and provide a GIS map outlining this area and discuss potential solutions. Explore short and long-term alternatives to dealing with these problems, including individual treatment, single source treatment and delivery to multiple systems, importing water from Birch Bay/Blaine, importing water from Sumas, importing water from the Nooksack River, and others that may arise.

8.8 Discuss other water quality issues and associated regulatory rules such as the U.S. Environmental Protection Agency’s Lead and Copper Rule and Arsenic Rule.

8.9 Update subsubsection 8.4.5 (Seawater Intrusion) to expand the discussion of seawater intrusion in Whatcom County to consider the extent and significance of the problem and provide a GIS map showing known areas where it has been encountered.

8.10 Update subsubsection 8.4.6 (Relic Saltwater) to expand the discussion of the occurrence of relic seawater in Everson Glaciomarine geologic unit.

8.11 Update subsubsection 8.4.7 (Volatile Organic Chemicals and Pesticides) on ethylene dibromide (EDB) and dichloropropane (DCP) and 1,2-DCP contamination and provide a GIS map showing where it is generally encountered and the pipeline route which serves lands generally west of the City of Lynden. Also discuss the specific criteria to qualify to receive this water from the pipeline and monitoring requirements.

8.12 Update subsubsection 8.4.8 (Iron/Manganese) to expand the discussion of iron/manganese in county groundwater, and discuss the implications for existing and future public water supplies.

8.13 Update subsubsection 8.5.2 (Quantity) to include a review the history of the drilling of deep wells in the county and identify where such efforts have been successful and where they have not. Provide a GIS map showing deep well locations.

8.14 Discuss the history of bedrock wells.

8.15 Address other water concerns raised by WUCC members.

8.16 Discuss instream flow restrictions and stream closures.

8.17 Update subsection 8.6 (Lack of Joint Facilities and System Interties). Prepare a GIS map showing existing and potential future interties. Identify which interties are normal supply and which are emergency interties.

8.18 Update subsection 8.7 (Water Conservation), including subsubsections, to include water use efficiency requirements.

8.19 Perform QA/QC review.

Assumptions: Inclusion of Lummi Nation and Nooksack Tribe reservations will be non-controversial and will not result in protracted discussions or multiple iterations. Water right information will be obtained from water system plan water right self-assessment forms and water right documents. Subtask 8.7 will focus on a discussion of the problem and options and will not provide a recommended course of action or preferred alternative. It is assumed that WDOH has an updated list of groundwater sources determined to be potentially under the influence of surface water. Information on the Lynden-EDB pipeline will be obtained from Ecology.

RH2 Deliverables:

- Section 8 – Regional Resource Issues for WUCC review and comment.

Task 9 – Plan Implementation

Objective: Update Section 9 of the CWSP.
Approach:
9.1 Update Section 9 with changes regarding CWSP implementation that result from previous tasks.
9.2 Perform QA/QC review.

RH2 Deliverables:
- Section 9 – Plan Implementation for WUCC review and comment.

**Task 10 – Executive Summary**

**Objective:** Prepare an executive summary to describe the key elements of the CWSP.

**Approach:**
10.1 Identify the purpose of the CWSP and summarize the key elements in the CWSP.
10.2 Perform QA/QC review.

RH2 Deliverables:
- Executive Summary chapter for WUCC review and comment.

**Task 11 – Draft CWSP Completion and County Review**

**Objective:** Prepare a draft of the CWSP for final review and discussion with the WUCC.

**Approach:**
11.1 Develop a cover format that includes the CWSP name and revision date, certificate of engineer, and acknowledgement letter.
11.2 Obtain a completed State Environmental Policy Act (SEPA) Checklist from the County for inclusion in the CWSP.
11.3 Assemble full draft CWSP, proofread and perform QA/QC review, then provide electronic copies of the draft CWSP document to the WUCC.
11.4 Meet with the WUCC to discuss the draft CWSP.
11.5 Prepare responses to comments and make revisions to the CWSP per WUCC comments.

RH2 Deliverables:
- Draft CWSP in electronic format.

**Task 12 – Final CWSP Binding and Submittal to WDOH**

**Objective:** Prepare a final draft of the CWSP and submit it to the Whatcom County Council and WDOH for review.

**Approach:**
12.1 Prepare final report for adoption by the Whatcom County Council and WDOH.
12.2 Bind ten (10) copies of the CWSP in three-ring binders.
12.3 Create an electronic version of the CWSP.
12.4 Submit the final draft CWSP to WDOH for review and comment.

RH2 Deliverables:
- Ten (10) copies of the CWSP in three-ring binders.
- One (1) camera-ready electronic version of the CWSP in Microsoft Word and one (1) in PDF.

**Task 13 – Meeting Facilitation and Public Involvement**

**Objective:** Organize, moderate, and document meetings of the WUCC and other public involvement activities associated with the CWSP update.
Approach:

13.1 Prepare for, facilitate, and follow-up on WUCC meetings including agenda preparation, meeting facilitation, recording of votes, and preparation of minutes and conduct up to two (2) additional WUCC subcommittee meetings if needed.

13.2 Prepare for, attend, and present at meetings of other planning groups, including the Joint Board and the Planning Unit.

13.3 Support WUCC in preparing for, conducting, and follow up to one (1) public informational meeting on the CWSP update.

13.4 Support County staff and Council in preparing for, conducting, and follow up to public hearing on the proposed CWSP document.

13.5 Prepare graphs, charts, maps, and other materials to communicate with various interest groups.

13.6 Respond to comments received from WUCC members, general public, and other stakeholders as a result of public meetings, review drafts, and public hearing.

Assumptions: RH2 will convene a maximum of fourteen (14) WUCC meetings and six (6) subcommittee meetings. RH2 will participate in two (2) briefings at meetings with the Joint Board and Planning Unit (one (1) early to introduce the project, one (1) later to brief them on the proposed updated document for each group). RH2 will also provide support for one (1) public hearing by the Whatcom County Council. Meetings will be held in venues that are free of cost. RH2 will send out agendas electronically prior to the WUCC meetings and will prepare meeting minutes for those meetings. RH2 will only provide electronic copies of documents for review.

RH2 Deliverables:

- Meeting agendas and supporting documents.
- Recording of votes.
- Meeting minutes.
- Process documentation.
- Written responses to comments received.

Project Schedule

The goal of the CWSP update is to present the final draft CWSP to WDOH in approximately one (1) year (September 2015). However, if allowance of additional time is needed for additional cooperation and/or to produce a more defined product, up to a year and a half may be needed (early 2016).

Note: At the completion of Tasks 1 through 13, the CWSP will be in a final format, ready for review by WDOH. The number of comments, number of meetings and amount of required CWSP modifications from the review by WUOH is difficult to predict. Therefore, RH2 will prepare a separate scope of work and fee estimate to address review comments, review meetings, and final CWSP modifications upon receipt of review comments, if needed.
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. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location services are provided. Reimbursement for air travel will be at coach rates. Other expenditures not specified in the rate sheet below shall be reimbursed at actual cost. All sub-consultant services shall be billed at cost plus 15%.

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Compensation shall not exceed $174,776. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

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<tr>
<td>5.1</td>
<td>Convene WUCC subcommittee to evaluate design standards</td>
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<td>5.2</td>
<td>Meet with WUCC subcommittee, WCHD, PDS, and Fire Marshal</td>
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<td>Add new discussion of the Water Use Efficiency Standards</td>
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<td>Summarize the issues related to Lane vs. Seattle</td>
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<td>6.1</td>
<td>Review the existing procedures</td>
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<td>Obtain updated procedures from County</td>
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<td>6.3</td>
<td>Update Exhibit 6-1</td>
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<td>6.4</td>
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<tr>
<td>7.1</td>
<td>Update subsection 7.1 (SMA Requirements)</td>
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<td>Update subsection 7.2 (Current SMA Status) to add approved SMAs</td>
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<td>Discuss the pros and cons of SMAs</td>
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<td>Update subsection 7.3 (Receivership of Failing Systems)</td>
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<td>Discuss options to provide assistance to failing public water systems</td>
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<td>Update subsection 8.1 (Lummi Indian Nation)</td>
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<td>8.3</td>
<td>Update subsection 8.2 (Water Rights) to discuss the Municipal Water Law</td>
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<td>8.4</td>
<td>Discuss options for water right processing</td>
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<td>Compare and contrast existing and forecasted water demands</td>
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<td>8.6</td>
<td>Update subsection 8.4.2 (Surface Water and GWI Sources)</td>
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<td>8.7</td>
<td>Update subsection 8.4.3 (Nitrate)</td>
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<td>8.8</td>
<td>Discuss other water quality issues</td>
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<td>8.9</td>
<td>Update subsection 8.4.5 (Seawater Intrusion)</td>
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<td>8.10</td>
<td>Update subsection 8.4.6 (Relic Saltwater)</td>
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<td>8.11</td>
<td>Update subsection 8.4.7 (Volatile Organic Chemicals and Pesticides)</td>
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<td>8.12</td>
<td>Update subsection 8.4.8 (Iron/manganese)</td>
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<td>8.13</td>
<td>Update subsection 8.5.2 (Quantity)</td>
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<td>8.14</td>
<td>Discuss the history of bedrock wells</td>
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<td>8.15</td>
<td>Address other water quantity concerns raised by WUCC</td>
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<tr>
<td>8.16</td>
<td>Discuss instream flow restrictions and stream closures</td>
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<tr>
<td>8.17</td>
<td>Update subsection 8.6 (Lack of Joint Facilities and System Interties)</td>
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<td>8.18</td>
<td>Update subsection 8.7 (Water Conservation)</td>
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**Subtotal:** $36,193 $2,934 $39,127

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**Subtotal:** $7,583 $212 $7,795

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**Subtotal:** $4,325 $114 $4,439

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<td>11.1</td>
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**Subtotal:** $8,473 $559 $9,032
## Task 13 Meeting Facilitation and Public Involvement

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<td>13.1</td>
<td>Prepare for, facilitate, and follow-up on WUCC meetings</td>
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<td>13.2</td>
<td>Prepare for, attend, and present at meetings of other planning groups</td>
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<td>13.3</td>
<td>Support WUCC public informational meeting</td>
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<td>13.4</td>
<td>Support County staff and Council for public hearing</td>
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<tr>
<td>13.5</td>
<td>Prepare graphs, charts, maps, and other materials</td>
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<td>13.6</td>
<td>Respond to comments</td>
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| Subtotal | 280 | $40,680 | $7,790 | $48,470 |

### Subtotal Meeting Facilitation and Public Involvement Tasks

| Subtotal Meeting Facilitation and Public Involvement Tasks | 280 | $40,680 | $7,790 | $48,470 |

### PHASE 2 TOTAL

| PHASE 2 TOTAL | 1035 | $155,538 | $19,238 | $174,776 |
### RH2 ENGINEERING, INC.
#### SCHEDULE OF RATES AND CHARGES

##### HOURLY RATES

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##### IN-HOUSE SERVICES

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<td>Per Hour</td>
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##### OUTSIDE SERVICES

Outside direct costs for permit fees, reports, maps, data, reprographic, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

All Subconsultant services are billed at cost plus 15%.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER 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), AUTHORIZE 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
Samamish Insurance, Inc.
704 228th Ave NE, PMB 373
Samamish WA 98074

INSURED
RH2 ENGINEERING INC
22722 29th Dr SE STE 210
BOTHELL WA 98021

COVERAGES

INSURER(S) AFFORDING COVERAGE NAIC #
INSURER A Hartford Casualty Ins. Co. 29424
INSURER B Sentinel Insurance Co., Ltd 11000
INSURER C Continental Casualty Company

CERTIFICATE NUMBER: CL1452002405
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Whatcom County is added as an additional insured.

CERTIFICATE HOLDER
Whatcom County
322 North Commercial Street
Suite 110
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
Allen Fugin CPCU/JONA
TITLE OF DOCUMENT: Approval to Purchase Auto Parts

ATTACHMENTS: Memos from Finance and Public Works

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 purchase Auto Parts for the remainder of 2014 through August 2015 using the Washington State Contract #01809. The vendors are Auto Zone Stores, CarQuest Auto Parts (dba NAPA), Motion Auto Supply, and Seattle Automotive Distributing. Auto parts are purchased on an as needed basis and the total expenditure for auto parts could be up to $80,000.00. This is a regularly budgeted expenditure.

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:    July 10, 2014
TO:        Jack Louws, County Executive
FROM:   Brad Bennett, Administrative Services Finance Manager
SUBJECT: Approval to Purchase Fleet Vehicle Parts

- **Background & Purpose**
  Public Works ER&R would like to use the Washington State Contract to purchase their annual supply of miscellaneous auto and truck parts. These items are used for the maintenance and repair of smaller county vehicles and equipment.

  The State Contract has been awarded to Auto Zone Stores, Car Quest Auto Parts, NAPA, Motion Auto Supply, and Seattle Automotive Distributing. The local vendors are:
  - NAPA - Bellingham Auto Parts (Bellingham), Bridgeview Auto Parts (Ferndale)
  - Car Quest Auto Parts - Hawley's Auto Parts (Ferndale), S&H Auto Parts (Lynden)
  - Seattle Automotive (Bellingham)

  Consideration will be given as to the availability, total cost and performance of the parts, and vendor location.

  Parts are purchased on an as needed basis and anticipated expenditures are $80,000.00 annually.

- **Funding**
  This is a regular planned purchase and funds were approved in the 2014 ER&R budget. I concur with this request.

  [Signature]
  Administrative 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

RE: Washington State Contract 01809 (Fleet Vehicle Parts, Just-In-Time)

DATE: July 7, 2014

- Requested Action
I am requesting Executive and Council approval to purchase the following material as needed from the Washington State Bid Procurement List during the period of 2014 through August 9, 2015 (current state contract term is for the period of 08/10/2009 through 08/09/2015):

<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>STATE CONTRACT #</th>
<th>EXPIRATION DATE</th>
<th>APPROXIMATE ANNUAL EXPENDITURE</th>
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<tr>
<td>Fleet Vehicle Parts, Just-In-Time</td>
<td>01809</td>
<td>August 9, 2015</td>
<td>$80,000.00</td>
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</table>

This state contract has been awarded to multiple vendors: Auto Zone Stores, CarQuest Auto Parts, Genuine Parts Co. dba NAPA, Motion Auto Supply, and Seattle Automotive Distributing. Historically we have used the following local vendors for: 1) Genuine Auto Parts Co. (DBA, NAPA) – Bellingham Auto Parts located in Bellingham and Bridgeview Auto in Ferndale; 2) CarQuest Auto Parts – Hawley’s Auto Parts in Ferndale and S&H Auto Parts in Lynden; and 3) Seattle Automotive Distributing in Bellingham. Consideration will be given as to the availability of parts, total cost of the parts, performance of the parts, and the location of the vendor.

- Background and Purpose
The Equipment Services Division of the Public Works Department uses these materials regularly for annual maintenance on county vehicles and equipment. This agreement is for the purpose of providing automotive parts throughout the year to be used on county vehicles and equipment as needed.

- Funding Amount and Source
These are regularly budgeted expenditures for automotive parts, which are used on an annual basis as needed and have been budgeted during the 2013-2014 Budget process in the Equipment Rental and Revolving Capital Equipment Fund. Expenditures for 2011 were $46,407, in 2012 were $64,622, and in 2013 were $50,730.

- Recommended Action
Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 22, 2014 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 50607, if you have any questions or concerns.

Encl.
TITLE OF DOCUMENT:
Resolution commencing the Coordinated Water System Plan update process.

ATTACHMENTS:
Cover Memorandum
Resolution

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 staff is planning to update the Whatcom County Coordinated Water System Plan. The plan was last updated in 2000. The attached resolution calls for convening the Water Utility Coordinating Committee, sets the boundaries of the Critical Water Supply Service Area, and establishes a scope for the update.

COMMITTEE ACTION:
7/8/2014: Held in Committee for two weeks

COUNCIL ACTION:
7/8/2014: Held in Committee

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

THROUGH: Frank M. Abart, Director

FROM: Gary S. Stoyka, Natural Resources Program Manager

RE: Resolution Commencing the Coordinated Water System Plan Update Process

DATE: June 13, 2014

Requested Action
Enclosed is one original of a resolution to commence the Coordinated Water System Plan update process. Public Works staff requests that Council approve this resolution in order to start the update.

Background and Purpose
Public Works staff is initiating an update of the Whatcom County Coordinated Water System Plan (CWSP). The current plan was last updated in 2000. In accordance with RCW 70.116, the County will convene the Water Utility Coordinating Committee (WUCC) which will be responsible for the development of an updated plan. Whatcom County has contracted with RH2 Engineering, Inc. to facilitate the WUCC meetings and prepare the updated CWSP. Funding for the CWSP update is provided in the 2014 budget. As part of the update process, the following items need to be addressed:

- Council must designate the boundaries of the Critical Water Supply Service Area. Staff recommends that the boundaries remain the same as they have been since 1991.
- The WUCC needs to be convened.
- The Council needs to designate a representative to serve on the WUCC.

The attached resolution addresses these issues and also provides a scope for the update process.

Please contact Gary Stoyka at extension 50618, if you have any questions or concerns regarding this resolution.

Encl.
COMMENCING THE COORDINATED WATER SYSTEM PLAN UPDATE PROCESS

WHEREAS, on November 13, 1990, Whatcom County adopted a resolution establishing Critical Water Supply Service Area boundaries to meet the requirements for developing a Coordinated Water System Plan (CWSP) under RCW 70.116; and

WHEREAS, these boundaries were modified by resolution on July 9, 1991 and September 24, 1991 to generally include all lands west of the National Forest Boundary excluding certain portions of the Lummi and Nooksack Indian reservations; and

WHEREAS, the first CWSP was developed in 1993; and

WHEREAS, an update of the 1993 CWSP was prepared and adopted by the Whatcom County Council by resolution on May 2, 2000; and

WHEREAS, the CWSP recommends that it be updated every five years to stay current; and

WHEREAS, it has been over 14 years since the last update of the CWSP and much has changed regarding water systems and water issues in Whatcom County since the last update such that some provisions of the 2000 CWSP are now obsolete.

NOW THEREFORE BE IT RESOLVED, that the Whatcom County Council does hereby call for updating of the Whatcom County Coordinated Water System Plan to address the following issues:

1. Water demand forecasting consistent with the 2016 update of the County’s Comprehensive Plan
2. Minimum design standards for water systems including emergency interties and fire flow requirements
3. Service area boundary designations and identification of contested service areas
4. A review of the utility service review procedure
5. Satellite management agencies
6. Nitrate contamination issues
7. Relevant terms of the Lummi Peninsula groundwater settlement agreement
8. Incorporation of relevant provisions of the state Municipal Water Supply – Efficiency Requirements Act of 2003; and

BE IT FURTHER RESOLVED, that the boundaries of the Critical Water Supply Service Area shall remain unchanged; and
BE IT FURTHER RESOLVED, that the Whatcom County Council hereby convenes the Whatcom County Water Utility Coordinating Committee (WUCC) to assist in developing an update to the CWSP. In accordance with RCW 70.116.040, Whatcom County shall invite representatives of all public water systems serving more than 50 customers to participate on the WUCC as voting members along with representatives of the Health Department, Planning and Development Services Department, and County Council. To get the broadest base of input, Whatcom County shall also invite representatives of all other public water systems in the county and representatives of Lummi Nation and the Nooksack Indian Tribe to participate on the WUCC as non-voting members; and

BE IT FINALLY RESOLVED, that the Whatcom County Council shall select a councilmember to represent the entire County Council on the Water Utility Coordinating Committee.

APPROVED this _____ day of __________, 2014.

ATTEST: WHATCOM COUNTY COUNCIL

Dana Brown Davis, Clerk of the Council WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson

Civil Deputy Prosecutor
-----Original Message-----
From: Skip Richards [mailto:cdl@catalyst-consulting.com]
Sent: Tuesday, July 15, 2014 7:12AM
To: Gary Stoyka
Cc: Greg Brown; Rud Browne; Dan Eisses; Steve Jilk (stevej@pudwhatcom.org); Jack Louws; Tyler Schroeder; Council; Skip Richards
Subject: Re: Draft CWSP Resolution

At the Public Works Committee meeting July 8, I offered to undertake a revision of the resolution re CWSP update, taking into account various issues raised by interested parties during the discussion.

Attached please find my first iteration of the revised resolution, plus a document explaining the basis for the changes.

Skip Richards

On Tue, July 8, 2014 6:29 pm, Gary Stoyka wrote:
> Attached is the draft CWSP resolution that was discussed today, for
> your review and input.
> 
> Gary S. Stoyka, LHG
> Natural Resources Program Manager
> Whatcom County Public Works Department
> 322 North Commercial Street, Suite 110 Bellingham, WA 98225
> (360) 676-6876 x50618
> gstoyska@co.whatcom.wa.us<mailto:gstoyska@co.whatcom.wa.us>
RESOLUTION NO. ______

COMMENCING THE COORDINATED WATER SYSTEM PLAN UPDATE PROCESS

WHEREAS, on November 13, 1990, Whatcom County adopted a resolution Resolution 1990-073 establishing Critical Water Supply Service Area boundaries to meet the requirements for developing a Coordinated Water System Plan (CWSP) under RCW 70.116; and

WHEREAS, the Critical Water Supply Service Area boundaries were reviewed by the Water Utility Coordinating Committee established by Resolution 1990-073; and

WHEREAS, these boundaries were modified by resolution on Resolution 1991-046 dated July 9, 1991 and Resolution 1991-046 dated September 24, 1991 to generally include all lands west of the National Forest Boundary excluding certain portions of the Lummi and Nooksack Indian reservations; and

WHEREAS, the first CWSP was developed in 1993 but was not approved by state Department of Health (DOH) due to concerns raised by Lummi Nation and unresolved litigation over Whatcom County’s compliance with the state Growth Management Act; and

WHEREAS, an update of the 1993 CWSP was prepared and adopted by the Whatcom County Council by resolution on May 2, 2000; and

WHEREAS, in 2005 the Whatcom County Council approved the WRIA 1 Watershed Management Plan, Phase 1 which was developed pursuant to RCW 90.82; and

WHEREAS, in October 2010 the WRIA 1 Joint Administrative Board adopted the 2010 Lower Nooksack Strategy, Objective 3 Task 3 of which called for a CWSP update “to be used as the basis for furthering the completion of a comprehensive water supply plan;” and

WHEREAS, the CWSP recommends an update every five years to stay current notes periodic updates may be initiated by the Whatcom County Council, and recommends that the Water Utility Coordinating Committee establish standing subcommittees to address CWSP issues; and

WHEREAS, it has been over 14 years since the last update of the CWSP and much has changed regarding water systems and water issues in Whatcom County since the last update such that some provisions of the 2000 CWSP are now might be obsolete.

NOW THEREFORE BE IT RESOLVED, that the Whatcom County Council does hereby call for updating of the 2000 Whatcom County Coordinated Water System Plan to address the following issues:
1. Water demand forecasting consistent with the 2016 update of the County’s Comprehensive Plan, including a comparison of actual use with the forecasts of the 2000 CWSP;

2. A review of minimum design standards for water systems including emergency interties and fire flow requirements;

3. A review of service area boundary designations and identification of contested service areas;

4. A review of the utility service review procedure;

5. A review of policies regarding satellite management agencies;

6. A review of water quality issues including, but not necessarily limited to, nitrate contamination issues;

7. Terms of the Lummi Peninsula groundwater settlement agreement;

8. Incorporation of provisions of the state Municipal Water Law of 2003 including water use efficiency measures;

9. A review of pending litigation regarding Whatcom County’s compliance with the state Growth Management Act;

10. A review of the Critical Water Supply Service Area designation and its boundaries;

11. Establishment of provisions to ensure continuity and follow through of any recommendation by the Water Utility Coordinating Committee established by this Resolution that would survive the completion of the CWSP update;

12. Coordination, including identification of and provision for specific linkages, with other water resource management efforts, including but not necessarily limited to the WRIA 1 Watershed Management Project, in order to assure efficient use of time and funding, to avoid overlap and duplication of effort and consistency of use of parameters such as per capita water use rates;

13. A survey of water connection fees, water rate charges, and adequacy of water system plans and capital needs of water purveyors within the Critical Water Service Supply Area; and

BE IT FURTHER RESOLVED, that the boundaries of the Critical Water Supply Service Area shall remain unchanged; and

BE IT FURTHER RESOLVED, that the Whatcom County Council hereby convenes the Whatcom County Water Utility Coordinating Committee (WUCC) to assist in developing an update to the CWSP. In accordance with RCW 70.116.040, Whatcom County shall invite representatives of all public water systems serving more than 50 customers to participate on the WUCC as voting members along with representatives of the Health Department, Planning and Development Services Department, and County Council. To get the broadest base of input, Whatcom County shall also invite representatives of all other public water systems in the County and representatives of Lummi Nation and the Nooksack Indian Tribe to participate on the WUCC as non-voting members; and

BE IT FINALLY RESOLVED, that the Whatcom County Council shall select a councilmember to represent the entire County Council on the Water Utility Coordinating Committee.

APPROVED this _______ day of ____________, 2014.

ATTEST: WHATCOM COUNTY COUNCIL

______________________________
Dana Brown Davis, Clerk of the Council

______________________________
Carl Weimer, Council Chair

APPROVED AS TO FORM:
Civil Deputy Prosecutor
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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**RECEIVED**

**JUL 15 2014**

**WHATCOM COUNTY COUNCIL**

**TITLE OF DOCUMENT:** Request Executive Session discussion of potential property acquisitions.

**ATTACHMENTS:**

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<th>( ) Yes</th>
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<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( x ) NO</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.)

The County Executive requests an Executive Session to discuss potential park property acquisitions.

**COMMITTEE ACTION:**

<table>
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<tr>
<th>COUNCIL ACTION:</th>
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**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
Special Committee of the Whole

June 17, 2014

CALL TO ORDER

Council Chair Carl Weimer called the meeting to order at 1:36 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

(1:37:06 PM)

Present: Barbara Brenner, Sam Crawford, Ken Mann, Carl Weimer, Pete Kremen, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION

1. DISCUSSION OF COUNCIL OFFICE 2015-2016 BUDGET PRIORITIES (AB2014-205A)

Dana Brown-Davis, Clerk of the Council, described the budget timeline for the Council Office and asked which additional service requests (ASRs) the Council is interested in putting forward.

Weimer stated the County Executive asked the Council to have a discussion about their budgeted travel money sooner rather than later.

Crawford moved to approve a travel budget for each year equivalent to $3,000 per councilmember, for a total of $21,000, to be put into a general pot within the Council budget that councilmembers can use with the approval of the Council majority or Council Chair. There are opportunities councilmembers have missed. He would like to not have to negotiate monies. They must invest in councilmembers’ abilities to get education, participate in state and federal legislative processes, and associate more frequently with other elected officials who face similar problems. This county is growing. They must be able to interact with peers. The taxpayers of Whatcom County will receive a return on this investment in the form of grant revenue received from their efforts.

Brenner stated it’s not the councilmembers’ job to rub elbows. They have an opportunity to connect through email, telephone, and video. They must focus on the budget. If necessary, they can hire another grant writer. This is more than they’ve ever done for the Council. She’s willing to give up her travel money to other councilmembers. Increasing the amount per councilmember doesn’t set a good example for the rest of the County departments.
Kremen stated he agrees with Councilmember Crawford. He recently returned from a trip to Washington, D.C. during which he networked with White House officials and discussed the continual cutting of the Women, Infant, and Children (WIC) program. He brought that issue to the attention of the federal government because he was there and because the First Lady advocates for early childhood learning. Opportunities like that will be missed if they don’t engage in and participate at the State and federal level. The amount suggested is more than they’ve ever had before, but it’s less than they’ve paid for lobbying efforts in partnership with the Port and City of Bellingham, which hasn’t resulted in much benefit to the County. He plans to attend similar conferences around the country to foster similar efforts.

The training done by the Sheriff’s Office and Health Department, which have significant travel and education budgets, can just as easily be done by video. The Council cannot network, lobby for grants, and shape public policy without being face-to-face with others. One issue discussed at the White House and with Treasury Department officials had to do with the loss of sales tax to all counties throughout the country because of internet sales. They’re trying to get the administration and Congress to develop policy that will enable them to recapture lost revenues that they once relied upon.

Crawford stated his motion isn’t to pay people to travel, but to have a fund to reimburse travel expenses, which are set with allowed amounts to be spent, regulated by State and federal law. This is only for expense reimbursement, not to allow any councilmember to benefit financially. The councilmembers receive a minimal base salary to serve on the Council. Anything councilmembers choose to do on behalf of the County is done out-of-pocket unless there is a reimbursement mechanism.

(1:52:25 PM)

Brenner stated she doesn’t mind if the Council has a fund for travel reimbursement when the Council votes to approve the expense reimbursement, and then gets rid of the lobbyist.

Browne stated that in the private sector, a group with this decision-making authority would have a significantly higher travel and education budget. They have a responsibility to the citizens to seek the best available education before making decisions. He supports the motion.

Weimer stated he also supports an increased travel budget, but only if there is a direct benefit to Whatcom County. He’s been to a number of National Association of Counties (NACO) conferences, and not much was worthwhile. If they spend more money on travel, think about how that goes forward. They must be more involved at the State level with the Washington State Association of Counties (WSAC). He asked if this $21,000 includes the budget amount for staff travel and education.

Crawford stated it does. Brown-Davis stated each councilmember has a travel account of $500. There is a $6,000 line item that everyone can draw from. She asked if the $21,000 will be divided and go into individual councilmember accounts or combined into the joint line item.
Kremen asked the current total. Brown-Davis stated there is an additional line item for registration and tuition in the amount of $1,000. She asked if those expenditures would come out of the proposed $21,000 or left in a separate line item. The line item for joint travel account is called Travel/Other.

**Crawford amended his motion and moved** to increase the Travel/Other line item per year for a total of $21,000 for each year. There hasn’t been a formal process for approving reimbursement. They’ve all just been conscious of the limits and have traded each other’s budgets. He prefers one pot of money.

Kremen stated County councilmembers historically were not willing to be involved in training and other efforts. Government is more complex than in the past. Although this is a part-time job, councilmembers should make an effort to be more informed and involved at the State and federal levels and choose their niche so they have a well-rounded, informed legislative body.

**Weimer suggested a friendly amendment** that the budget be $2,000 per councilmember that can be reimbursed without Council approval in each councilmember travel account, and put the other $7,000 available in joint travel line item that can be used upon request and that staff can use for their training and travel needs.

**Crawford accepted** the friendly amendment. This is an expense reimbursement program that must be done with the standard forms and procedures.

Brenner stated she doesn’t support $2,000 per councilmember.

Browne called the question.

**Crawford restated the motion** to budget $2,000 per councilmember that can be reimbursed without Council approval in each councilmember travel account, and put the other $7,000 available in joint travel line item that can be used upon request and that staff can use for their training and travel needs.

The motion carried by the following vote:

**Ayes:** Crawford, Mann, Weimer, Kremen, Browne and Buchanan (6)

**Nays:** Brenner (1)

Brown-Davis asked what the Council wants to do about the line item amount for registration and tuition.

Kremen stated two councilmembers should go to the legislative conference in Washington D.C., which is about $550 for each registration. The line item would also pay for staff registrations. The current amount is obsolete, low, and should be increased.

**Crawford moved** to amend the budget line item in the Council budget from $1,000 to $3,000 per year for all registration and tuitions for councilmembers and staff. He has not used one cent of reimbursement during his time in the Council Office, but they must realistically look at expense reimbursement.
Brenner stated it’s important that staff be able to attend training and conferences whenever needed. She won’t use the money in her account and is willing to give it to others. Putting it in everyone’s line item isn’t the best way to spend the same amount of money. Don’t limit how much the staff can spend on tuition.

Weimer stated there is already a $1,000 limit, and they’re raising it to $3,000.

The motion carried by the following vote:

**Ayes:** Brenner, Crawford, Mann, Weimer, Kremen, Browne and Buchanan (7)

**Nays:** None (0)

Brown-Davis stated another potential ASR is for funding the Charter Review Commission in the amount of approximately $10,000 to $15,000.


Brenner stated she doesn’t mind padding that account because the Charter Review Commission needs whatever funding is necessary to operate because it’s mandatory. Brown-Davis stated the Commission will be busy this time.

**Weimer moved** to create an ASR for $15,000 to pay for the Charter Review Commission.

The motion carried by the following vote:

**Ayes:** Brenner, Crawford, Mann, Weimer, Kremen, Browne and Buchanan (7)

**Nays:** None (0)

Mann stated he supports all four ideas proposed in Ms. Brown-Davis’s email. That includes a full-time Council staff person in a policy analyst position to help with important policy issues. He also supports outsourcing someone to host and live stream Council meetings in a way that is searchable and can be done online.

Brown-Davis stated the County’s Information Technology (IT) Division and Facilities are exploring the option to live stream Council meetings.

Mann stated they should have that discussion with IT staff. It’s not expensive for someone else to host the full video streaming service. Make sure someone in the County budgets for it. Brown-Davis stated she will have a conversation with IT staff and Facilities staff. If they aren’t looking at it, she will research it and put something in the Council’s budget.

Mann stated create an ASR for the Council and Hearing Examiner for staff time spent on the Gateway Pacific Terminal (GPT) project. Have a second dedicated hearing examiner from a port city that’s dealt with huge projects like this. The Council staff is also spending a lot of time on GPT. Consider having some level of staff support dedicated to GPT.

Weimer asked what year they would need to budget for a hearing examiner. The current Hearing Examiner is interested in doing the GPT hearings if the Council contracts out
his current work. He knows the County’s code and the way things work. The Council could outsource the normal hearing examiner issues while Hearing Examiner Bobbink works on GPT. Brenner stated GPT is supposed to pay for those expenses.

Mann stated he believes that’s correct, but just make sure the Council Office doesn’t end up with an expensive bill with no way to get reimbursed. Brown-Davis stated they must have money to pay for the service prior to getting reimbursed.

Tyler Schroeder, Executive’s Office, stated the Council can amend the unified fee schedule (UFS) for a specific charge on a per hour basis for the hearing examiner. The City of Ferndale has a deposit for the hearing examiner services for a certain number of hours, and then charges per hour over that amount. If they amend the 2015 Unified Fee Schedule, those fees will be in place in time for the Council to make a decision on the GPT project or any other larger projects that take a lot of time. He recommends that they update the current contract to ensure that it covers reimbursement for time spent by the Hearing Examiner.

Kremen stated he prefers to amend the contract than amend the UFS.

Brenner stated she agrees. She asked if GPT pays up front. Schroeder described how the fees are recovered from GPT and the escrow account used for CH2MHill’s cost to do the environmental impact statement (EIS).

Mann stated he’s not interested in how reimbursement would work. Just make sure the Council Office and Hearing Examiner staff are tracking their hours and are reimbursed. He asked if Council staff can keep track of their hours.

Jack Louws, County Executive, stated it’s a policy decision. He doesn’t bill his time specifically to the GPT project. The Hearing Examiner is a judge for the County. There is now a specified fee schedule attached to it. The safest process for making sure the hearing examiner service, staff, and use of the facilities are covered on this or any future project is to charge a fee for up to a specific amount of time for hearings in the fee schedule, and include a way to charge extra for any overages.

Mann asked who would initiate that change to the UFS. Brown-Davis stated the Council Office would request that change to the Council portion of the UFS.

Louws stated that if that request comes through, he can review it and approve it on an interim basis before going through the budget process.

Crawford stated he prefers they amend the contract, not the UFS. The fee for the hearing examiner has been the topic of great debate among the councilmembers for many years. He believes the finer points of Whatcom County land use laws can be interpreted differently. There are many instances in which a property owner feels that the staff’s interpretation is incorrect. Going before the hearing examiner is the only time when an applicant is on a level playing field. The staff and the applicant are equals before the hearing examiner. He’s argued in the past that they should have minimal or no fee for the hearing examiner. The GPT project is unique. The County has a contract relationship in
which the County reserves the right to alter the contract and address the costs there. Don’t open the discussion about hearing examiner fees again. The hearing examiner fee covers the cost for Planning Department staff, not the Council. Brown-Davis stated the Council Office charges a $300 fee when the Hearing Examiner decision is appealed to the Council.

Louws stated they can put the expense reimbursement costs on major development applications only, and leave everything else the way it is. That would get to those huge projects with associated costs.

Crawford stated that would resolve his concern.

(2:28:46 PM)

Kremen stated he is concerned about separating the costs for the Hearing Examiner and other expenses. It’s cleaner to have one individual hearing examiner who works solely on the GPT issue instead of having to compute various staff hours. It seems very cumbersome, awkward, and inefficient. It would be easier to administer.

Brenner stated she agrees with keeping a GPT hearing examiner separate and isolated.

Mann stated he’s talking about charging a flat rate until they go over some threshold when an hourly rate would apply. That would also protect the little guy.

Weimer stated he prefers making a unified fee schedule change to major development permits only instead of amending the contract. Hiring a hearing examiner would be costly because of the hiring process. They don’t know what other costs are coming forward. He asked if the request for proposal (RFP) process for hiring a hearing examiner or renting Bellingham High School for public hearings could be charged in the contract. Louws stated a major development applicant would reimburse the County for all costs associated with the major development application, including hearing examiner time, staff time, and facility rental. Make that fee and reimbursement policy solid enough to encompass labor and overhead. They need to account for the cost in the 2015-2016 budget, regardless of who the hearing examiner will be.

Brenner stated she feels strongly about not commingling hearing examiner and other services. Maintain a separation.

Crawford moved to request that the Executive have staff prepare a UFS for 2015-2016 with a base rate plus hourly rate for hearing examiner hearings on major project permits, in addition to the regular hearing examiner fee.

Brenner asked if councilmembers are interested in having another hearing examiner just for the GPT project.

Crawford stated he is not. Mr. Bobbink is extremely competent and has been an excellent hearing examiner. He’s prepared to take this on. When it comes to understanding local code and its history, Mr. Bobbink will be a great asset in this controversial process. He would dread the process of hiring another hearing examiner just for GPT. The public will interpret any hiring decision as being political. Keep away from that option. If the Hearing
Examiner feels like he doesn’t have enough hours to deal with everything, he can ask to
shift the workload.

Brenner stated any hearing examiner has to be a Washington State attorney. She
has faith that other attorneys can do this work. It would be less controversial.

Weimer stated the Hearing Examiner could bring in a hearing examiner pro tempore
to fill in for the normal hearing examiner duties while he works on the GPT project if
necessary.

Kremen stated that would also be a political and problematic process to leave it up to
the Hearing Examiner, who has expressed a specific desire that he wants to deal with all the
issues relating to Gateway Pacific project. It’s cleaner and less problematic to bring in a
separate hearing examiner. The Council is treating this issue differently from any other
issue the Council has ever dealt with.

Weimer stated they don’t need to make that decision today. The Council can have a
conversation with the Hearing Examiner specifically. Mr. Bobbink never expressed to him a
desire to take on the GPT project.

Brown-Davis stated Mr. Bobbink didn’t come to her and the Council Chair because he
wants to do the GPT project. She and the Council Chair went to Mr. Bobbink to ask him if
he would take on the project, if that’s the way things went. Mr. Bobbink told her he would
reluctantly take on the project because it would be the fairest way to travel through the
process. Mr. Bobbink has not come to the Council asking for the project.

Browne asked if the Hearing Examiner indicated how his workload would change and
if he would need assistance.

Weimer stated the Hearing Examiner indicated that he would need assistance
because the hearing would go on for days. Also, he has to read through all the material
submitted.

The motion carried by the following vote:
**Ayes:** Brenner, Crawford, Mann, Weimer, Kremen, Browne and Buchanan (7)
**Nays:** None (0)

**Mann moved** to hire a full time staff person as a legislative analyst with legal and/or
land use expertise for the Council who works at the Council’s direction, in the amount of
approximately $85,000.

Brenner stated make sure they hire a person who also understands budget issues.

Kremen stated he supports one legislative analyst who can provide the Council with
expertise in issues regarding policy, land use, and the budget.

Buchanan asked if the budgeted amount of $85,000 is for salary and benefits.
Brown-Davis stated it is, in addition to any supplies and furniture that person would need.
Browne stated he’s concerned about how a legislative analyst’s time would be allocated. Brown-Davis stated the person’s duties have to be approved by a super-majority of the Council.

Browne stated another option is to split the legislative analyst’s time equally among all councilmembers, so the person isn’t pulled in different directions by individual councilmembers.

Kremen stated Council staff aren’t pulled in different directions by councilmembers. They all can work together peacefully.

Crawford stated the Clerk of the Council is accountable to the Council Chair, and the Council staff are accountable to the Clerk, not to all the councilmembers. The last time the Council had a person in this position, councilmembers may have met with her but didn’t give her direction. Duties were assigned during Committee of the Whole meetings and five votes were necessary.

He is opposed to the motion. The Council has tried this two times in the past decades. In both cases, the legislative analyst went away, but the position was not replaced. The information the legislative analyst provided was not critical. The Council operates fine. Continue to work with the administration under the direction of the County Executive. Build those relationships of collaboration, policy direction, and resource allocation.

The most recent person in the Council’s legislative analyst position collaborated with the Planning Director to support and promote decisions that the Council didn’t agree with and eventually left without notice when the Council changed. Given the nature of what the Council does, it will be tough for this person to keep objective and move in different directions when the will of the Council changes. He asked what a legislative analyst would do.

Mann stated the legislative analyst would provide more in-depth analysis and support on certain proposed issues, such as slaughterhouses and windmills. Many Planning staff have left the Planning Department. The Council does not have direct control over who is hired or assigned to a particular issue. If the Council wants good, independent, professional support, the legislative analyst should be in the Council’s control. If the Council super-majority chooses the workload and the Chair is the point of communication, it can work. The legislative analyst can go through the science behind each issue to determine which are valid and peer-reviewed, for example. This person would not be hired to help the Council achieve a foregone conclusion on any particular issue. The legislative analyst would help the Council wade through competing evidence for complex issues, provide information, and write a report on his or her findings. He could use more professional level analysis beyond what they get from the Planning Department.

Weimer stated this type of legislative analyst would be able to research issues and provide information that Planning staff may not have time to provide for councilmembers.

Browne stated that requiring a super-majority to allocate the legislative analyst’s duties won’t work. Divide the person’s time equally and allocate to each councilmember.
He may want the legislative analyst to do research and answer questions on a particular topic that may be outside the normal process.

Brenner stated it would be extremely inefficient to divide a legislative analyst’s time seven ways. The position will be political no matter what. She will support the motion, but the position is political. The Council needs a legislative analyst because the Council serves a check-and-balance function to the administration. The Council and Executive aren’t a team. The analyst position is very important. The importance of the legislative analyst supersedes the potential for politics.

Kremen stated it won’t be a problem for councilmembers to get information from the legislative analyst. They work well with the Clerk and the rest of the staff. The Council only works on one or two critical and controversial issues at a time. The Council would be served well by having a legislative analyst so councilmembers can be more informed, make better decisions, and work in tandem with the administration.

Louws stated he would like to work with the Council Chair and Clerk to fully understand the relationship a legislative analyst would have with the administration. The administration does everything it can right now to provide information on everything that is going on to all seven councilmembers. Some councilmembers are much more involved than others. He asked if a legislative analyst would be an eighth person who engages the administration in addition to what goes on now or a conduit for councilmembers to engage the administration. The thought processes surrounding the idea of hiring a legislative analyst must be refined further before he supports it through the budget. At this time, it’s his budget and he will move it forward. The Council can then make changes. Right now, he needs to know how this person would work. The administration is available to provide as much information to the Council as it can. All the staff believe the information they provide is reliable. They want to continue to do that for the Council. If the Council’s workload justifies hiring a full-time legislative analyst to work on behalf of the Council, they will move forward. Refine the details of how the position will function to be successful.

The motion carried by the following vote:

Ayes: Brenner, Mann, Weimer, Kremen and Buchanan (5)

Nays: Crawford and Browne (2)

Brenner stated the administrative staff are wonderful, but the Council must operate only as a check-and-balance. It’s not personal.

Weimer stated the Council staff can talk to the Executive’s staff about the most appropriate way for GPT project staff time reimbursement to happen.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:03 p.m.
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

The Council approved these minutes on ______________, 2014.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Carl Weimer, Council Chair

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Jill Nixon, Minutes Transcription
TITLE OF DOCUMENT: Ordinance amending the Official Whatcom County Zoning Ordinance, Title 20, Chapter 20.13 – Wireless Communications Facilities to reorganize and streamline administration of the chapter, add a new section on permitted uses, add new definitions; and also amend Title 20, Chapter 20.97 – Definitions.

ATTACHMENTS:
(1) Cover Memo to County Executive and County Council
(2) Draft Ordinance & Exhibit “A”
(3) Whatcom County Planning Commission Findings of Fact and Reasons for Action, Conclusions, & Recommendation
(4) Planning Commission Draft Minutes from May 22, 2014 and June 12, 2014
(5) Staff Report & Memos (on file at the Council Office)
(6) Public Comment (on file at the Council Office)

SEPA review required? (X) Yes ( ) NO
SEPA review completed? (X) Yes ( ) NO
Should Clerk schedule a hearing? (X) Yes ( ) NO
Requested Date: July 22, 2014
Note: Based on public input, staff suggests that the County Council hold a public hearing on the proposal; note also, that the Council must hold a hearing if they want to change the Planning Commission’s recommendation [WCC 20.90.051(iv)].

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
The proposal is to amend Whatcom County Code, Title 20, Chapter 20.13 – “Wireless Communications Facilities” and Chapter 20.97 – Definitions to streamline permit processing for routine wireless communication equipment upgrades. Proposed changes to the wireless code chapter include new definitions and clarification of terms for ease of administration, adding a new section on “permitted uses” to allow routine antenna upgrades and replacement construction on existing, approved and conforming sites as a permitted use instead of as an administrative approval use; reorganization of the Chapter into a format that is more consistent with the format used in most chapters of Title 20; and deleting definitions in Chapter 20.97 that pertain to wireless communication facilities to avoid duplication in the title and maintain consistency with the wireless code chapter as amended.

COUNCIL ACTION:
7/8/2014: Introduced 7-0

Related County Contract #: Related File Numbers: PLN2014-00010/SEP2014-00021

Ordinance or Resolution Number:
MEMORANDUM

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

FROM: Erin Osborn, Planner

THROUGH: Mark Personius, Long Range Planning Manager

DATE: June 25, 2014

SUBJECT: Wireless Communication Code Amendments (PLN2014-00010)

The attached packet contains recommendations from the Whatcom County Planning Commission on a proposal to amend Whatcom County Code, Title 20, Chapter 20.13 – "Wireless Communications Facilities", as shown in the attached Exhibit "A", in both 'clean' and 'strike-through' versions.

Generally, the proposal is to streamline the permit process for routine equipment upgrades, and new antenna construction on existing, approved and conforming wireless communication service sites. Definitions are amended to clarify terms, and new ones added, for increased transparency and ease of administration; the chapter is reorganized into a format that more closely resembles the format used in most chapters of the County’s zoning code, i.e. putting specific uses that are now found in sections on “additional standards” into their own individual sections according to type of use, such as: administrative uses, conditional uses, non-conforming uses, and prohibited uses. Note: The strike-through version of Exhibit "A" in your packet notes the original location of uses that have been 'moved'.

During the last 5 years, PDS has issued approximately 44 WCF Permits for routine upgrades and collocation on existing sites. Staff has noticed that although many of the applications required public notice, based on lack of public comment and absence of objection to projects on existing sites, staff finds that the public is generally not concerned about routine upgrades or new antenna construction on existing sites.

Existing code requires a special use permit even for routine upgrades, i.e. collocations or replacement antennas on existing sites. Adding a new permitted use section, (as proposed) would allow routine antenna upgrades, replacement construction, and new antennas or new antenna arrays to be constructed on existing, approved and conforming sites as a permitted use, (instead of having to get an administrative approval use permit, subject to public notice), but still subject to the requirement of a commercial building permit and corresponding zoning review for conformance with the chapter.
Recent changes to the State Environmental Policy Act (SEPA) have expanded categorical exemptions that apply to modifications of existing wireless communication facilities. Under existing code, wireless communication facility improvement projects that are exempt from SEPA are also exempt from public notice. Proposed changes to existing code factor in changes to SEPA and its rules, and are reflected in the proposal to allow routine equipment upgrades, and replacement construction on existing sites as a permitted use when such proposals don’t substantially change the physical dimensions of such facilities.

Key to successful application of new SEPA categorical exemptions is language in SEPA that defines “substantial change to the physical dimensions”. The proposal before you to approve a new permitted use section would allow replacement construction and new antenna construction (collocation) on existing sites, only when such modifications to existing, approved, and conforming sites do not result in a substantial change to the physical dimensions of existing sites. The proposal also incorporates the definition from SEPA for “substantial change”.

As noted in my introductory comments, a number of definitions have been proposed and terms have been clarified for ease of chapter administration. New definitions are proposed to more clearly explain what is meant by “wireless communication facilities”, and new definitions are proposed to distinguish “free standing wireless communication facilities”, from “attached wireless communication facilities”, and to clarify what is meant by “collocation”. New language is also proposed that gives a provider an opportunity to weigh in on the selection of an expert, should the County require “third party” review.

The Planning Commission held two public hearings on the proposal, and the proposal has gone through a number of drafts. During the two hearings held on the application, there was discussion on the subject of performance bonds (required under existing code to cover costs incurred by the county should the county find it necessary to remove a facility if one was ever to be abandoned). Commissioners voted to recommend that the County Council docket a future application proposal to review and update these provisions.

Wireless service industry representatives for AT&T (Bush Law Firm) have been involved in providing input to staff and the Planning Commission on the subject amendments. They have expressed a desire to further comment on the proposal to the County Council, and staff suggests that Council hold a hearing on the proposal.

I look forward to presenting an overview of the subject proposal and answering questions at your July 22, 2014 Public Hearing.

Please contact me if you have any questions.

Thank you.
ORDINANCE # __________________________

ADOPTING AMENDMENTS TO THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, TITLE 20: CHAPTER 20.13 – “WIRELESS COMMUNICATIONS FACILITIES” TO STREAMLINE PERMIT PROCESSING ON ROUTINE WIRELESS COMMUNICATION EQUIPMENT UPGRADES ON EXISTING, APPROVED, AND CONFORMING SITES: ADDING A NEW SECTION ON PERMITTED USES, ADDING NEW DEFINITIONS TO CLARIFY TERMS FOR EASE OF ADMINISTRATION, REORGANIZATION OF THE CHAPTER TO BETTER MATCH THE ORGANIZATION OF OTHER TITLE 20 CHAPTERS; AND ALSO AMENDING CHAPTER 20.97 – DEFINITIONS

WHEREAS, Whatcom County Comprehensive Plan Goals and Policies emphasize the importance of refining the regulatory system, streamlining development regulations and eliminating unnecessary delays in routine permitting, and support the development and use of new technologies; and

WHEREAS, Whatcom County Code that regulates establishment of new wireless communication facilities was originally adopted fourteen years ago under Whatcom County Ord. 2000-006; and

WHEREAS, Since adoption of the County’s wireless communication facility code, wireless service technologies have advanced, especially in recent years. Increased customer demand for wireless service especially ‘data’, requires that providers routinely update their equipment and replace antennas to make use of the latest technologies; and

WHEREAS, Under existing code, project proponents when collocating or replacing equipment and structures on existing sites are required to obtain an administrative approval use permit which requires a public comment period in addition to a commercial building permit; staff has noted that public comment on these types of proposals is infrequent, and opposition to upgrades on existing, approved, conforming sites is very rare; and

WHEREAS, Representatives of the wireless communication services industry have submitted verbal and written comments requesting that Whatcom County update its wireless code. Comments received indicates that both the wireless services industry and wireless service customers in the county would benefit from a more streamlined, efficient permit process for routine equipment upgrades on existing sites; and

WHEREAS, Whatcom County Planning and Development Services submitted an application to amend the Official Whatcom County Zoning Ordinance, Title 20, Chapter 20.13 – “Wireless Communications Facilities” and placed this item on the docket which was affirmed by the Whatcom County Council under Whatcom County Res. 2014-012; and

WHEREAS, Legal notice and County Public Participation requirements have been met; and
WHEREAS, The proposed amendments have been reviewed for conformance with zoning text amendment approval criteria established in Whatcom County Code, Chapter 20.90.050; and

WHEREAS, The Whatcom County Planning Commission held two public hearings on the subject amendments, and after considering staff recommendations and input from the public, they voted to recommend that the Whatcom County Council adopt amendments to the text of Whatcom County Code, Title 20 as shown in the attached Exhibit "A".

WHEREAS, The County Council has adopted the following Findings of Fact:

**FINDINGS OF FACT**

1. The purpose of the proposal to amend Whatcom County Code, Title 20, Chapter 20.13 "Wireless Communications Facilities" is to streamline permit processing for routine wireless communication equipment upgrades on existing, approved, and conforming sites. Existing code requires a special use permit even for routine upgrades. The proposal adding a new permitted use section would allow routine antenna upgrades, replacement construction, and new antennas or new antenna arrays on existing, approved and conforming sites as a permitted use subject to the requirement of a commercial building permit, and subject to all applicable local, state, and federal laws and regulations.

The proposal also amends definitions and clarifies existing terms to promote ease of administration and increase transparency, and includes a reorganization of the chapter into a format that more closely resembles the format used in most chapters of the County's zoning code. Types of uses found in sections on "additional standards" have been moved into their own individual sections according to type of use, such as administrative uses, conditional uses, non-conforming uses, and prohibited uses.

2. The proposed amendments have been drafted in response to staff recommendations, public comment, and recommendations by the Planning Commission. The amendments as proposed may provide increased flexibility in siting wireless service facilities, streamline application review, avoid duplicative review, and provide greater permit efficiencies that may assist wireless service providers to more successfully implement new technologies and better serve wireless customers in Whatcom County.


4. On March 31, 2014 a "60 Day Notice of Intent to Adopt Amendment" was submitted to the Washington State Department of Commerce via email in regards to the subject amendments. On April 7, 2014 Washington State Department of Commerce replied to confirm that the County had fulfilled this requirement, and that the 60 Day Notice was filed for reference under Material ID 20154. On May 14, 2014, a supplement to the 60-Day Notice was sent by email to provide Department of Commerce with the most recent proposal on that date.
5. The Whatcom County Designated SEPA Official (lead agency) reviewed the proposed amendments to the Wireless Communications Facilities Chapter, and on April 2, 2014 made a determination that no probable significant adverse impacts to the environment would be likely to occur as a result of adopting the proposed amendments. This decision was made after a review of the completed SEPA Environmental Checklist on file with the lead agency, referenced under File No. SEP2014-00021. A 14 day comment period ending on April 16, 2014 was established for the DNS; one comment was received from the City of Bellingham, which indicated general support for the proposal. At the conclusion of the comment period, a 10 day appeal period was established, and no appeals to the determination, a DNS, were filed.

6. Notice of the Planning Commission hearing scheduled for May 22, 2014, and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on May 13, 2014.


8. Notice of the Planning Commission hearing scheduled for May 22, 2014 was published in the Bellingham Herald on May 9, 2014.

9. A number of public comments were received from the wireless communication services industry, and these comments were posted to the Planning Commission website, as they were received. The substance of these comments generally supported the County’s intent to streamline wireless communication facility permit processing on existing, approved, and conforming sites. General and specific suggestions were given on what kind of changes would benefit the wireless communications service industry.

10. The Planning Commission held a scheduled public hearing on the subject proposed amendments on May 22, 2014.

11. At the May 22, 2014 public hearing, the Planning Commission heard from one member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities, and gave an example of how at one point public comment positively influenced the siting of a new tower constructed on Badger Road, in regards to setbacks.

12. At the May 22, 2014 public hearing, Planning Commissioners also heard from several members of the public (Bush Law Firm) representing interests of AT&T Wireless Services. Comments included an outline of four additional opportunities for streamlining the permit process for routine replacement construction and equipment upgrades on existing sites, as follows:

- Revise Exhibit "A" proposed new definition for "substantially increase the
physical dimensions” to match the new definition (July 2013) for “substantial change” in the State Environmental Policy Act (SEPA);

- Consider alternative measures to supplant “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility;
- Revise Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” as to the selection of a third party expert;
- Instead of moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140 (as proposed by staff), reconsider whether or not routine maintenance should be exempt from provisions of the chapter, and whether or not such maintenance should be subject to requirements of obtaining a building permit.

13.During the work session of the May 22, 2014 meeting, during deliberations on the subject amendments, commissioners voted to recommend that staff make a number of minor edits to Exhibit “A” preliminary draft proposed text to increase clarity, including adding a note to clarify the meaning of the term “collocate”; they also voted to recommend that staff provide a new definition for “substantial increase to physical dimensions” to match the SEPA definition for “substantial change to physical dimensions”, and to draft easy-to-understand new language providing a base line from which to measure “substantial change in physical dimensions”, so as to limit the effect of incremental changes on the size of existing facilities; to revise Section 20.13.160 – “Third Party Review” language to require “joint approval” between Whatcom County and applicant in selection of third party experts; and that staff provide a rationale for maintaining existing wireless code provisions on performance bonds that are intended to cover costs of removal; and finally, that staff provide a memo or some discussion on applicability of the International Building Code (IBC) to wireless service improvement projects, including, temporary uses, routine maintenance and repair, and replacement construction.

14. Based on public input at their May 22, 2014 meeting, Planning Commissioners voted to hold the public record open for additional comment. They also requested that members of the public representing AT&T interests submit written comment to summarize their verbal comments and suggestions. Commissioners then voted to hold a second public hearing on the proposed amendments, scheduled for June 12, 2014.

15. On May 23, 2014, staff spoke with Whatcom County Planning & Development Services, Building Official, relaying the Planning Commissioner’s request that a briefing on applicability of the IBC to wireless communication facility improvement projects be provided at or before the scheduled June 12, 2014 Planning Commission Meeting & Public Hearing. A follow up email was sent on
May 27, 2014 to outline the nature of the Planning Commission’s inquiry in more detail.

16. Information about applicability of the International Building Code (IBC) to wireless communication facilities, and emergency repair permitting was provided by the Whatcom County Building Services Manager, and this information was submitted to all members of the Whatcom County Planning Commission by email, and was also posted to the County’s website, in advance of the second hearing, scheduled on June 12th.

17. Between the first and second hearings, staff conducted research on performance bonds as requested by the Planning Commission, reviewing the code of a number of city and county jurisdictions, interviewed four staff from different County departments, and drafted a new Exhibit “A” (dated June 2, 2014) to reflect Planning Commission recommendations.


19. Notice of the second Planning Commission hearing and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on June 3, 2014.

20. Notice of the second Planning Commission hearing and proposed amendments was sent to the Lummi Indian Business Council, Historic Preservation Office on June 3, 2014.

21. Additional comment was received in a letter from Bush Law Firm representing the interests of AT&T on June 11th 2014. The letter addressed the four items addressed in public comment submitted to commissioners on May 22, 2014, and also included a section suggesting new definitions for “wireless communications service”, “wireless communications facilities” and “collocation”.

22. Staff wrote an additional memo to the Planning Commission dated June 12, 2014, to cover public comment and suggestions outlined in the June 11, 2014 Bush Law Firm Letter, including discussion and recommendations on support for the new definitions for wireless communication service and wireless communication facility, and also gave reasons why the suggested definition for “collocation” outlined in the June 11th Bush Law Firm letter should not be approved.

23. The Planning Commission held a second public hearing on the subject amendment on June 12, 2014.

24. At the June 12, 2014 public hearing, the Planning Commission heard from a member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities on new sites, and gave an example of how public comment influenced the siting of a new tower constructed on Badger Road, in regards to setbacks. Further comment from this individual emphasized an understanding of how important it is to uphold setbacks for new
wireless towers to ensure protection of property and public safety.

25. At the June 12, 2014 public hearing, Planning Commissioners heard from the public representing interests of AT&T (Bush Law Firm). Public comment included general support for changes to the proposal, as follows:

- Support for revised proposed definition: "substantially change the physical dimensions" to match the definition in the State Environmental Policy Act (SEPA);
- Support for staff’s revised proposal (June 12, 2014, Memo to Planning Commission) to delete “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility, but not supporting staff suggested language to expressly provide Whatcom County authority to lien property to recover costs incurred should the facility ever become abandoned, and should the county find it necessary to remove the facility.
- Support for revisions to Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” in selecting a third party expert;
- Support for moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140, but still recommending that commissioners should reconsider whether or not routine maintenance should be exempt from provisions of the chapter.

26. At the Planning Commission meeting held June 12, 2014, after considering staff’s report and recommendations, and after considering public comment, commissioners deliberated on the subject amendments and through a series of motions, and amended motions, they voted to recommend that the Whatcom County Council adopt amendments to the text of the Official Whatcom County Zoning Ordinance, as shown in the Exhibit “A” attached to this ordinance.

27. At the end of the Planning Commission meeting held on June 12, 2014, commissioners voted on a motion to recommend that the Whatcom County Council consider initiating to the docket a proposal to review and update existing wireless code provisions that relate to Performance Bonds [WCC 20.13.062(11)]. More specifically, commissioners recommended that performance bond requirements that are intended to cover costs incurred by the County (in removing such facilities in the case of abandonment), may be more efficiently administered if they apply only to wireless support structures and their appurtenant ground equipment, and that performance bonds not be required as a condition of issuance for each incremental and successive improvement made to the structure over the life of the facility. The general motion was to recommend that the County Council docket a future amendment to review and update “performance bonds”, because it appeared to exceed the scope of the original application: Planning Commission discussion indicated that additional
research, review and input on this subject was needed prior to making a more specific recommendation.

28. Pursuant to Whatcom County Code (WCC) 20.90.050, Whatcom County Planning and Development Services has evaluated the proposed amendment in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan as authorized by the Washington State Growth Management Act (GMA) – RCW 36.70A; and has considered possible environmental impacts identified by the lead agency through the State Environmental Policy Act (SEPA) threshold determination process.

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

Section 1. The Official Whatcom County Zoning Ordinance, Title 20 is hereby amended as shown on Attachment “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 __________________________, 2014

ATTEST: WHATCOM COUNTY COUNCIL

Dana Brown-Davis, Council Clerk

Carl Weimer, Chairperson

APPROVED as to form: ( ) Approved ( ) Denied

Royce Buckingham,
Civil Deputy Prosecutor

Jack Louws, Executive

Date: ____________________
AMENDMENTS TO THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, TITLE 20: CHAPTER 20.13 – “WIRELESS COMMUNICATIONS FACILITIES” TO STREAMLINE PERMIT PROCESSING ON ROUTINE WIRELESS COMMUNICATION EQUIPMENT UPGRADES ON EXISTING, APPROVED, AND CONFORMING SITES: ADDING A NEW SECTION ON PERMITTED USES, ADDING NEW DEFINITIONS TO CLARIFY TERMS FOR EASE OF ADMINISTRATION, REORGANIZATION OF THE CHAPTER TO BETTER MATCH THE ORGANIZATION OF OTHER TITLE 20 CHAPTERS; AND ALSO AMENDING CHAPTER 20.97 – DEFINITIONS

THE PLANNING COMMISSION ENTERS THE FOLLOWING FINDINGS OF FACT, REASONS FOR ACTION, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS OF FACT AND REASONS FOR ACTION

1. The purpose of the proposal to amend Whatcom County Code, Title 20, Chapter 20.13 “Wireless Communications Facilities” is to streamline permit processing for routine wireless communication equipment upgrades on existing, approved, and conforming sites. Existing code requires a special use permit even for routine upgrades. The proposal adding a new permitted use section would allow routine antenna upgrades, replacement construction, and new antennas or new antenna arrays on existing, approved and conforming sites as a permitted use subject to the requirement of a commercial building permit, and subject to all applicable local, state, and federal laws and regulations.

The proposal also amends definitions and clarifies existing terms to promote ease of administration and increase transparency, and includes a reorganization of the chapter into a format that more closely resembles the format used in most chapters of the County’s zoning code. Types of uses found in sections on “additional standards” have been moved into their own individual sections according to type of use, such as administrative uses, conditional uses, non-conforming uses, and prohibited uses.

2. The proposed amendments have been drafted in response to staff recommendations, public comment, and recommendations by the Planning Commission. The amendments as proposed may provide increased flexibility in siting wireless service facilities, streamline application review, avoid duplicative review, and provide greater permit efficiencies that may assist wireless service providers to more successfully implement new technologies and better serve wireless customers in Whatcom County.

4. On March 31, 2014 a “60 Day Notice of Intent to Adopt Amendment” was submitted to the Washington State Department of Commerce via email in regards to the subject amendments. On April 7, 2014 Washington State Department of Commerce replied to confirm that the County had fulfilled this requirement, and that the 60 Day Notice was filed for reference under Material ID 20154. On May 14, 2014, a supplement to the 60-Day Notice was sent by email to provide Department of Commerce with the most recent proposal on that date.

5. The Whatcom County Designated SEPA Official (lead agency) reviewed the proposed amendments to the Wireless Communications Facilities Chapter, and on April 2, 2014 made a determination that no probable significant adverse impacts to the environment would be likely to occur as a result of adopting the proposed amendments. This decision was made after a review of the completed SEPA Environmental Checklist on file with the lead agency, referenced under File No. SEP2014-00021. A 14 day comment period ending on April 16, 2014 was established for the DNS; one comment was received from the City of Bellingham, which indicated general support for the proposal. At the conclusion of the comment period, a 10 day appeal period was established, and no appeals to the determination, a DNS, were filed.

6. Notice of the Planning Commission hearing scheduled for May 22, 2014, and notice that the proposal had been posted on the County website was sent to citizen, media, cities and other groups on the County’s e-mail list on May 13, 2014.


8. Notice of the Planning Commission hearing scheduled for May 22, 2014 was published in the Bellingham Herald on May 9, 2014.

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example of how at one point public comment positively influenced the siting of a new tower constructed on Badger Road, in regards to setbacks.

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- Revise Exhibit “A” proposed new definition for “substantially increase the physical dimensions” to match the new definition (July 2013) for “substantial change” in the State Environmental Policy Act (SEPA);

- Consider alternative measures to supplant “Performance Bond” [WCC 20.13.062(11)] requirements that are meant to cover costs incurred by the County should the county ever have to intervene and remove an abandoned wireless structure or facility;

- Revise Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” as to the selection of a third party expert;

- Instead of moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140 (as proposed by staff), reconsider whether or not routine maintenance should be exempt from provisions of the chapter, and whether or not such maintenance should be subject to requirements of obtaining a building permit.

13. During the work session of the May 22, 2014 meeting, during deliberations on the subject amendments, commissioners voted to recommend that staff make a number of minor edits to Exhibit “A” preliminary draft proposed text to increase clarity, including adding a note to clarify the meaning of the term “collocate”; they also voted to recommend that staff provide a new definition for “substantial increase to physical dimensions” to match the SEPA definition for “substantial change to physical dimensions”, and to draft easy-to-understand new language providing a base line from which to measure “substantial change in physical dimensions”, so as to limit the effect of incremental changes on the size of existing facilities; to revise Section 20.13.160 – “Third Party Review” language to require “joint approval” between Whatcom County and applicant in selection of third party experts; and that staff provide a rationale for maintaining existing wireless code provisions on performance bonds that are intended to cover costs of removal; and finally, that staff provide a memo or some discussion on applicability of the International Building Code (IBC) to wireless service improvement projects, including, temporary uses, routine maintenance and repair, and replacement construction.

14. Based on public input at their May 22, 2014 meeting, Planning Commissioners voted to hold the public record open for additional comment. They also requested that members of the public representing AT&T interests
submit written comment to summarize their verbal comments and suggestions. Commissioners then voted to hold a second public hearing on the proposed amendments, scheduled for June 12, 2014.

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20. Notice of the second Planning Commission hearing and proposed amendments was sent to the Lummi Indian Business Council, Historic Preservation Office on June 3, 2014.

21. Additional comment was received in a letter from Bush Law Firm representing the interests of AT&T on June 11th 2014. The letter addressed the four items addressed in public comment submitted to commissioners on May 22, 2014, and also included a section suggesting new definitions for “wireless communications service”, “wireless communications facilities” and “collocation”.

22. Staff wrote an additional memo to the Planning Commission dated June 12, 2014, to cover public comment and suggestions outlined in the June 11, 2014 Bush Law Firm Letter, including discussion and recommendations on support for the new definitions for wireless communication service and wireless communication facility, and also gave reasons why the suggested definition for “collocation” outlined in the June 11th Bush Law Firm letter should not be approved.

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amendment on June 12, 2014.

24. At the June 12, 2014 public hearing, the Planning Commission heard from a member of the public who spoke about the importance of providing a public comment period when siting new wireless facilities on new sites, and gave an example of how public comment influenced the siting of a new tower constructed on Badger Road, in regards to setbacks. Further comment from this individual emphasized an understanding of how important it is to uphold setbacks for new wireless towers to ensure protection of property and public safety.

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- Support for revisions to Exhibit “A” Section 20.13.160 – “Third Party Review” language to provide explicitly for “joint approval” in selecting a third party expert;

- Support for moving routine maintenance from the chapter reserved for exempt actions to a new permitted use section in WCC 20.13.140, but still recommending that commissioners should reconsider whether or not routine maintenance should be exempt from provisions of the chapter.

26. At the Planning Commission meeting held June 12, 2014, after considering staff’s report and recommendations, and after considering public comment, commissioners deliberated on the subject amendments and through a series of motions, and amended motions, they voted to recommend that the Whatcom County Council adopt amendments to the text of the Official Whatcom County Zoning Ordinance, as shown in Exhibit “A”, dated June 24, 2014.

27. At the end of the Planning Commission meeting held on June 12, 2014, commissioners voted on a motion to recommend that the Whatcom County Council consider initiating to the docket a proposal to review and update existing wireless code provisions that relate to Performance Bonds [WCC
20.13.062(11)]. More specifically, commissioners recommended that performance bond requirements that are intended to cover costs incurred by the County (in removing such facilities in the case of abandonment), may be more efficiently administered if they apply only to wireless support structures and their appurtenant ground equipment, and that performance bonds not be required as a condition of issuance for each incremental and successive improvement made to the structure over the life of the facility. The general motion was to recommend that the County Council docket a future amendment to review and update “performance bonds”, because it appeared to exceed the scope of the original application. Planning Commission discussion indicated that additional research, review and input on this subject was needed prior to making a more specific recommendation.

28. Pursuant to Whatcom County Code (WCC) 20.90.050, Whatcom County Planning and Development Services has evaluated the proposed amendment in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan as authorized by the Washington State Growth Management Act (GMA) – RCW 36.70A; and has considered possible environmental impacts identified by the lead agency through the State Environmental Policy Act (SEPA) threshold determination process.

CONCLUSIONS

After evaluating all information presented by staff, and after considering all comment from the public, and after reviewing the proposed amendments for consistency with zoning text amendment approval criteria established in Whatcom County Code, Chapter 20.90.050, the Whatcom County Planning Commission concludes that it will be in the best interest of the public if the County Council adopts amendments to the text of the Whatcom County Official Zoning Ordinance (Title 20) as shown in the attached Exhibit “A”.

RECOMMENDATION

Based upon the above findings of fact, reasons for action and conclusions, the Whatcom County Planning Commission hereby recommends that the Whatcom County Council adopt amendments to the Official Whatcom County Zoning Ordinance as shown in the attached Exhibit “A”.

WHATCOM COUNTY PLANNING COMMISSION

[Signature]

Dave Onkels, Chair

[Signature]

Becky Boxxl, Secretary

Date June 16, 2014

Commissioners present at the June 12, 2014 meeting when the vote was taken on the subject amendments:
Dave Onkels, Mary Beth Teigrob, Gary Honcoop, Ken Bell, Ben Elenbaas, Natalie McClendon, Walter Haugen, David Hunter

Roll Call Vote: Ayes: Dave Onkels, Mary Beth Teigrob, Gary Honcoop, Ken Bell, Ben Elenbaas, Natalie McClendon, Walter Haugen, David Hunter; Nays: 0; Abstain: 0; Absent: Gerald Vekved. Motion carried to forward a recommendation of approval to the County Council on the subject amendments.

Attachment:

Exhibit "A"
EXHIBIT “A”

Whatcom County Code, Title 20

Chapter 20.13
WIRELESS COMMUNICATIONS FACILITIES

Sections:

20.13.010 Purpose.
20.13.020 Definitions.
20.13.040 Permitted Uses.
20.13.050 Administrative Approval Uses.
20.13.060 Conditional Uses.
20.13.080 Prohibited Locations
20.13.070 Additional standards for residential-related districts.
20.13.080 Additional standards for nonresidential-related districts.
20.13.100 Wireless communication facility permit.
20.13.110 Special exceptions.
20.13.120 Application requirements and conditions of issuance.
20.13.130 General criteria for issuance of permits.
20.13.140 Federal requirements.
20.13.150 Removal of antennas and support structures.
20.13.160 Third party review.
20.13.170 Appeals.

20.13.010 Purpose.

The purpose of this chapter is to set forth the regulations for the placement, development, permitting, and removal of personal wireless communications facilities including support structures and antennas. These standards were developed to comply with the Federal Telecommunications Act of 1996. They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the county.

The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to discriminate between providers of functionally equivalent personal wireless services.

In reviewing an application to provide personal wireless service or to install personal wireless service facilities, the county shall act within a reasonable period of time, taking into account the nature and scope
of the application and the required notice and necessary review process. Any decision to deny an
application shall be in writing, supported by substantial evidence contained in a written record. (Ord.
2000-006 § 1, 2000).

20.13.020 Definitions.
As used in this chapter, the following terms shall have the following meanings. Other words and terms
shall have meanings assigned to them by Chapter 20.97 WCC or if not defined in this chapter or Chapter
20.97 WCC, the meaning customarily assigned to them.

(1) “Administrator” means the director of planning and development services or his designee.

(2) “Amateur radio” or “ham radio” means radio facilities operated for noncommercial purposes by
individuals licensed by the FCC with an interest in construction and operation of radio equipment, usually
as a hobby or vocation.

(3) “Ancillary equipment facility (AEF)” means an unstaffed structure used to contain ancillary equipment
for a WCF. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar
structures. Ancillary equipment may include air conditioners and emergency generators.

(4) “Antenna” means any pole, panel, reflection disc, or similar device used for the transmission or
reception of radio frequency signals, including but not limited to, directional antennas, Omni-directional
antennas, and parabolic antennas.

(5) “Antenna array” means any system of poles, panels, rods, reflecting discs or similar devices used for
the transmission or reception of radio frequency signals. An antenna array can be made up of one or
more antennas including but not limited to the following:

(a) Directional antenna (also known as a panel antenna) which transmits signals in a directional
pattern of less than 360 degrees.

(b) Omni-directional antenna (also known as a whip antenna) which transmits signals in a 360-
degree pattern.

(c) Parabolic antenna (also known as a dish antenna) which is a bowl shaped device that
receives and transmits signals in a specific directional pattern (e.g., point-to-point).

“Attached wireless communications facility” means an antenna array that is attached to an existing
building or structure (attachment structure), which structure shall include but not be limited to utility poles,
signs, and water towers, together with any accompanying pole or device (attachment device) which
attaches the antenna array to the existing building or structure, transmission cables, and an ancillary
equipment facility which may be located either inside or outside of the attachment structure.
"Attached wireless communication support structure" is a support structure not specifically designed and constructed to support an antenna array. Such structures may include but are not limited to buildings or structures, utility poles, signs, and water towers, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure.

"Attached wireless communication facility" is a wireless communication facility that utilizes an attached wireless communication support structure as defined in WCC 20.13.020(6). It means the site, the leased area, attached wireless communication support structures, antennas, antenna array(s), accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure, transmission cables, and an ancillary equipment facility which may be located either inside or outside of the attachment structure.

"Citizens band radio" means two-way radio facilities operated for short-range personal and business communications, without necessity of a federal license, pursuant to 47 Congressional Federal Register Part 95.

"Clustering" means the placement of more than one wireless communication support structure on a single site either by one provider or by several different providers.

"Collocation" means the use of a single wireless communications support structure by more than one wireless communications provider or the use of a site by more than one wireless communications provider.

"Collocate" means the installation of wireless services equipment on a freestanding or attached wireless communication facility that may be shared by one or more wireless service providers to transmit and/or receive radio frequency signals for communication purposes. For the purposes of this chapter, the terms "collocate", "collocation" or "co-locate" may be used interchangeably to describe action taken by a principal facility owner, an authorized agent, or a valid lessee to add wireless services equipment to an existing facility. Note: The spelling of these terms may vary based on local vernacular used by wireless service industry professionals, and in accordance with state and federal law.

"Direct-to-home satellite service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

"FAA" means the Federal Aviation Administration.

"FCC" means the Federal Communications Commission.
Wireless Communication

(14) "Freestanding wireless communication facility" means the site, the lease area, freestanding wireless communication support tower(s), antennas, antenna array(s), accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication services. Freestanding wireless communication facilities include but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

(15) "Freestanding wireless communication support structure" is a freestanding structure, designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below:

(a) "Lattice tower" means a wireless communication support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

(b) "Monopole tower" means a wireless communication support structure consisting of a single pole to support antennas and connecting appurtenances.

(c) "Guyed tower" means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communication towers, antennas, and connecting appurtenances. (Ord. 2000-006 § 1, 2000).

(16) "Wireless communications facilities" (WCF) means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

(17) "Personal wireless communications services" means wireless communications services.

(18) "Wireless communication service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

(19) "Wireless communication service" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.
(18) "Wireless communications support structure" means a structure designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below. Any device (attachment device) which is used to attach an attached WCF to an existing structure (attachment structure) is excluded from this definition.

(a) "Lattice tower" means a wireless communications support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

(b) "Monopole tower" means a wireless communications support structure consisting of a single pole to support antennas and connecting appurtenances.

(c) "Guyed tower" means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communications towers, antennas, and connecting appurtenances. (Ord. 2000-006 § 1, 2000).

(1319) "Satellite earth station" means the facilities used for reception and processing of programming services from a satellite prior to transfer to terrestrial distribution systems or for processing of programming and services from a terrestrial source before transmission via satellite.

(1420) "Site". For the purpose of this chapter, "site" means a building, structure, leased area which may contain a base station, building(s) or structure in compliance with the provisions of Whatcom County subdivision regulations, site easement area or lot of record upon which a wireless communications facility is or will be located.

(1522) "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need a FCC license.

(21) "Substantially change the physical dimensions" means:

(a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than ten percent, or twenty feet, whichever is greater, provided that any such increase in height must conform to the provisions of this chapter; or

(b) The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet or more than the width of the structure at the level of the appurtenance, whichever is greater.

Provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in (a) or (b) above, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County.
The requirements of this chapter shall apply to all new personal wireless communications facilities and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

1. Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.

2. Send and receive citizen band radio antennas or antennas operated by federally licensed amateur ("ham") radio operators.

3. Industrial, scientific and medical equipment using frequencies regulated by the FCC.

4. Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.

5. Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes.

6. Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations. Provided, that compliance with design and development standards of this chapter is maintained. (Ord. 2000 006 § 1, 2000).

20.13.040 Permitted Uses.
The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter; the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt.

1. Replacement construction:
In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites; provided that such replacement does not increase the total number of components lawfully existing on the site at the time of application for such replacement construction, and further provided that such replacement construction does not "substantially change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(21).

Determinations made as to whether or not replacement proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially change the physical
dimensions of such facilities as defined in WCC 20.13.020(20). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction:

In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided that such new antennas or antenna arrays do not "substantially change the physical dimensions" of such facilities, as defined in WCC 20.13.020(19);

Determinations made as to whether or not new construction proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially change the physical dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).

20.13.050 Administrative Approval Uses

The following uses are considered administrative approval uses and shall require a Wireless Communication Facility (WCF) permit in accordance with WCC 20.84 and WCC 2.33, and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless categorically exempt; provided that WCF permit proposals located in nonresidential related districts shall be exempt from the public noticing requirements found in WCC 2.33 - Permit Review Procedures.

Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for its review prior to making a decision on the application.
(1) Wireless Communication Facility (WCF) permit

New freestanding wireless communication support structures, new antennas or antenna arrays on existing freestanding or attached wireless communication structures on existing approved and conforming sites, and new attached wireless communication facilities that substantially change the physical dimensions of a facility as defined in WCC 20.13.020(21) may be approved by the administrator through issuance of a WCF permit, subject to a required commercial building permit. Prior to application approval, the applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards (as applicable).

(a) New freestanding wireless communication support structures:

(i) New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Rural, Residential Rural, and Rural Residential Island. [Moved from: WCC 20.13.070(1)(a)(i)]

(ii) New freestanding wireless communication support structures (monopoles only), may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain residential uses. [Moved from: WCC 20.13.070(1)(ii)]

(iii) Monopoles that are permitted as a WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates that the structure’s height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain. [Moved from: WCC 20.13.070(1)(b)]

(iv) In all nonresidential districts: New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on approved and conforming sites; provided that the height of such structures shall be subject to requirements of WCC 20.13.092(9)(b); and provided further that the height does not exceed 150 feet. Additional height may be approved only by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)]

(b) New attached wireless communication facilities:

New attached wireless communication facilities may be approved by the administrator through issuance of a WCF Permit, and subject to a required commercial building permit(s), as provided below.

(i) In all residential districts: New attached wireless communication facilities or new antennas attached to existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the
roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(ii) In all non-residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites, provided that the site is not used exclusively for residential purposes. [Moved from: WCC 20.13.080(2)(b)(c)]

(iii) In all residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites, provided that the site is not used exclusively for residential purposes and the antenna is not more than 15 feet above ground level nor more than 12 feet in diameter. [Moved from: WCC 20.13.070(2)(b)(iii)]

(c) New antennas or antenna arrays on existing freestanding wireless communication facilities or existing attached wireless communication facilities on existing, approved and conforming sites; may be approved by the administrator through issuance of a WCF Permit, and subject to required commercial building permit(s):

(i) In all nonresidential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on existing approved and conforming sites, provided that the height of such new antennas or antenna arrays shall not extend more than 15 feet above the attachment device. [Moved from: WCC 20.13.080(2)(c)(d)]

(ii) In all residential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on approved and conforming sites; provided that the height of such new antennas or antenna arrays shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(2)(i)]

(iii) In all residential districts: New antennas on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(iv) In all nonresidential related districts: New antennas attached on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(2) Ancillary Equipment Facilities
(a) New ancillary equipment facilities or replacement construction that substantially increases the physical dimensions of an existing facility as defined in WCC 20.13.020(19), may be permitted on existing approved, conforming sites as an Ancillary Equipment Facility (AEF) under the scope of a WCF permit. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a WCF permit shall conform to original time frames for completion set by the administrator, or as further amended by the administrator.

20.13.060 Conditional Uses.

(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with WCC 20.84 and WCC 2.33 and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) Emission Standards (as applicable). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.

(a) New freestanding wireless communication facilities:

(i) In all nonresidential related districts: New freestanding wireless communication facilities that utilize lattice tower or monopole wireless communication support structures; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b); and further provided that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)(a)]

(ii) New freestanding wireless communication facilities that utilize lattice towers or monopole towers in the following residential related districts: Rural, Residential Rural, Rural Residential Island; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(a)]

(iii) New freestanding wireless communication facilities that utilize monopole towers only in the following residential districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain existing residential uses, and further provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(ii)]

(b) New Attached Wireless Communication facilities:

(i) In all non-residential related districts: New attached wireless communication facilities that utilize a residential structure on a site used exclusively for residential purposes shall require a conditional use
permit; provided that the antenna shall not extend more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(ii) In all residential districts: New attached wireless communication facilities that utilize an attached wireless communication support structure that is a residential building or on a parcel used exclusively for residential purposes shall require a conditional use permit; provided that the antenna shall not extend more than 15 feet above the roof top (or top of the structure if not a building) and that the requirements of WCC 20.13.092(1) are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.092(1). [Moved from: WCC 20.13.070(2)(c)]

(2) New ancillary equipment facilities may be permitted under the scope of a conditional use permit, or may be permitted separately as an AEF under a WCF permit pursuant to WCC 20.13.060. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a conditional use permit shall conform to original time frames for completion set by the hearing examiner, or as further amended by the hearing examiner.

20.13.040-070 Nonconforming uses and structures.
Freestanding and attached wireless communications facilities, and ancillary equipment facilities in operation as of the effective date of the ordinance codified in this chapter or amendment hereto, including vested applications for such facilities, that do not conform to the use standards or development standards of this chapter are hereby declared nonconforming uses and shall be subject to the provisions of Chapter 20.83 WCC governing nonconforming uses. Routine maintenance on existing towers and antennas is permitted as provided in WCC 20.13.030(6) WCC 20.13.050. However, any new construction other than routine maintenance on existing non-conforming towers, antennas, buildings or other facilities shall comply fully with the requirements of Chapter 20.83 WCC governing nonconforming uses, and this chapter. (Ord. 2000 006 § 1, 2000).

20.13.080 Prohibited Locations.
(a) New attached antennas or antenna arrays shall not be mounted, installed or affixed to a single family residence, duplex or their accessory structures; this prohibition shall not apply to residential structures such as multi-family housing, condominiums, apartment buildings, hotels, rooming houses, and their appurtenant structures, such as parking garages, and storage buildings.

(b) New freestanding wireless communication support structures (lattice towers) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts.

(c) New freestanding wireless communication support structures (monopole towers and ground level dishes) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts on sites that also contain residential uses.
(d) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).

20.13.050 085 Siting priorities and prohibited locations.

(1) In reviewing applications for new freestanding wireless communication facilities, and new attached wireless communication facilities, the approving authority shall evaluate the proposal in relationship to the following siting priorities and prohibited locations. Unless the facility will be located at the highest priority location, the applicant shall demonstrate that:

(a) None of the higher priority locations are available; or
(b) If one is available it is not a feasible location for the proposed facility; or
(c) If feasible, the location is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(2) For the purpose of this section:

(a) Residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial (NC), Rural-Residential Rural (RR), Rural Residential Island (RR-I), and Rural (R) Districts;

(b) Non-residential related districts include:

(i) Commercial districts shall include Rural including Rural General Commercial (RGC), General Commercial (GC), Resort Commercial (RC) and Tourist Commercial (TC) Districts;

(ii) Industrial districts shall include including Heavy Impact Industrial (HII), Light Impact Industrial (LII), Gateway Industrial (GI), Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), Airport Operations (AO) and the Cherry Point Industrial District (CP-ID);

and

(iii) Resource districts shall include including Agriculture (AG), Commercial Forestry (CF), Rural Forestry (RF) and Recreation Open Space (ROS).

(3) Siting Priorities. Listed in descending order with the highest priority first:

(a) Collocated attached antennas on attached wireless communication structures that are nonresidential buildings and structures, including and collocated antennas on existing freestanding wireless communications towers in nonresidential related districts.

(b) Collocated attached antennas on attached wireless communication support structures that are nonresidential buildings and structures, including and collocated antennas on existing
freestanding wireless communications towers in residential related districts on property not used exclusively for residential purposes.

(c) Attached antennas on attached wireless communication structures such as nonresidential buildings and structures in nonresidential related districts.

(d) New freestanding wireless communication support structures at low visual impact locations in resource and industrial districts.

(e) New Attached antennas on attached wireless communication facilities that utilize nonresidential buildings and structures in residential related zones on property not used exclusively for residential purposes.

(f) New freestanding wireless communication support structures at low visual impact locations in commercial districts.

(g) Locations other than those listed above.

(4) Prohibited Locations.

(a) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).

20.13.060 Design and development standards.

Design and Development Standards. The development standards set forth below shall apply to all wireless communications facilities. These developments standards are minimum standards and shall be in addition to any development standards or project review process which applies in the underlying district in which a wireless communication facility is located. In the event of a conflict between the provisions of this chapter and the general development standards of this title, or the project review process, the more stringent provision shall govern; provided, that where a provision of this chapter is the more specific in its application to wireless communication facilities that provision shall prevail regardless of stringency.

(1) Anti-Climbing Devices. All freestanding and attached wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.

(2) Attachment to Trees Prohibited. It is prohibited to attach any wireless communication facility or portion thereof to any tree.

(3) Signage. All freestanding and attached wireless communications support structures shall be identified with an nonilluminated sign not exceeding four square feet. The sign shall list the wireless service provider’s name and emergency telephone number and shall be posted in a place visible to the general public.
public. No advertising signs shall be located on support structures or antennas, however arrays may be camouflaged as otherwise permitted signs.

(4)_-Lighting. All freestanding and attached Wireless communications facilities shall not be illuminated except where required by the FAA.

(5)_-Painting. All freestanding and attached Wireless communications facilities shall be painted or finished in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.

(6)_-Noise from Accessory Equipment. Accessory Equipment Facilities shall comply with state noise level standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

(7)_-Copies of deeds or other instruments such as lease agreements and site easements that establish the applicant's right to use the site shall be provided at the time of application. These may be in unsigned final draft form pending the outcome of the approval process. The boundaries of a proposed wireless communications facility site shall be defined in each such instrument in a manner that will provide a land surveyor sufficient information to accurately locate the site boundaries using standard survey methods.

(8)_-If the proposed site is leased, the terms of the lease shall not restrict the land owner in any way from leasing other areas of his property to other wireless communications providers with the exception that the lease may include a provision that any additional facilities so located not materially interfere with the operation of the existing facility.

.062.092 General Design Standards.

(1) Attached antennas-Antennas that are mounted, installed or affixed to an attached wireless communication support structure (excluding collocated antennas on existing WCF-structures) shall be designed or placed to blend with the, predominant background or architectural features as seen from abutting residential uses, roadways or other public rights of way.

(2) When located on buildings, panel antennas shall be placed closely against walls or parapets and not extend above the wall or parapet unless an alternative design is required to a) achieve better compatibility with the building design or b) to obtain antenna function.

(3) Accessory equipment facility structures shall be placed underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, they shall be screened from view.
(4) Ground-mounted dishes shall be located outside any required landscaped area and preferably located in service areas or other less visible locations. They shall be solidly screened to at least as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the top of the dish on sides adjacent to residential zones.

Roof-mounted dishes shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. The dish should be placed as close to the center of the roof as possible.

(5) Antennas on utility poles shall be limited to whip-antennas that are no more than two feet in length unless the approving authority finds that the visual impact of a longer antenna would not have an appreciable effect on surrounding uses. No more than one whip-antenna is permitted per pole. No utility pole shall be extended in height in order to accommodate an antenna. No antenna shall be allowed on light standards.

(6) Setbacks Applicable. The following setback standards shall apply to wireless communications facilities:

(a) Accessory equipment structures shall comply with the setback requirements for principle nonaccessory structures in the underlying district. An antenna and its attachment device attached to a building or other permanent structures shall comply with the setback requirements for principle nonaccessory structures in the underlying district. Where the setback requirement in the underlying zone is based on the height of the structure, the height used to compute the setback for the antenna array shall be the height of the structure plus the additional height that will be added by the antenna array and its attachment device.

(b) Nonattached Freestanding wireless communications support structures located in a residential related district as set out described in WCC 20.13.050-20.13.085 shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

(c) Nonattached Freestanding wireless communications support structures located in other than residential related districts shall be set back from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

(d) Regardless of the district, nonattached freestanding wireless communications structures shall be setback from dwellings not on the same legal lot, a distance equal to the height of the freestanding wireless communications support structure or the setback of the underlying use district whichever is greater.
(e) Setbacks for nonattached freestanding wireless communications support structures shall be measured from the ground-level base of the structure.

(f) The setback requirements for freestanding and attached wireless communication facilities under this chapter may be reduced by the approving authority subject to the satisfaction of the special exception criteria in WCC 20.13.110.

(7) In the event that a new freestanding or attached wireless communications facility is proposed on land zoned agriculture or in an agriculture overlay zone and the land is otherwise suitable for agricultural use, the facility shall be located and maintained so as not to interfere with current agricultural activities or the potential future use of the site for agricultural activities.

(8) Screening Standards. Freestanding and attached Wireless communications facilities shall be subject to the following standards for visual screening:

(a) The perimeter of the wireless communication support structure and any guyed wires and anchors shall be enclosed by a fence or wall at least six feet in height. A row of evergreen shrubs, spaced not more than five feet apart and capable of growing to form a continuous hedge at least five feet high within five years of planting, and at least one row of evergreen trees or shrubs spaced not more than 10 feet apart nor less than six feet high when planted shall be installed outside and adjacent to the fence.

(b) Landscape material used for screening should be selected and sited to produce a hardy and drought-resistant landscape area. Native plant materials are preferred.

(c) Maintenance of landscaped areas shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy manner. Trees and shrubs that die must be replaced with healthy in-kind materials such that during the life of the facility the landscaping continues to satisfy the requirements of the permit. Temporary irrigation shall be provided to help ensure survival during the plant establishment period. If the approving authority determined that existing vegetation provided adequate screening without the need for additional landscaping, than no action shall be taken by the applicant or his assigns or successors that would diminish its effectiveness in screening the site. In the event that natural vegetation is removed to the extent that the area required to be screened is made more visible, the operator of the facility shall prepare a revegetation plan and submit the plan to the administrator for review and approval. Upon approval the operator shall implement the plan.

(d) The administrator or the hearing examiner as appropriate may approve any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. Either, as appropriate, may waive the requirement for the installation of screening for those sides of the
facility that are naturally screened so as not to be visible from public streets or adjoining properties.

(e) Existing vegetation shall be preserved to the maximum extent practicable.

(f) When landscaping is required to be installed a maintenance bond, assignment of funds or other financial guaranty acceptable to the county shall be provided in the amount of 50 percent of the value of the labor and materials. The guaranty shall be in effect for two years from the date of planting.

(9) General Height Standards. The following standards shall apply to wireless communications facilities:

(a) The height of a freestanding or attached wireless communications facility shall be measured to include the support structure and any antennas proposed to be attached to the structure at the time of application; provided that a lightning rod, not to exceed 10 feet or FAA required lighting shall not be included in the height measurement.

(b) For a nonattached wireless communications facility, the height limit on a freestanding wireless communications facility shall be the minimum height necessary for the facility to function satisfactorily provided the height does not exceed height restriction imposed elsewhere in this chapter. The applicant shall provide technical documentation that the height proposed is the minimum necessary. As provided in WCC 20.13.160, the administrator or the hearing examiner may require a third party review of this information.

(c) The height of attached antennas mounted or installed on an attached wireless communication support structure may exceed the height limit of the underlying zone; provided that the height does not exceed height restriction imposed elsewhere in this chapter.

(10) Parking. Each freestanding and attached wireless communications support structure shall be provided with at least one adjacent parking space or more if needed to accommodate staff. All unstaffed wireless communications facilities shall have access to parking for maintenance personnel, however such parking may be shared or public parking at the discretion of the county. Staffed facilities shall require one parking space per staff under the standard provisions of the zone in which it is located.

(11) Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.160.

(12) Building and Utility Permits. Approval of a WCF permit does not exempt or otherwise remove any requirements for obtaining building permits and other applicable construction, development or operation
related permits, licenses or approvals for the project. It shall be the permittee's responsibility to secure all
other necessary permits and approvals prior to beginning work on the installation of the facility. (Ord.
2000-006 § 1, 2000).

20.13.070 Additional standards for residential related districts.
The following requirements and restrictions shall apply to the location of wireless communications
facilities in the county's residential related districts. For the purposes of this section, residential related
districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed
(UR-MX), Eliza Island (EI), Neighborhood Commercial, (NC) Rural Residential (RR), Rural Residential
Island (RR-1), and Rural (R) Districts.

(1) Support Structures.

(a) When not otherwise prohibited, new wireless communications support structures in
residential related zones shall require conditional use approval pursuant to WCC 20.84.200 and
subject to the following; provided, that new support structures collocated or clustered on an
existing approved and conforming site may be permitted through a wireless communications
facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an
expansion of a nonconforming use by conditional use as provided in WCC 20.83.020:

(i) Lattice towers are prohibited in the following residential related zones: Urban
Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood
Commercial, and Eliza Island Districts.

(ii) Monopole wireless communication support structures and ground level dishes shall not
be located on land parcels or lots in Urban Residential, Urban Residential Medium, Urban
Residential Mixed, Neighborhood Commercial and Eliza Island Districts that also contain
residential uses.

(b) A monopole WCF may exceed the height limits of the underlying residential related zone by
15 feet; provided, the applicant demonstrates the structure's height is the minimum necessary to
adequately function, or if collocation is specifically provided for on the tower. The additional 15
feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30
feet in the event both situations pertain.

(2) Attached Antennas.

(a) Attached antennas are prohibited on single-family dwellings, duplexes and their accessory
structures. Dish antennas shall not be mounted on roofs without a special exception under the
provisions of WCC 20.13.110.

(b) The following antennas may be permitted through a wireless communications facility (WCF)
permit:
Collocation on an existing, approved and conforming, wireless communication support structure; provided, that no more than 15 feet is added to the height of the facility.

Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in \textbf{WCC 20.83.020}.

Attachment to a nonresidential structure on a land parcel or lot not used primarily for residential purposes; provided, the antenna does not extend more than 15 feet above the roof or top of the structure if not a building.

Ground-mounted dish antennas may be located on sites not used exclusively for residential purposes; provided, the antenna is not more than 15 feet in height above ground level nor more than 12 feet in diameter.

Attached antennas on a structure located on a land parcel of lot used exclusively for residential purposes or attached to a residential building, other than those residential buildings prohibited in subsection (1)(a) of this section, may be approved as a conditional use provided the antenna shall not extend more than 15 feet above the roof or top of the structure if not a building and that the requirements of \textbf{WCC 20.13.062(1)} are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with \textbf{WCC 20.13.062(1)}.

\textbf{20.13.080 Additional standards for nonresidential-related districts.}

The following requirements and restrictions shall apply to the location of wireless communications facilities in the county's nonresidential districts. For the purposes of this section, nonresidential-related districts shall include commercial districts, industrial districts and resource districts each as described in \textbf{WCC 20.13.050}.

\textbf{(1) Support Structures.}

(a) New support structures shall require a conditional use permit pursuant to \textbf{WCC 20.84.200}; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in \textbf{WCC 20.83.020}. The height of new support structures shall be subject to requirements of \textbf{20.13.062(9)(b)}; provided, that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided for in \textbf{WCC 20.13.110}.

\textbf{(2) Attached Antennas.}

(a) Antennas shall not be attached to single-family residences, duplexes or their accessory structures.
(b) Where not otherwise prohibited by this chapter, attached wireless communications facilities on sites used exclusively for residential purposes and wireless communications facilities attached to residential structures shall require a conditional use permit.

(c) Other attached antennas, ground-mounted dishes and collocated antennas, on existing, approved and conforming sites, shall require a WCF permit; provided, that new support structures collocated on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.

(d) Antennas attached to structures shall not extend more than 15 feet above the roof or parapet. Collocated antennas shall not extend more than 15 feet above the attachment device. (Ord. 2000-006 § 1, 2000).

20.13.090 100 Temporary uses.
Wireless Freestanding or attached wireless communication facilities may be permitted as a temporary use with review by the administrator in order to facilitate continuity in wireless communications service during repair or maintenance of existing wireless communications facilities or prior to completion of construction of new wireless communications facilities. Such temporary wireless communications facilities shall use wireless communications facilities facilities shall operate for not more than 60 days at any one location within a six-month period commencing when transmission from such facility begins. The wireless communications facilities facility(s) shall be removed within 30 days after the facility is no longer needed for telecommunications purposes. (Ord. 2000-006 § 1, 2000).

20.13.100 Wireless communication facility permit.
A wireless communication facility (WCF) permit is an administrative approval permit, except where a conditional use permit is required in WCC 20.13.080 and 20.13.070, and shall be processed and approved pursuant to WCC 20.84.235; provided, that the notice requirements shall be as follows:

Applications that are categorically exempt from environmental review under SEPA (WAC 197-11-800) shall also be exempt from the public notice requirements of WCC 20.84.235 and Chapter 2.33 WCC.

Applications not exempt from environmental review under SEPA shall be provided notice of completeness, notice of application and notice of decision as provided by Chapter 2.33 WCC.

The administrator may refer an application for a WCF permit to the technical review committee for review and comment prior to making a decision on the proposal. (Ord. 2000-006 § 1, 2000).

20.13.110 Special exceptions.
When adherence to all development standards of this chapter would result in a physical barrier which would block signal reception or transmission or prevent effective communication in all permissible locations, a special exception may be permitted provided criteria outlined below are met. Exceptions do
not apply to variations from the current code as adopted and amended per WCC Title 15, Buildings and Construction. A variance pursuant to Chapter 20.84 WCC is required for variations from applicable zoning regulations not described in this section.

The approval authority for granting of the special exception shall be the same as that of that of the authority authorized to approve the permit for the antenna location. A request for a special exception shall be processed in conjunction with the permit approving the antenna location.

Upon review of special exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.

(1) Special Exception Criteria.

(a) The applicant shall justify the request for a special exception by documenting and providing evidence that the full application of a particular standard or standards of this chapter would result in an obstruction or inability to send and receive a communication signal from the proposed location of the facility and further, that the obstruction or inability to send or receive a signal from that location is the result of factors beyond the property owner's or applicant's control. Pictures, scaled drawings, maps and/or manufacturer's specifications, and other technical information as necessary, should be provided to substantiate the need for the special exception.

(b) The applicant for a special exception shall demonstrate that the proposed materials, shape, and color of the antenna will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.

(c) Any request for a special exception to heights for new antennas that are proposed to be mounted or installed on an attached wireless communication support structure requesting a special exception for height shall be reviewed relative to through the same process as a support structure height limitations set for structures in the underlying zone district in which the antenna is to be located.

(d) Requests for special exceptions for setback reductions shall also be judged based on the following criteria:

(i) The extent to which screening and camouflaging will be employed to mitigate the effects of the structure versus the value of the setback in providing such screening.

(ii) The need for the setback reduction to facilitate a location or design that better satisfies the criteria of this chapter.
20.13.120 Application requirements and conditions of issuance.

Applicants shall submit the following information in addition to standard application materials:

1. A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

2. Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.

3. Legal description and ownership of the parcel.

4. A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.

5. For new freestanding support structures, a location evaluation study shall be provided as follows:
   a. A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.
   b. The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC 20.13.060(11) 20.13.130(4), to cover the future costs of removal of the antenna and/or tower facility.
   c. A report from a licensed professional engineer documenting that:
      i. The support structure is designed for collocation of other antennas (if applicable.)
      ii. The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.
      iii. The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.
(8) A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipates will be sited by his company within Whatcom County during the next five years.

(9§) Proof of license by the FCC, if applicable.

(10§) A copy of the findings from the FAA’s Aeronautical Study Determination regarding the proposed wireless communication support structure.

(11) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.061 20.13.091(7).

(12) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers. (Ord. 2000-006 § 1, 2000).

**20.13.130 General criteria for issuance of permits.**

(1) Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:

(a) The antenna must be located at the site to satisfy its function in the applicant’s local wireless service provider’s local grid-system. The county may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.

(b) The height requested is the minimum height necessary to fulfill the site’s function within the grid-wireless service provider’s system.

(2) In addition to standard criteria, the authority granting the permit shall find that, unless the facility will be located at the highest priority location as set forth in WCC 20.13.050 20.13.085, the applicant has demonstrated that none of the higher priority locations are available or if one is available it is not a feasible location for the proposed facility; or if feasible is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(3) The permit may include requirements which:

(a) Minimize visual impacts to the greatest extent possible by maximum feasible use of camouflage or screening, including but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or live or simulated vegetation, undergrounding of accessory equipment structures, incorporation of wireless communications support structures, antennas and other appurtenances into the architectural features of existing buildings or structures and by requiring compatibility with key design elements in the surrounding area; for example, use of
brick or other material similar to that used in adjacent buildings or structures, incorporation of
support structures into compatible architectural features such as flag poles, bell towers or
cornices, or use of simulated vegetation to camouflage support structures.

(b) Locate wireless communication facilities so as to minimize the visibility of the facility to
residentially zoned land and so as to minimize the obstruction of scenic views from residentially
zoned land.

(c) Require the mounting of the facility on existing buildings or structures, or use of other,
alternatives with less visual, aesthetic or safety impacts, as an alternative to use of a monopole
or lattice tower. (Ord. 2000-006 § 1, 2000).

(4) **Performance Bond or Other Security Acceptable to the County.** The operator of the facility shall obtain
and keep in force throughout the time the facility is located on the site a performance bond or other
security acceptable to Whatcom County payable to Whatcom County in the amount of 150 percent of the
estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended
to cover the costs of removal of such facility at such time as the facility may be required to be removed
pursuant to WCC 20.13.150.

**20.13.140 Federal requirements.**
All wireless communications support structures must meet or exceed current standards and regulations of
the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless
communications support structures and antennas. If such standards and regulations are changed, owners
of the freestanding or attached wireless communication support structure, antennas and electronic
equipment governed by this chapter shall bring such wireless communication support structure, antennas
and electronic equipment facility into compliance with such revised standards and regulations within the
compliance schedule of the federal agency. Failure to bring such facilities wireless communication
support-structures and antennas into compliance with such revised standards and regulations shall
constitute grounds for the removal of the wireless communication support structure, antenna or electronic
equipment facility at the owner's expense. (Ord.-2000-006 § 1, 2000).

**20.13.150 Removal of antennas and support structures.**
No less than 30 days prior to the date that a personal wireless service provider plans to abandon or
discontinue operation of a facility, the provider must notify the Whatcom County planning and
development service director by certified U.S. mail of the proposed date of abandonment or
discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of
discontinuation or abandonment unless an additional period of time is authorized by the county. In any
case, if the county finds that any antenna or wireless communication support structure has not operated
for a continuous period of six months, the owner or lessee of the property on which the wireless
communication support structure or antenna is situated or the owner of the wireless communications
antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from
the county. If the antenna and/ or wireless communication support structure is not removed within said
time period, the county may remove the antenna or wireless communication support structure at the
owner's expense. If there are two or more wireless communications providers on a single wireless
communication support structure, this provision shall not become effective until all providers cease using
the wireless communication support structure. (Ord. 2000-006 § 1, 2000).

20.13.150 Removal of antennas and support structures.
No less than 30 days prior to the date that a personal wireless service provider plans to abandon or
discontinue operation of a facility, the provider must notify the Whatcom County planning and
development services director by certified U.S. mail of the proposed date of abandonment or
discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of
discontinuation or abandonment unless an additional period of time is authorized by the county. In any
case, if the county finds that any antenna or wireless communication support structure has not operated
for a continuous period of six months, the owner or lessee of the property on which the wireless
communication support structure or antenna is situated or the owner of the wireless communications
antenna or support structure shall remove the facility within 90 days 36 months of receipt of notice to
remove from the county. If the antenna and/or wireless communication support structure abandoned
facility is not removed within said time period, the county may remove the antenna or wireless
communication support structure at the owner's expense. If there are two or more wireless
communications providers on a single wireless communication support structure, this provision shall not
become effective until all providers cease using the wireless communication support structure. (Ord:
2000-006 § 1, 2000).

20.13.160 Third party review.
Personal wireless service providers use various methodologies and analyses, including geographically-
based computer software, to determine the specific technical parameters of their services and low power
mobile radio service facilities, such as expected coverage area, antenna configuration, topographic
constraints that affect signal paths, etc. Because of the technical nature of methodologies and analyses,
the county may find it necessary to require a third party technical review of the material submitted by the
applicant as part of a permitting process. The expert review is intended to address interference and public
safety issues and be a site-specific review of technical aspects of the facilities or a review of the
provider's methodology and equipment used and not a subjective review of the site which was selected
by a provider. Based on the results of the expert review, the county may require changes to the provider's
application. The expert review shall address the following:

(1) The accuracy and completeness of submissions;
(2) The applicability of analysis techniques and methodologies;
(3) The validity of conclusions reached; and
(4) Any specific technical issues designated by the county.
In general, and if necessary, the administrator shall consider requiring a third party review of technical information submitted in support of a special exception, and technical information submitted in support of a wireless communications facility proposed at a low priority, high visual impact location.

The selection of the third party expert shall may be by mutual agreement between the provider and the county. The cost of the technical review shall be borne by the applicant. (Ord. 2000-006 § 1, 2000).

20.13.170 Appeals.

The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under provided in WCC 20.92.210(2). (Ord. 2000-006 § 1, 2000).

Chapter 20.97
DEFINITIONS

20.97.456 Wireless communications facilities.

"Wireless communications facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. Wireless communications facilities includes, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronic and switching equipment. (Ord. 2000-006 § 3, 2000).

20.97.457 Wireless communications service.

"Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services. (Ord. 2000-006 § 4, 2000).
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, David Onkels, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call
Present: Ben Elenbaas, Jerry Vekved, David Onkels, Ken Bell, Natalie McClendon
Absent: Walt Haugen, Gary Honcoop, David Hunter, Mary Beth Teigrob

Staff Present: Mark Personius, Erin Osborn, Karen Frakes-Prosecutor’s Office, Becky Boxx

Department Update
Mark Personius updated the commission on the following:
• Review of items before the County Council
• Planning & Development Services happenings

Open Session for Public Comment
Greg Brown, Whatcom County: Thanked Ken Bell and Ben Elenbaas for applying for the Charter Review Committee.

Commissioner Comments
There were no Commissioner comments.

File #PLN2014-00010: A proposal to amend Whatcom County Zoning Code text, Title 20, Chapter 20.13 – Wireless Communications Facilities. The purpose of the proposed amendments are to review and update permit processes for routine wireless communication facility equipment upgrades, adding new definitions to clarify terms for ease of administration and adding new language that exempts certain projects from Wireless Communication Facility permit requirements when such structures or improvements do not substantially increase the physical dimensions of such facilities.

Erin Osborn presented the staff report and a power point presentation.

The purpose of the amendments are to streamline permit processing for routine wireless communication equipment upgrades on existing approved and conforming sites. What staff has found, over the years, is that the code does not provide for routine upgrades. There is existing code language that states that if the bulk or footprint is increased in any way, then it is no longer exempt, and would require a special use permit, either an administrative approval WCF permit or a conditional use permit. During development of this proposal staff has been in contact with representatives of the wireless industry to get their input on ways to streamline the permit process.

Proposed Substantive Changes
• New permitted uses apply to replacement construction; new antenna or new antenna array construction; routine maintenance and emergency repair. Staff
recommends that routine maintenance and repair should not be exempt from the provisions of the chapter. Under the proposed code most routine replacement construction and new antennas, on existing approved conforming sites, would be a permitted use, subject to a commercial building permit and zoning review for conformance with the chapter, so long as the proposals don't substantially increase the physical dimensions. The new permitted use would be subject to a pre-screening at the time of the commercial building permit. Once it has been determined to be a permitted use it would not have to get what is typically required, which is a WCF permit, an administratively approved use permit. At the pre-application screening for the commercial building permit, and after the zoning administrator determines that it is a permitted use based on what documentation the applicant provides, it would be approved per zoning, but still would be subject to conditions in the commercial building permit, similar to normal conditions of approval found in a WCF permit.

- Add new language and delete existing language to address July 2013 amendments to SEPA and updated May 10, 2014 SEPA rules regarding expanded statutory categorical exemptions that apply to modifications of existing wireless communication facilities.

- Move exemptions for "routine repair and maintenance" into a new section for permitted uses.

- Add new definitions.

The existing definition for "collocation" is deleted. A new definition for "collocate:" is proposed that expands on the existing definition to clarify that the terms may be used to describe action by someone other than the owner of the facility. This was an issue that was a concern for staff because "collocate" implies that one provider is putting something on another provider's tower. In a situation where the tower owner wants to add additional equipment to its own tower, what is it called? Staff didn't have a way to describe that. This new definition clarifies that.

The freestanding wireless communication structure facilities such as lattice towers and monopole towers are called wireless communication structures in the existing code. Other types of facilities and structures are called attached, but if specifically designed to support equipment it is considered a wireless communication structure. If not designed for this it is called an attached wireless communication structure. The existing code goes all over the place, in that it calls the wireless communication structures non-attached, but there is no definition and there is a lot of blending of the language.

Proposed Non-Substantive Changes

- Consists of reorganizing the chapter so that uses are taken out of the standards sections for residential and non-residential related districts and puts them into specific use categories such as: administrative approval uses, conditional uses, non-conforming uses and prohibited uses.
• Delete the "s" from the word "communications" because it is problematic.
• Clarify provisions that would allow ancillary equipment facilities as part of an administrative approval WCF permit or as part of a conditional use permit. Right now a provider will come in and apply for a conditional use permit but there is no clear mechanism for them to attach antennas or to permit their ancillary equipment.

Existing Chapter Organization
All of the uses embedded in existing code sections 20.13.070 and 20.13.080 WCC are very difficult to administer. In the proposal these uses weren’t changed they were just extracted from the existing text and moved into new sections that more clearly describe that they are “uses”, as opposed to “standards”

Public Notice Requirements and Public Comment
Under existing code most routine wireless equipment upgrades require a WCF permit. Generally, unless exempt from SEPA, the process for review and permitting is very similar to a conditional use permit, including public notice (in residential related districts). Conditional use applications require environment review, under SEPA and a threshold determination. SEPA determinations need to be published with a 14 day comment period. Public notice is sent to all property owners with 300 feet of the proposal in the Urban Growth Areas, or 1,000 feet in other areas. There is then a 15 day comment period for the application. Staff does utilize the optional DNS provisions, which allows them to combine noticing. Staff has found that public comment on sites that require public notice, generally don’t express any major objection.

New SEPA and SEPA Rules
SEPA is a broad, general law that is meant to catch environmental impacts when other types of code regulations might not. In the state law there are some categorical exemptions for wireless communication facilities. In July 2013 SEPA was amended and new rules, to reflect the SEPA changes went into effect in May 2014. The new rules exempt most routine upgrades and replacement construction on existing sites. The new rules state that a substantial change occurs when "the mounting of equipment on a structure that increases the height of the structure more than 10 percent or 20 feet, whichever is greater; or an action that would add an appurtenance to the body that would protrude from the edge more than 20 feet or more than the width of the structure at the level of the appurtenance, whichever is greater."

The way changes to SEPA affect existing code is that the applications that are categorically exempt from environmental review are also exempt from the public notice requirements. What it does is create a less restrictive requirement than what is in existing code. This would exempt sites in residential zones from public notice. The proposal is to delete language that refers to SEPA rules and add language stating that all permitted uses, administrative approval uses, conditional uses and non-conforming uses are subject
to environmental review under SEPA, unless categorically exempt. New language is added
that requires public notice on those projects that substantially increase the dimensions
and do require a wireless communication facility permit in residential related zones.

Proposed Amendments

Right now there are no provisions to allow for minor upgrades, such as antenna
replacement except under a WCF permit, and then subsequent commercial building
permit. To make this more streamlined, staff proposes language stating “the mounting of
equipment on a structure that increases the height of the structure more than 10 feet, in
any direction, or 4 feet for new antennas on an existing tower would be a permitted use,
subject to commercial building permit. Most new antennas aren’t going to be more than 4
feet more than the existing. (Staff showed photo examples of what additions to existing
towers may look like). Staff also proposes adding language to the permitted use section
that requires some sort of documentation that the proposal is going to conform to the FCC
rules.

Commissioner Bell asked if the FCC requires any permit.

Ms. Osborn stated she does not know.

Ken Lyons, AT&T representative, stated the FCC does not require a permit.

The hearing was opened to the public.

Carol Tagayun, AT&T representative: They have been involved in the process of the
amendments. People are relying on their wireless devices more and more and for a
variety of reasons. AT&T sees that is will continue to grow. Over the past seven years, on
the AT&T network there has been a 50,000 percent increase in data traffic. That has
required them to do a lot of work on the network to ensure that customers can get the
services they need and want. This means doing a lot of upgrades to their existing network
that they never knew they would have to do. People are using their phones more at
home. They are not installing land lines as much. 75 percent of the people that do have
land lines are not using them. They have been doing a lot of upgrading to existing
facilities, to increase capacity, rather than building new ones if they are not needed. Being
involved in this process allows AT&T to respond to the growth in technology and make
upgrades efficiently.

Commissioner McClendon asked if every jurisdiction has different rules.

Ms. Tagayun stated they do. They are working with a number of jurisdictions to update
their codes as well.

Kristen Larson, AT&T representative: They support the proposal to streamline the rules.
They proposed the following, in addition: If you can build a structure on your property,
without a permit, you should be able to add a part. To the definition of “substantial
increase” they suggest it be consistent with the SEPA definition. The reason for this is the
separation requirement. There needs to be a certain number of feet between antennas so

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they do not interfere with each other. She would like the commission to consider the bonding requirements. They are in the application section of the code. Right now it is an application requirement. They don’t think this is needed. The term of the bonds is written as open ended, without interest. It costs the county time and money to administer. There are already safeguards to insure proper removal of towers. Each lease, with the landowners, requires removal of the facilities if the facilities revert to the landowner. They do not want to give up their assets in this way so they believe there are safeguards in place. Regarding Third-party review, right now the section currently requires an applicant to pay for any third-party review. They would like the language to state that the third-party reviewer shall be chosen by mutual agreement between the county and applicant. Currently the applicant has no say. They respect the proposal to add the new 20.13.040 Permitted Uses section, but they urged the commission to consider not adding additional complexity to the code and instead leave normal, routine and emergency maintenance under the exempt uses.

Ken Lyons, Busch Law Firm on behalf of AT&T: Regarding routine maintenance and repair, that usually involves replacement of an identical part. Under the existing code a building permit would not be needed. Under the new code 20.13.040, a permit would be needed. Once sites are on the air it is very important that they continue to provide service, especially for emergency services so they are not in favor of this change.

Ms. Osborn stated the code was silent on this issue before and is now being addressed. She does not see where a permit is required under this section. Perhaps the language should be clarified. However, a building permit may be required under the International Building Code (IBC), and it’s the Building Official who makes this determination.

Karen Frakes stated this text puts people on notice that a permit may be required under the IBC.

Mr. Lyons stated the new SEPA laws are based on new federal laws. They urged the commission to add this to their code.

Commissioner Elenbaas asked why the cell phone industry is being singled out. Other companies aren’t required to get permits for maintenance.

Evelyn Vooge, Whatcom County: Stated having people comment on these projects is very important. When the cell tower on Double Ditch Road was being proposed it was because of the public comment that they relocated the tower to a safer area. In the text is the word “substantially”. This is a word that really refers to a lot bigger. So even if it was substantially smaller it could be a big change. Other than that she is not opposed to the proposed language.

The hearing was closed to the public.

Mark Personius suggest if the commission would like to hold the hearing open that the Building Official attend the next meeting on this issue to clarify how the building code applies to wireless improvement projects.
Commissioner Onkels stated he was concerned about the apparent contradiction between the need to repair or replace components in a timely manner and still comply with the code.

Ms. Osborn stated that the provisions that allow for the permitted uses are not making it harder than the existing code. Whatever has been done in the past to respond to emergency repairs is not going to change. There are provisions for temporary repairs. These are dealt with at the building permit level. How they are dealt with is up to the building official.

Commissioner Elenbaas asked where the line is being drawn as far as replacing a like item. Why is a permit required?

Ms. Osborn stated staff still wants the chapter to apply to the repair. Whether or not it requires a building permit is going to be building official decision. It is not something that the zoning ordinance is going to decide. We need to look at the safety issues that might be involved. There are provisions for emergency situations so work can begin as soon as possible.

Commissioner Bell wants to see the FCC definition used for a substantial change.

Ms. Osborn clarified that the FCC does not have a definition. It is defined under SEPA.

Commissioner Bell moved to use the definition in SEPA for a substantial change. Commissioner Elenbaas seconded.

Commissioner Vekved asked if staff had a reason for not proposing to use the SEPA definition.

Ms. Osborn stated this is under a public use that doesn’t have any public comment. It would be exempt from SEPA. Staff’s opinion was that 20 feet might be substantial. The point is staff wants to hear what the public has to say on proposals that exceed dimensions listed in the staff proposal.

Commissioner Vekved asked if there is an average tower height or do they vary.

Mr. Lyons stated the tower height depends on various factors, such as topography, area coverage, etc. Most are 100 feet.

Ms. Osborn stated the four foot proposal was based on the City of Bellingham comments. They stated two to three feet was considered substantial for their purposes. Notice regarding the proposal went to all of the cities.

Commissioner McClendon asked what the width of a tower is.

Mr. Lyons stated there may be arms or brackets which are generally under 20 feet.

The motion to use the definition in SEPA for a substantial change passed.
Commissioner Elenbaas asked if the proposal of an increase of four feet should be changed to six feet.

Mr. Lyons stated that under SEPA there is no requirement or restriction on the size of the antenna. If the SEPA definition of substantial change is adopted this section could be deleted.

Ms. Osborn stated there was scriveners error made in proposed 20.13.020(19)(b). It should read: The installation or mounting of equipment that would add an appurtenance to the body of the structure protruding from the edge of the structure, resulting in an increase in the overall with of the structure by more than ten percent, or 10 feet, whichever is less greater.

Commissioner Elenbaas stated the FAA is going to have limits on height. They should have jurisdiction.

Commissioner Bell requested some language be inserted that once substantial has been met then there are different requirements.

Ms. Osborn stated she has seen language to address that issue from the City of Salem. To incorporate language into Whatcom County’s code would require additional staff research.

**Commissioner Vekved moved to request staff to provide the commission with proposed language limiting incremental increases in sizes to the structures.**

Commissioner Bell seconded.

Mr. Lyons stated they have recommended such language be added in other jurisdictions and support it.

**The motion to request staff to provide the commission with proposed language limiting incremental increases in sizes to the structures passed.**

Commissioner Bell moved to make it explicit that normal, routine repairs and maintenance are exempt from permitting. The motion failed for lack of a second.

Commissioner Bell asked about the bonding requirements. Is it strictly a teardown requirement?

Ms. Osborn stated it is for removal of the structure should it be abandoned.

Commissioner Bell asked if there was a standard mechanism for bonding.

Ms. Osborn stated staff spent a lot of time on the bonding issue and took into account the wireless industries concerns. Bonds are difficult for staff to administer. Often there is more than one tower on a parcel and each tower may have several carriers. Then over time carriers merge so it becomes very complex to determine who is responsible for what. To
her knowledge there has never been a time when the county has had to cash in on a bond. However, the system seems to be working.

Commissioner Bell stated the towers are on private property so why are they bonded? The arrangement should be between the carrier and the land owner. The county should have to part in it.

Ms. Osborn stated that bonding has been part of the code for a long time. The issue requires more research. It may be one of those things that is outdated.

Commissioner McClendon asked if property taxes are paid on the towers.

Ms. Osborn stated taxes are paid on them but indicated that it would only be the Assessor’s Office who could comment on how these structures are assessed.

Commissioner Bell moved to remove the bonding requirement from the regulations. Commissioner Elenbaas seconded.

Commissioner Onkels asked if bonding is required in other jurisdictions.

Ms. Larson stated their leases have a reversion clause stating if the structure is abandoned the equipment reverts to the private property owner where the structure is located.

Mr. Lyons stated there are different types of abandonment clauses in other codes. They generally require removal of the tower within a certain time frame but do not require a bond. There are some jurisdictions that do have a bonding requirement for the tower when it is originally built. Over time it has been shown that the abandonment clauses or bonding has never been used so the codes may be obsolete. What is different about Whatcom County is that bonds are required every time equipment is added.

Ms. Frakes suggested staff research this issue before the commission takes action on the issue.

The vote to remove the bonding requirement from the regulations failed.

Staff will research the bonding issue and make their findings known at the next meeting.

Regarding 20.13.160-Third party review, Commissioner Bell stated it should be by mutual agreement between the county and provider.

Ms. Osborn stated that whoever wrote the code had a reason for the language. She had to justification to change the language.

Commissioner Vekved moved to change 20.13.160 to read: The selection of a third party expert may shall be by mutual agreement between the provider and the county, or at the discretion of the county, with a provision for the provider and interested parties to comment on the proposed expert and review its
qualifications. The cost of the technical review shall be borne by the applicant.
Commissioner Bell seconded.

Ms. Frakes asked what would happen if mutual agreement can’t be reached?
Commissioner McClendon stated it would be the applicant that loses so it would be in their best interest to agree.

The motion to change 20.13.160 carried.

Commissioner Bell moved to keep the public hearing open to the next meeting. Commissioner Vekved seconded. The motion carried.

Commissioner Vekved suggested the following changes to the proposal:

20.13.020(10) - “Collocate” means the installation of wireless services equipment on a freestanding or attached wireless communication facility that may be shared by one or more wireless service providers to either transmit and/or receive radio frequency signals for communication purposes. For the purposes of this chapter, the terms “collocate”, “collocation” or “co-locate” may be used interchangeably to describe action taken by a principal facility owner, an authorized agent, or a valid lessee to add wireless services equipment to an existing facility

The commission discussed the definition and pronunciation of “collocate”. The commission and staff agreed to research the issue more and possibly add the word to the list of definitions in the code making it easier to understand.

20.13.050- Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for review and comment prior to referring the application to the administrator for a decision.

Ms. Osborn suggested it could read: Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for their review and comment prior to referring the application to the administrator for prior to making a decision on the application.

The commission agreed to Ms. Osborn’s suggestion.

Commissioner Onkels suggested the following change to the proposal:

20.13.050(1)(a)(iv) - In all nonresidential districts: New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on approved and conforming sites; provided that the height of such structures shall be subject to requirements of WCC 20.13.092(9)(b); and provided further that the height does not exceed 150 feet. Additional height may only be approved only by special exception as provided in WCC 20.13.110.
Commissioner Bell moved to adopt the proposed text changes. Commissioner McClendon seconded. The motion carried.

Commissioner Vekved suggested the following change to the proposal:

20.13.040(1)(b) – The applicant or applicant’s agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).

Commissioner Vekved stated is does not make sense to pick out one particular report as an example. If it is not a requirement it should not be mentioned.

Ms. Osborn stated this language was suggested by one of the representatives from the wireless services industry.

Commissioner Vekved stated this language appears throughout the proposal and suggested it be deleted in all instances.

Commissioner Vekved moved to adopt the above suggested amendments. Commissioner McClendon seconded. The motion carried.

The meeting was adjourned at 9:20 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair     Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, David Onkels, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call
Present: Ben Elenbaas, Gary Honcoop, David Onkels, Mary Beth Teigrob, Ken Bell, Walter Haugen, Natalie McClendon, David Hunter
Absent: Jerry Vekved

Staff Present: Mark Personius, Erin Osborn, Becky Boxx

Department Update
Mark Personius updated the commission on the following:
- The Critical Areas Citizen Advisory Committee has started meeting.
- Planning Commission schedule.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
Commissioner Elenbaas stated he graduated from college last week. His final paper was titled “Is Planning and Zoning Helping or Hurting Protecting 100,000 Acres of Farm Land in Whatcom County”.

Approval of Minutes
May 8, 2014
Commissioner Teigrob moved to approve as written. Commissioner Bell seconded. The motion carried.

Public Hearing
File #PLN2014-00010: A proposal to amend Whatcom County Zoning Code text, Title 20, Chapter 20.13 – Wireless Communications Facilities. The purpose of the proposed amendments are to review and update permit processes for routine wireless communication facility equipment upgrades, adding new definitions to clarify terms for ease of administration and adding new language that exempts certain projects from Wireless Communication Facility permit requirements when such structures or improvements do not substantially increase the physical dimensions of such facilities. This is a continuation of the public hearing held May 22, 2014.

Erin Osborn gave an overview of the proposal.

This proposal came about because there are no provisions for routine upgrades. Staff has established a permitted uses section so routine collocations or routine maintenance can be done. Staff also reorganized the chapter because it was very confusing in that it didn’t...
parallel the organizational structure of the rest of the zoning code. There are also new
definitions which are key in applying the section on permitted uses. Planning Commission
recommendations, from the last meeting, have been incorporated. They include a
definition of “substantial change” and “incremental changes”; the meaning of “collocate”;
“third party review” language; “performance bonds” and applicability of the International
Building Code.

Representatives from AT&T submitted their recommendations. Staff drafted a memo
which addresses those recommendations. (see attached)

Definition of Substantial Change: Staff was in agreement with the recommendation.

Third Party Review: At the May 22nd meeting the commission agreed to the
representative’s suggestions.

Commissioner Hunter asked what happens if agreement can’t be reached.

Commissioner Elenbaas stated they won’t get their permit. There was concern that if you
are paying for the permit you should have some input in the selection.

Commissioner Hunter stated if the county doesn’t agree that would end the permit
process.

Ms. Osborn said the representatives stated the code should provide an applicant with an
opportunity to come to mutual agreement with the county.

Commissioner Hunter stated some neutral party needs to be involved if agreement can’t
be reached.

Mr. Personius asked how many times have there been when a third party review is
required.

Ms. Osborn stated she did not know of any.

Staff will formulate language to address the concern.

Emergency and Routine Repair and Maintenance: Staff proposed that routine emergency
repair and maintenance be moved into the permitted use section. There was concern,
from the wireless industry, that this would make it subject to additional review. It is up to
the building official to determine when a building a permit is needed. Staff now proposes
the language be returned back to the exemption section but have a provision added that
states “provided that compliance with design and development standards is maintained”.

Bonding: Currently a performance bond is required to cover the cost of removal should
the facility be abandoned. They are difficult for staff to administer. At the last meeting the
commission asked staff to come back with rational to justify keeping them. In the memo
is alternative language, which states putting a lien on the property. Bonds don’t have an
inflation factor figured in so that raises the question of will there be enough money to
remove one in the future? Staff ultimately recommends the section be deleted and add
language which allows the county to put a lien on the property.

Definitions: Wireless Communication Facilities - suggested to adopt definition in SEPA and
delete the definition in 20.97.456 & 20.97.457.

Collocation: Staff recommends keeping the definition that the commission approved at the
last meeting.

The hearing was opened to the public.

Evelyn Vooge, Whatcom County: Referred to a statement from Commissioner Bell at the
last meeting. He had stated that tearing down a house would have no effect on anyone
else, which is true, however tearing down a cell phone tower could have a bad health
effect so there is a difference. Sometimes the owners don’t care if it is torn down or not so
there may be more health effects. She referred to a statement from Commissioner
Elenbaas at the last meeting. He had stated that everyone there uses cell phones all day.
He did not survey everyone. She stated that fact is incorrect. In 1999 a permit was issued
for Nextel. Before they built their cell tower, on Double Ditch Road, they moved it back to
240 from 175 from the road. Why do you think they did that? If was for possible health
effect reasons. In the permit it was stated a Washington State professional engineer shall
engineer new components, including tower structure, antenna, shelter, foundation, etc.
for all equipment. You should keep the bond requirements because the towers are a
health hazard to the people near it.

Kristin Larsen, Representative of AT&T: They are in agreement with the definition of
“substantial change” and “third party review”. She highlighted that “third party review” is
not required so it does not mean it will be part of all of their permit processes. The
permits that are needed for wireless facilities do not set criteria, within the code, for their
approval or denial. The decision is based on the information that is in the record. Whether
agreement is reached or not on a third party reviewer the information in the record will
decided if the permit is approved or denied. Regarding the emergency repair and
maintenance issue they agree that should remain exempt from the chapter. Maintenance
and repair of existing facilities is what the language speaks to. The word existing is key.
Nothing new is being added. Review has already been done on what is there to make sure
it complies with the standards. On the bonding requirement their leases have a provision
that if they abandon the facility after 90 days it reverts to the underlying property owner.
They don’t have an issue with placing a lien on the property owner.

The hearing was closed to the public.

Commissioner Honcoop stated regarding bonds, he disagreed with AT&T’s suggestion that
the responsibility for removing the tower be shifted to the property owner. That is a
convenient way to get out of the responsibility of removing their equipment. He can
understand the problem of the county trying to keep track of the bonds. He asked if new
bonds are required each time a new permit is issued for a replacement, etc.
Ms. Osborn stated the existing bond usually covers those issues or expansion of the bond may be required.

Commissioner Bell stated the property owner is receiving an income so there is no need to have a bond. There are two entities making money so the cell phone provider should not bear the full burden of removal.

Commissioner Haugen stated there has been a tendency, in the American system, that the full cost of removal is not budgeted into the cost of making something. That could be extended to say that the people that put the equipment on the property are responsible to get it off.

Commissioner Honcoop stated that in this case the property owner does not own the tower so the party that put it there should be responsible to remove it. If the language is changed there is a possibility that the current bonds could be removed then the responsibility shifts to the property owner who had no say in this.

Commissioner Hunter stated that whatever a lease says today can say something else tomorrow. He assumed AT&T was comfortable with attempting to shift the responsibility in their leases to the property owners. He is not comfortable with that. There may be ways of structuring the bond so it has increasing value over time.

Commissioner Elenbaas noted that some of the commissioners feel inheriting a cell tower would be a burden but from what he has heard from the cell tower providers it must not be a burden. Just recycling it would pay for the cost of demolition.

Commissioner Teigrob asked the AT&T representative to explain more clearly what their leases say both currently and in the past.

Kelly Dunham, Representative of AT&T: It has been there policy, for about the last 15 years, that all equipment will be removed from the site within 30-90 days of termination of the lease. If that does not happen there is a second provision that the equipment will revert to the land owner. Should that happen, the landowner, if they should choose to remove that equipment, it will be at AT&T’s cost.

Commissioner Bell asked the cost of a bond.

Ms. Larsen stated the bond minimum stated in the code is $1,000. Every time something is added or changed it is another $1,000.

Commissioner Honcoop asked if they are purchasing a performance bond or posting a cash bond.

Ms. Larsen said they are purchasing a performance bond.

Commissioner McClendon stated it seems like the tower owner has an interest in having an antenna removed if it is not being used or paid for. Why are there bonds on each piece of equipment? Why not just the tower?
Ms. Osborn it would be nice to determine a tower’s full build out might be and just bond the tower, but that’s not how it happens.

Commissioner Honcoo stated there are bonds on each because ownership is different.

Commissioner Bell noted that there is an insurance policy behind AT&T’s policies which will cover the cost of removal in addition to the cost of the bond and the civil process if needed. He is not a fan of the bond. He is not nervous about the cost of removal shifting to the property owner.

Commissioner Hunter stated he would be amazed if AT&T is putting together leases that are of benefit to the other party. He is skeptical that a lease written today will remain the same in the future.

Commissioner Honcoo agreed with Commissioner McClendon’s comments. Bond’s should be focused on the towers.

Commissioner Bell asked if the county could be added as additionally insured on the policy.

Commissioner Elenbaas asked why bonds are even needed. They aren’t needed for other things such as silos, tall buildings, etc. Will anyone even know if a tower is abandoned just by looking at it?

Commissioner Onkels stated that the benefit to using insurance is the benefit that the insurance company does the underwriting. They take care of the small details.

Commissioner Bell moved to accept the staff changes on bonding as written in the memo of June 12th. Commissioner Elenbaas seconded.

Commissioner Hunter stated he will not support the motion because he is not comfortable with the language. He pointed out language that stated the county may seek and obtain a court order. A court order is not automatically obtained just by applying. The new language introduces a court process. Do we want that? A bond is preferable because the money is already there versus a lien or court order.

Commissioner Bell stated that if he had a bond he would walk away from it and let other people take it down. The practical aspect is that you will be in court anyway if you abandon a site.

Commissioner Honcoo stated the insurance company can come after you. You can’t just walk away from the bond.

The vote on the motion to accept the staff changes on bonding as written in the memo of June 12th failed.

Commissioner Honcoo asked if the 30 and 90 day time periods mentioned in the text and new or existing.
Ms. Osborn stated they are existing.

Commissioner Honcoop asked if they could be changed. He felt the time period was not long enough to remove a tower. What is the rational for the time period being so short?

Ms. Osborn stated this is existing language that may have been based on a model code in the state.

Commissioner Haugen moved to adopt staff’s recommendation minus bonding, third party review, emergency and routine maintenance and definition of substantial changes. The motion failed for lack of a second.

Commissioner Honcoop moved to accept proposed language in the memo regarding 20.13.020(19)(a). Commissioner Teigrob seconded. The motion carried.

The following motions were made regarding Exhibit A. (attached)

Commissioner Hunter moved to accept section 20.13.010 as written. Commissioner Haugen seconded. The motion failed. (This section was adopted at the previous meeting.)

Commissioner Hunter moved to accept section 20.13.020(10) as written. Commissioner Haugen seconded. The motion carried.

Commissioner Honcoop moved to retain the language in section 20.13.030(6) and add the language proposed by staff in the June 12th memo. Commissioner Hunter seconded. The motion carried.

Commissioner Hunter moved to accept the changes to section 20.13.040. Commissioner Teigrob seconded. The motion carried.

Commissioner Teigrob moved to accept the changes to section 20.13.050 and 20.13.050(1). Commissioner Honcoop seconded.

Commissioner Onkels made a friendly amendment to change 20.13.050 to read: Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for their its review and comment prior to referring the application administrator for prior to making a decision on the application. Commissioner Hunter seconded. The motion carried.

The motion to accept the changes to section 20.13.050 and 20.13.050(1) carried.
Commissioner Teigrob moved to accept the change to 20.13.050(1)(a)(iv).
Commissioner McClendon seconded. The motion carried.

Commissioner Hunter moved to accept the language in 20.13.092(11).
Commissioner Haugen seconded.

Commissioner Hunter stated he does not understand why this language is in the general design standards section.

Ms. Osborn stated it may have to do with the condition and appearance if the equipment is abandoned.

Commissioner Teigrob noted there is language in 20.13.150 regarding removal.

Ms. Osborn stated that the way the code is structured there is a provision for removal of the facilities, in the design standards is language regarding the performance bonds and in the application requirements there is reference to the performance bond. They refer to different things.

Commissioner Hunter stated the language in 20.13.092(11) belongs in 20.13.130. Also the language in 20.13.120(6) needs to be changed in some way.

The vote to accept the language in 20.13.092(11) failed.

Commissioner Hunter moved to move the language in 20.13.092(11) to 20.13.130. Commissioner Teigrob seconded. The motion carried.

Commissioner Hunter moved to amend the language in 20.13.130(6) to read:
The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC.... Commissioner Haugen seconded.

Commissioner Honcoop spoke against taking out the wording “or other security as acceptable to the county” because there may be circumstances where a performance bond can’t be obtained.

Commissioner Hunter stated that if the language remains the language in moved from 20.13.060(11) needs to be changed.

Commissioner Honcoop made an amendment to the motion to read: The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC.... Commissioner Hunter seconded. The motion carried.
The motion to amend the language in 20.13.130(6) to read: The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC.... carried.

Commissioner Honcoop moved to change the wording in 20.13.130 (previously 20.13.092(11)) to read: Performance Bond or Other Security Acceptable to the County. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond or other security, acceptable to Whatcom County, payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150. Commissioner Bell seconded. The motion carried.

Commissioner Onkels commented on 20.13.150 stating six months is not enough time to remove an abandoned facility. The period of time should be at least a year.

Commission Onkels moved to change 20.13.150 (lines 13-22 of Exhibit A) to read: In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days 18 months of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner’s expense. If there are two or more wireless communication providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. .... Commissioner Bell seconded.

Ms. Osborn indicated that staff recommended language that would put a lien on the real property if the facility is abandoned.

Commissioner McClendon stated if there is a bond in place why the concern about having the tower taken down?

Commissioner Honcoop stated the county should make it easier for the towers to stay in place. What is the point of taking them down if they may be used again to improve service?

The vote on the motion to change 20.13.150 (lines 13-22 of Exhibit A) to read: In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days 18 months...
of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner’s expense. If there are two or more wireless communication providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure...Commissioner McClendon stated there should be language that the performance bond has to be maintained.

Commissioner Teigrob suggested adding language about the tower becoming dangerous.

Commissioner Honcoop stated there needs to be a limit. The time period can’t be left open forever.

Commissioner Honcoop moved to change 20.13.150 (lines 13-22 of Exhibit A) to read: In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner’s expense. If there are two or more wireless communication providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure...Commissioner Teigrob seconded. The motion carried.

Commissioner Hunter moved to accept the proposed language in 20.13.160(4). Commissioner Haugen seconded. The motion failed.

Commissioner Hunter spoke to the issue of mutual agreement. He thinks the county can require a third party expert. If they require that and agreement is not reached that can stop the process. Language should be added that states: if mutual agreement can not be reached then the third party will be selected by....It needs to be a third non-interested party to select the third party expert. Perhaps there needs to be a list.

Commissioner Honcoop likes the language the way it was proposed in Exhibit A.

Mr. Personius noted that if mutual agreement can’t be reached the county may get sued for blocking its own permit process.

Commissioner Honcoop asked if there is appeal process for this.

Mr. Personius stated if they applied for a building permit there would be.
Commissioner Haugen asked the AT&T representative had any concerns about the language as it was originally proposed.

Ms. Larsen stated she had no problem with the language.

Ms. Osborn reviewed the two new definitions for "Wireless Communication Facility" and "Wireless Communication Services" that were proposed on page 6 and 7 of the June 12th memo. She recommended approval of the language.

Commissioner Teigrob moved to accept the proposed language. Commissioner McClendon seconded. The motion carried.

Commissioner Teigrob moved to strike definitions in 20.13.020(16) & (17); 20.97.456; and 20.97.457. Commissioner Hunter seconded. The motion carried.

Commissioner Hunter moved to adopt the amended Chapter 20.13, as amended and associated findings. Commissioner Teigrob seconded. Roll Call Vote: Ayes – Bell, Elenbaas, Haugen, Honcoop, Hunter, McClendon, Onkels, Teigrob; Nays – 0; Abstain –0; Absent – Vekved. The motion carried.

The meeting was adjourned at 10:00 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair

Becky Boxx, Secretary
EXHIBIT "A"

Chapter 20.13
WIRELESS COMMUNICATIONS FACILITIES

Sections:

20.13.010 Purpose.
20.13.020 Definitions.
20.13.040 Permitted Uses.
20.13.050 Administrative Approval Uses.
20.13.060 Conditional Uses.
20.13.080 Prohibited Locations
20.13.070 Additional standards for residential related districts.
20.13.100 Wireless communication facility permit.
20.13.110 Special exceptions.
20.13.120 Application requirements and conditions of issuance.
20.13.130 General criteria for issuance of permits.
20.13.140 Federal requirements.
20.13.150 Removal of antennas and support structures.
20.13.160 Third party review.
20.13.170 Appeals.

20.13.010 Purpose.
The purpose of this chapter is to establish regulations for the placement, development, permitting, and removal of personal wireless communications facilities including support structures and antennas. These standards were developed to comply with the Federal Telecommunications Act of 1996. They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the county.

The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to discriminate between providers of functionally equivalent personal wireless services.

In reviewing an application to provide personal wireless service or to install personal wireless service facilities, the county shall act within a reasonable period of time, taking into account the nature and scope of the application and the required notice and necessary review process. Any decision to deny an
application shall be in writing, supported by substantial evidence contained in a written record. (Ord. 2000-006 § 1, 2000).

20.13.020 Definitions.

As used in this chapter, the following terms shall have the following meanings. Other words and terms shall have meanings assigned to them by Chapter 20.97 WCC or if not defined in this chapter or Chapter 20.97 WCC, the meaning customarily assigned to them.

(1) "Administrator" means the director of planning and development services or his designee.

(2) "Amateur radio" or "ham radio" means radio facilities operated for noncommercial purposes by individuals licensed by the FCC with an interest in construction and operation of radio equipment, usually as a hobby or vocation.

(3) "Ancillary equipment facility (AEF)" means an unstaffed structure used to contain ancillary equipment for a WCF. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners and emergency generators.

(4) "Antenna" means any pole, panel, reflection disc, or similar device used for the transmission or reception of radio frequency signals, including but not limited to, directional antennas, Omni-directional antennas, and parabolic antennas.

(4§) "Antenna array" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals. An antenna array can be made up of one or more antennas including but not limited to the following:

(a) Directional antenna (also known as a panel antenna) which transmits signals in a directional pattern of less than 360 degrees.

(b) Omni-directional antenna (also known as a whip antenna) which transmits signals in a 360-degree pattern.

(c) Parabolic antenna (also known as a dish antenna) which is a bowl shaped device that receives and transmits signals in a specific directional pattern (e.g., point-to-point).

5) "Attached wireless communications facility" means an antenna array that is attached to an existing building or structure (attachment structure), which structure shall include but not be limited to utility poles, signs, and water towers, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure, transmission cables, and an ancillary equipment facility which may be located either inside or outside of the attachment structure.

6) "Attached wireless communication support structure" is a support structure not specifically designed and constructed to support an antenna array. Such structures may include but are not limited to buildings.
or structures, utility poles, signs, and water towers, together with any accompanying pole or device
(attachment device) which attaches the antenna array to the existing building or structure.

(7) "Attached wireless communication facility" is a wireless communication facility that utilizes an attached
wireless communication support structure as defined in WCC 20.13.020(6). It means the site, the leased
area, attached wireless communication support structures, antennas, antenna array(s), accessory
equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal
wireless communication, together with any accompanying pole or device (attachment device) which
attaches the antenna array to the existing building or structure, transmission cables, and an ancillary
equipment facility which may be located either inside or outside of the attachment structure.

(8) "Citizens band radio" means two-way radio facilities operated for short-range personal and business
communications, without necessity of a federal license, pursuant to 47 Congressional Federal Register
Part 95.

(9) "Clustering" means the placement of more than one wireless communication support structure on a
single site either by one provider or by several different providers.

(10) "Collocation" means the use of a single wireless communications support structure by more than one
wireless communications provider or the use of a site by more than one wireless communications
provider

(11) "Collocate" means the installation of wireless services equipment on a freestanding or attached
wireless communication facility that may be shared by one or more wireless service providers to either
transmit and/or receive radio frequency signals for communication purposes. For the purposes of this
chapter, the terms "collocate", "collocation" or "co-locate" may be used interchangeably to describe action
taken by a principal facility owner, an authorized agent, or a valid lessee to add wireless services
equipment to an existing facility. Note: The spelling of these terms may vary based on local vernacular
used by wireless service industry professionals, and in accordance with state and federal law.

(12) "Direct-to-home satellite service" means the distribution or broadcasting of programming or services
by satellite directly to the subscriber's premises without use of ground receiving or distribution equipment,
except at the subscriber's premises or in the uplink process to the satellite.

(13) "FAA" means the Federal Aviation Administration.

(14) "FCC" means the Federal Communications Commission.

(15) "Freestanding wireless communication facility" means the site, the lease area, freestanding wireless
communication support tower(s), antennas, antenna array(s), accessory equipment structures, and
appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication
services. Freestanding wireless communication facilities include but are not limited to antennas, poles,
towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.
(15) "Freestanding wireless communication support structure" is a freestanding structure, designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below:

(a) "Lattice tower" means a wireless communication support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

(b) "Monopole tower" means a wireless communication support structure consisting of a single pole to support antennas and connecting appurtenances.

(c) "Guyed tower" means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communication towers, antennas, and connecting appurtenances. (Ord. 2000-006 § 1, 2000).

(1216) "Personal wireless communications services" means wireless communications services.

(1317) "Satellite earth station" means the facilities used for reception and processing of programming services from a satellite prior to transfer to terrestrial distribution systems or for processing of programming and services from a terrestrial source before transmission via satellite.

(1418) Site. For the purpose of this chapter, "site" means a building, structure, leased area which may contain a base station, building(s) or structure in compliance with the provisions of this chapter; or

(19) "Substantially increase change the physical dimensions" means:

(a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than ten percent, or ten twenty feet, whichever is less greater; provided that any such increase in height must conform to the provisions of this chapter; or

(b) The installation or mounting of equipment that would add an appurtenance to the body of the structure protruding from the edge of the structure. The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet resulting in an increase in the overall width of the structure by more than ten percent, or 10 feet, or more than the width of the structure at the level of the appurtenance, whichever is less greater; or:
Provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in (a) or (b) above, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County.

(c) The installation or mounting of equipment, including adding new antennas or antenna arrays that are intended to replace smaller existing antennas, when such installations increase the area of existing antennas or antenna arrays by ten percent or increase the length or width of such existing antenna by four feet in any direction, whichever is greater.

(1520) "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need a FCC license.

(1721) "Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

(16) "Wireless communications facilities" (WCF) means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

(17) "Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

(18) "Wireless communications support structure" means a structure designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below. Any device (attachment device) which is used to attach an attached WCF to an existing structure (attachment structure) is excluded from this definition.

(a) "Lattice tower" means a wireless communications support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.
(b) "Monopole tower" means a wireless communications support structure consisting of a single pole to support antennas and connecting appurtenances.

(c) "Guyed tower" means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communications towers, antennas, and connecting appurtenances. (Ord. 2000-006 § 1, 2000).


The requirements of this chapter shall apply to all new personal wireless communications facilities and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

(1) Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.

(2) Send and receive citizen band radio antennas or antennas operated by federally licensed amateur ("ham") radio operators.

(3) Industrial, scientific and medical equipment using frequencies regulated by the FCC.

(4) Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.

(5) Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes.

(6) Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations. (Ord. 2000-006 § 1, 2000).

20.13.040 Permitted Uses.

The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter; the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt.

(1) Replacement construction:

In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites; provided that such replacement does increase the total number of components lawfully existing on the site at the time of application for such replacement construction.
and further provided that such replacement construction does not "substantially increase change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(19).

Determinations made as to whether or not replacement proposals substantially increase change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially increase change the dimensions of such facilities as defined in WCC 20.13.020(19). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction:

In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided that such new antennas or antenna arrays do not "substantially increase change the physical dimensions" of such facilities, as defined in WCC 20.13.020(19); Determinations made as to whether or not new construction proposals substantially increase the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially increase change the dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).
In all districts: Normal, routine and emergency maintenance and repairs to existing freestanding or attached wireless communication facilities, and ancillary equipment facilities which do not change the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations.

20.13.50 Administrative Approval Uses.
The following uses are considered administrative approval uses and shall require a Wireless Communication Facility (WCF) permit in accordance with WCC 20.84 and WCC 2.33, and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless categorically exempt; provided that WCF permit proposals located in nonresidential related districts shall be exempt from the public noticing requirements found in WCC 2.33 – Permit Review Procedures.

Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF Permit to a technical review committee for their review and comment prior to referring the application administrator for prior to making a decision on the application.

(1) Wireless Communication Facility (WCF) permit

New freestanding wireless communication support structures, new antennas or antenna arrays on existing freestanding or attached wireless communication structures on existing approved and conforming sites, and new attached wireless communication facilities that substantially increase change the physical dimensions of a facility as defined in WCC 20.13.020(19) may be approved by the administrator through issuance of a WCF permit, subject to a required commercial building permit. Prior to application approval, the applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER):

(a) New freestanding wireless communication support structures:

(i) New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Rural, Rural Residential, and Rural Residential Island. [Moved from: WCC 20.13.070(1a)(i)]

(ii) New freestanding wireless communication support structures (monopoles only), may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain residential uses. [Moved from: WCC 20.13.070(1ii)]
(iii) Monopoles that are permitted as a WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates that the structure’s height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain. [Moved from: WCC 20.13.070(1)(b)]

(iv) In all nonresidential districts: New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on approved and conforming sites; provided that the height of such structures shall be subject to requirements of WCC 20.13.092(9)(b); and provided further that the height does not exceed 150 feet. Additional height may only be approved only by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)]

(b) New attached wireless communication facilities:

New attached wireless communication facilities may be approved by the administrator through issuance of a WCF Permit, and subject to a required commercial building permit(s), as provided below.

(i) In all residential districts: New attached wireless communication facilities or new antennas attached to existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(ii) In all non-residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites, provided that the site is not used exclusively for residential purposes. [Moved from: WCC 20.13.080(2)(b)(c)]

(iii) In all residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites, provided that the site is not used exclusively for residential purposes and the antenna is not more than 15 feet above ground level nor more than 12 feet in diameter. [Moved from: WCC 20.13.070(2)(b)(iii)]

(c) New antennas or antenna arrays on existing freestanding wireless communication facilities or existing attached wireless communication facilities on existing, approved and conforming sites; may be approved by the administrator through issuance of a WCF Permit, and subject to required commercial building permit(s):

(j) In all nonresidential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on existing approved and conforming sites, provided that the height of such new antennas or antenna arrays shall not extend more than 15 feet above the attachment device. [Moved from: WCC 20.13.080(2)(c)(d)]
(ii) In all residential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on approved and conforming sites; provided that the height of such new antennas or antenna arrays shall be subject to the requirements of WCC 20.13.092(9)(b).

[Moved from: WCC 20.13.070(2)(i)]

(iii) In all residential districts: New antennas on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110. [Moved from: WCC 20.13.070(2)(b)(ii) and 20.13.070(2)(a)]

(iv) In all nonresidential related districts: New antennas attached on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(2) Ancillary Equipment Facilities

(a) New ancillary equipment facilities or replacement construction that substantially increases the physical dimensions of an existing facility as defined in WCC 20.13.020(19), may be permitted on existing approved, conforming sites as an Ancillary Equipment Facility (AEF) under the scope of a WCF permit. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a WCF permit shall conform to original time frames for completion set by the administrator, or as further amended by the administrator.

20.13.060 Conditional Uses

(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with WCC 20.84 and WCC 2.33 and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-ionization emission report (NIER). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.

(a) New freestanding wireless communication facilities:
(i) In all nonresidential related districts: New freestanding wireless communication facilities that utilize lattice tower or monopole wireless communication support structures, provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b); and further provided that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided in WCC 20.13.110. [Moved from: WCC 20.13.080(1)(a)]

(ii) New freestanding wireless communication facilities that utilize lattice towers or monopole towers in the following residential related districts: Rural, Rural Residential, Rural Residential Island; provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(a)]

(iii) New freestanding wireless communication facilities that utilize monopole towers only in the following residential districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided that the site does not also contain existing residential uses provided that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b). [Moved from: WCC 20.13.070(1)(ii)]

(b) New Attached Wireless Communication facilities:

(i) In all non-residential related districts: New attached wireless communication facilities that utilize a residential structure on a site used exclusively for residential purposes shall require a conditional use permit; provided that the antenna shall not extend more than 15 feet above the roof or parapet. [Moved from: WCC 20.13.080(2)(b)(c)]

(ii) In all residential districts: New attached wireless communication facilities that utilize an attached wireless communication support structure that is a residential building or on a parcel used exclusively for residential purposes shall require a conditional use permit; provided that the antenna shall not extend more than 15 feet above the roof top (or top of the structure if not a building) and that the requirements of WCC 20.13.092(1) are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.092(1). [Moved from: WCC 20.13.070(2)(c)]

(2) New ancillary equipment facilities may be permitted under the scope of a conditional use permit, or may be permitted separately as an AEF under a WCF permit pursuant to WCC 20.13.060. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a conditional use permit shall conform to original time frames for completion set by the hearing examiner, or as further amended by the hearing examiner.

20.13.040 070 Nonconforming uses and structures.
Freestanding and attached wireless communications facilities, and ancillary equipment facilities in operation as of the effective date of the ordinance codified in this chapter or amendment hereto,
including vested applications for such facilities, that do not conform to the use standards or development standards of this chapter are hereby declared nonconforming uses and shall be subject to the provisions of Chapter 20.83 WCC governing nonconforming uses. Routine maintenance on existing towers and antennas is permitted as provided in WCC 20.13.030(6) WCC 20.13.050. However, any new construction other than routine maintenance on existing non-conforming towers, antennas, buildings or other facilities shall comply fully with the requirements of Chapter 20.83 WCC governing nonconforming uses, and this chapter. (Ord. 2000-006 § 1, 2000).

20.13.080 Prohibited Locations.
(a) New attached antennas or antenna arrays shall not be mounted, installed or affixed to a single family residence, duplex or their accessory structures; this prohibition shall not apply to residential structures such as multi-family housing, condominiums, apartment buildings, hotels, rooming houses, and their appurtenant structures, such as parking garages, and storage buildings.
(b) New freestanding wireless communication support structures (lattice towers) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts.
(c) New freestanding wireless communication support structures (monopole towers and ground level dishes) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts on sites that also contain residential uses.
(d) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).

20.13.085 Siting priorities and prohibited locations.
(1) In reviewing applications for new freestanding wireless communication facilities, and new attached wireless communication facilities, the approving authority shall evaluate the proposal in relationship to the following siting priorities and prohibited locations. Unless the facility will be located at the highest priority location, the applicant shall demonstrate that:

   (a) None of the higher priority locations are available; or
   (b) If one is available it is not a feasible location for the proposed facility; or
   (c) If feasible, the location is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(2) For the purpose of this section chapter:

   (a) Residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial (NC), Rural Residential (RR), Rural Residential Island (RR-I), and Rural (R) Districts;
(b) Non-residential related districts include:

(i) Commercial districts shall include Rural including Rural General Commercial (RGC), General Commercial (GC), Resort Commercial (RC) and Tourist Commercial (TC) Districts Districts and only;

(ii) Industrial districts shall include including Heavy Impact Industrial (HII), Light Impact Industrial (LII), Gateway Industrial (GI), Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), Airport Operations (AO) and the Cherry Point Industrial District (CP-ID); and

(iii) Resource districts shall include including Agriculture (AG), Commercial Forestry (CF), Rural Forestry (RF) and Recreation Open Space (ROS).

(3) Siting Priorities. Listed in descending order with the highest priority first:

(a) Collocated attached antennas on attached wireless communication structures that are nonresidential buildings and structures, including and collocated antennas on existing freestanding wireless communications towers in nonresidential related districts.

(b) Collocated attached antennas on attached wireless communication support structures that are nonresidential buildings and structures, including and collocated antennas on existing freestanding wireless communications towers in residential related districts on property not used exclusively for residential purposes.

(c) Attached antennas New antennas on attached wireless communication structures such as nonresidential buildings and structures in nonresidential related districts.

(d) New freestanding wireless communication support structures at in remote, low visual impact locations in resource and industrial districts.

(e) New Attached antennas on attached wireless communication facilities that utilize nonresidential buildings and structures in residential related zones on property not used exclusively for residential purposes.

(f) New freestanding wireless communication support structures at low visual impact locations in commercial districts.

(g) Locations other than those listed above.

(4) Prohibited Locations.

(a) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000).
20.13.060 **Design and development standards.**

.061 Design and Development Standards. The development standards set forth below shall apply to all wireless communications facilities. These developments standards are minimum standards and shall be in addition to any development standards or project review process which applies in the underlying district in which a wireless communication facility is located. In the event of a conflict between the provisions of this chapter and the general development standards of this title, or the project review process, the more stringent provision shall govern; provided, that where a provision of this chapter is the more specific in its application to wireless communication facilities that provision shall prevail regardless of stringency.

1. **Anti-Climbing Devices.** All freestanding and attached wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.

2. **Attachment to Trees Prohibited.** It is prohibited to attach any wireless communication facility or portion thereof to any tree.

3. **Signage.** All freestanding and attached wireless communications support structures shall be identified with a nonilluminated sign not exceeding four square feet. The sign shall list the wireless service provider’s name and emergency telephone number and shall be posted in a place visible to the general public. No advertising signs shall be located on support structures or antennas, however arrays may be camouflaged as otherwise permitted signs.

4. **Lighting.** All freestanding and attached wireless communications facilities shall not be illuminated except where required by the FAA.

5. **Painting.** All freestanding and attached wireless communications facilities shall be painted or finished in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.

6. **Noise from Accessory Equipment.** Accessory Equipment Facilities shall comply with state noise level standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

7. **Copies of deeds or other instruments such as lease agreements and site easements that establish the applicant’s right to use the site shall be provided at the time of application. These may be in unsigned final draft form pending the outcome of the approval process. The boundaries of a proposed wireless communications facility site shall be defined in each such instrument in a manner that will provide a land surveyor sufficient information to accurately locate the site boundaries using standard survey methods.**
(8) If the proposed site is leased, the terms of the lease shall not restrict the land owner in any way from leasing other areas of his property to other wireless communications providers with the exception that the lease may include a provision that any additional facilities so located not materially interfere with the operation of the existing facility.

.062.092 General Design Standards.

(1) Attached antennas. Antennas that are mounted, installed or affixed to an attached wireless communication support structure (excluding collocated antennas on existing WCF structures) shall be designed or placed to blend with the, predominant background or architectural features as seen from abutting residential uses, roadways or other public rights of way.

(2) When located on buildings, panel antennas shall be placed closely against walls or parapets and not extend above the wall or parapet unless an alternative design is required to a) achieve better compatibility with the building design or b) to obtain antenna function.

(3) Accessory ancillary equipment facility structures shall be placed underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, they shall be screened from view.

(4) Ground-mounted dishes shall be located outside any required landscaped area and preferably located in service areas or other less visible locations. They shall be solidly screened to at least as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the top of the dish on sides adjacent to residential zones.

Roof-mounted dishes shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. The dish should be placed as close to the center of the roof as possible.

(5) Antennas on utility poles shall be limited to whip antennas that are no more than two feet in length unless the approving authority finds that the visual impact of a longer antenna would not have an appreciable effect on surrounding uses. No more than one whip-antenna is permitted per pole. No utility pole shall be extended in height in order to accommodate an antenna. No antenna shall be allowed on light standards.

(6) Setbacks Applicable. The following setback standards shall apply to wireless communications facilities:

(a) Accessory equipment structures shall comply with the setback requirements for principle nonaccessory structures in the underlying district. An antenna and its attachment device attached to a building or other permanent structures shall comply with the setback requirements
for principle nonaccessory structures in the underlying district. Where the setback requirement in
the underlying zone is based on the height of the structure, the height used to compute the
setback for the antenna array shall be the height of the structure plus the additional height that
will be added by the antenna array and its attachment device.

(b) Nonattached Freestanding wireless communications support structures located in a
residential related district as set out described in WCC 20.13.060 20.13.085 shall be set back
from any property line by a distance equal to the height of the wireless communications support
structure or the setback of the underlying use district, whichever is greater.

c) Nonattached Freestanding wireless communications support structures located in other than
residential related districts shall be set back from any property line abutting or adjacent to a
residential related district a distance equal to the height of the wireless communications support
structure or the setback of the underlying use district, whichever is greater.

(d) Regardless of the district, nonattached freestanding wireless communications structures shall
be setback from dwellings not on the same legal lot, a distance equal to the height of the
freestanding wireless communications support structure or the setback of the underlying use
district whichever is greater.

(e) Setbacks for nonattached freestanding wireless communications support structures shall be
measured from the ground-level base of the structure.

(f) The setback requirements for freestanding and attached wireless communication facilities
under this chapter may be reduced by the approving authority subject to the satisfaction of the
special exception criteria in WCC 20.13.110.

(7) In the event that a new freestanding or attached wireless communications facility is proposed on land
zoned agriculture or in an agriculture overlay zone and the land is otherwise suitable for agricultural use,
the facility shall be located and maintained so as not to interfere with current agricultural activities or the
potential future use of the site for agricultural activities.

(8) Screening Standards. Freestanding and attached Wireless wireless communications facilities shall be
subject to the following standards for visual screening:

(a) The perimeter of the wireless communication support structure and any guyed wires and
anchors shall be enclosed by a fence or wall at least six feet in height. A row of evergreen
shrubs, spaced not more than five feet apart and capable of growing to form a continuous hedge
at least five feet high within five years of planting, and at least one row of evergreen trees or
shrubs spaced not more than 10 feet apart nor less than six feet high when planted shall be
installed outside and adjacent to the fence.
(b) Landscape material used for screening should be selected and sited to produce a hardy and drought-resistant landscape area. Native plant materials are preferred.

(c) Maintenance of landscaped areas shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy manner. Trees and shrubs that die must be replaced with healthy in-kind materials such that during the life of the facility the landscaping continues to satisfy the requirements of the permit. Temporary irrigation shall be provided to help ensure survival during the plant establishment period. If the approving authority determined that existing vegetation provided adequate screening without the need for additional landscaping, than no action shall be taken by the applicant or his assigns or successors that would diminish its effectiveness in screening the site. In the event that natural vegetation is removed to the extent that the area required to be screened is made more visible, the operator of the facility shall prepare a revegetation plan and submit the plan to the administrator for review and approval. Upon approval the operator shall implement the plan.

(d) The administrator or the hearing examiner as appropriate may approve any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. Either, as appropriate, may waive the requirement for the installation of screening for those sides of the facility that are naturally screened so as not to be visible from public streets or adjoining properties.

(e) Existing vegetation shall be preserved to the maximum extent practicable.

(f) When landscaping is required to be installed a maintenance bond, assignment of funds or other financial guaranty acceptable to the county shall be provided in the amount of 50 percent of the value of the labor and materials. The guaranty shall be in effect for two years from the date of planting.

(9) General Height Standards. The following standards shall apply to wireless communications facilities:

(a) The height of a freestanding or attached wireless communications facility shall be measured to include the support structure and any antennas proposed to be attached to the structure at the time of application; provided, provided that a lightning rod, not to exceed 10 feet or FAA required lighting shall not be included in the height measurement.

(b) For a nonattached wireless communications facility, the height limit on a freestanding wireless communications facility shall be the minimum height necessary for the facility to function satisfactorily provided the height does not exceed height restriction imposed elsewhere in this chapter. The applicant shall provide technical documentation that the height proposed is the minimum necessary. As provided in WCC 20.13.160, the administrator or the hearing examiner may require a third party review of this information.
(c) The height of attached antennas mounted or installed on an attached wireless communication support structure may exceed the height limit of the underlying zone; provided, provided that the height does not exceed height restriction imposed elsewhere in this chapter.

(10) Parking. Each freestanding and attached wireless communications support structure shall be provided with at least one adjacent parking space or more if needed to accommodate staff. All unstaffed wireless communications facilities shall have access to parking for maintenance personnel, however such parking may be shared or public parking at the discretion of the county. Staffed facilities shall require one parking space per staff under the standard provisions of the zone in which it is located.

(11) Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.

(12) Building and Utility Permits. Approval of a WCF permit does not exempt or otherwise remove any requirements for obtaining building permits and other applicable construction, development or operation related permits, licenses or approvals for the project. It shall be the permittee’s responsibility to secure all other necessary permits and approvals prior to beginning work on the installation of the facility. (Ord. 2000-006 § 1, 2000).

20.13.070 Additional standards for residential related districts.

The following requirements and restrictions shall apply to the location of wireless communications facilities in the county’s residential related districts. For the purposes of this section, residential related districts shall include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial, (NC) Rural-Residential (RR), Rural-Residential Island (RR-I), and Rural (R) Districts.

(1) Support Structures.

(a) When not otherwise prohibited, new wireless communications support structures in residential related zones shall require conditional use approval pursuant to WCC 20.84.200 and subject to the following; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.
(i) Lattice towers are prohibited in the following residential related zones: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island Districts.

(ii) Monopole wireless communication support structures and ground level dishes shall not be located on land parcels or lots in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial and Eliza Island Districts that also contain residential uses.

(b) A monopole WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates the structure’s height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain.

(2) Attached Antennas.

(a) Attached antennas are prohibited on single family dwellings, duplexes and their accessory structures. Dish antennas shall not be mounted on roofs without a special exception under the provisions of WCC 20.13.110.

(b) The following antennas may be permitted through a wireless communications facility (WCF) permit:

(i) Collocation on an existing, approved and conforming, wireless communication support structure; provided, that no more than 15 feet is added to the height of the facility. Collocation on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020.

(ii) Attachment to a nonresidential structure on a land parcel or lot not used primarily for residential purposes; provided, the antenna does not extend more than 15 feet above the roof or top of the structure if not a building.

(iii) Ground-mounted dish antennas may be located on sites not used exclusively for residential purposes; provided, the antenna is not more than 15 feet in height above ground level nor more than 12 feet in diameter.

(c) Attached antennas on a structure located on a land parcel of lot used exclusively for residential purposes or attached to a residential building, other than those residential buildings prohibited in subsection (1)(a) of this section, may be approved as a conditional use provided the antenna shall not extend more than 15 feet above the roof or top of the structure if not a building and that the requirements of WCC 20.13.062(1) are met. The hearing examiner shall have the
authority to restrict the height of the attached antenna to a figure less than 15 feet in order to

20.13.060 Additional standards for nonresidential related districts.
The following requirements and restrictions shall apply to the location of wireless communications
facilities in the county’s nonresidential districts. For the purposes of this section, nonresidential related
districts shall include commercial districts, industrial districts and resource districts each as described in
WCC 20.13.050.

(1) Support Structures.

(a) New support structures shall require a conditional use permit pursuant to WCC 20.84.200;
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provided, that new support structures collocated or clustered on an existing approved and
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conforming site may be permitted through a wireless communications facility (WCF) permit.
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Collocation or clustering on a nonconforming site may be approved as an expansion of a
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nonconforming use by conditional use as provided in WCC 20.83.020. The height of new support
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structures shall be subject to requirements of 20.13.062(9) (b); provided, that the height does not
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exceed 150 feet. Additional height may only be approved by special exception as provided for in
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WCC 20.13.110.

(2) Attached Antennas.

(a) Antennas shall not be attached to single-family residences, duplexes or their accessory
structures.

(b) Where not otherwise prohibited by this chapter, attached wireless communications facilities
on sites used exclusively for residential purposes and wireless communications facilities
attached to residential structures shall require a conditional use permit.

(c) Other attached antennas, ground-mounted dishes and collocated antennas, on existing,
approved and conforming sites, shall require a WCF permit; provided, that new support
structures collocated on an existing approved and conforming site may be permitted through a
wireless communications facility (WCF) permit. Collocation on a nonconforming site may be
approved as an expansion of a nonconforming use by conditional use as provided in WCC
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20.83.020.

(d) Antennas attached to structures shall not extend more than 15 feet above the roof or parapet.
Collocated antennas shall not extend more than 15 feet above the attachment device. (Ord.
20
2000-006 § 1, 2000).

20.13.090 Temporary uses.

Wireless Freestanding or attached wireless communication facilities may be permitted as a temporary use
with review by the administrator in order to facilitate continuity in wireless communications service during
repair or maintenance of existing wireless communications facilities or prior to completion of construction of new wireless communications facilities. Such temporary wireless communications facilities shall operate for not more than 60 days at any one location within a six-month period commencing when transmission from such facility begins. The wireless communications facilities facility(s) shall be removed within 30 days after the facility is no longer needed for telecommunications purposes. (Ord. 2000-006 § 1, 2000).

20.13.100 Wireless communication facility permit.
A wireless communication facility (WCF) permit is an administrative approval permit, except where a conditional use permit is required in WCC 20.13.080 and 20.13.070, and shall be processed and approved pursuant to WCC 20.84.235, provided, that the notice requirements shall be as follows:

Applications that are categorically exempt from environmental review under SEPA (WAC 197-11-800) shall also be exempt from the public notice requirements of WCC 20.84.235 and Chapter 2.33 WCC.

Applications not exempt from environmental review under SEPA shall be provided notice of completeness, notice of application and notice of decision as provided by Chapter 2.33 WCC.

The administrator may refer an application for a WCF permit to the technical review committee for review and comment prior to making a decision on the proposal. (Ord. 2000-006 § 1, 2000).

20.13.110 Special exceptions.
When adherence to all development standards of this chapter would result in a physical barrier which would block signal reception or transmission or prevent effective communication in all permissible locations, a special exception may be permitted provided criteria outlined below are met. Exceptions do not apply to variations from the current code as adopted and amended per WCC Title 15, Buildings and Construction. A variance pursuant to Chapter 20.84 WCC is required for variations from applicable zoning regulations not described in this section.

The approval authority for granting of the special exception shall be the same as that of that of the authority authorized to approve the permit for the antenna location. A request for a special exception shall be processed in conjunction with the permit approving the antenna location.

Upon review of special exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.

(1) Special Exception Criteria.

(a) The applicant shall justify the request for a special exception by documenting and providing evidence that the full application of a particular standard or standards of this chapter would result in an obstruction or inability to send and receive a communication signal from the proposed
location of the facility and further, that the obstruction or inability to send or receive a signal from that location is the result of factors beyond the property owner's or applicant's control. Pictures, scaled drawings, maps and/or manufacturer's specifications, and other technical information as necessary, should be provided to substantiate the need for the special exception.

(b) The applicant for a special exception shall demonstrate that the proposed materials, shape, and color of the antenna will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.

(c) Attached a request for a special exception to heights for new antennas that are proposed to be mounted or installed on an attached wireless communication support structure, requesting a special exception for height shall be reviewed relative to through the same process as a support structure height limitations set for structures in the underlying zone district in which the antenna is to be located.

(d) Requests for special exceptions for setback reductions shall also be judged based on the following criteria:

(i) The extent to which screening and camouflaging will be employed to mitigate the effects of the structure versus the value of the setback in providing such screening.

(ii) The need for the setback reduction to facilitate a location or design that better satisfies the criteria of this chapter.

(iii) The impact on adjacent properties.


20.13.120 Application requirements and conditions of issuance.
Applicants shall submit the following information in addition to standard application materials:

(1) A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

(2) Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.

(3) Legal description and ownership of the parcel.
(4) A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.

(5) For new freestanding support structures, a location evaluation study shall be provided as follows:

(a) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.

(b) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.

(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.

(6) The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC-20.13.060(14) 20.13.091(11), to cover the future costs of removal of the antenna and/or tower facility.

(7) A report from a licensed professional engineer documenting that:

(a) The support structure is designed for collocation of other antennas (if applicable.)

(b) The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.

(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.

(8) A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipates will be sited by his company within Whatcom County during the next five years.

(9) Proof of license by the FCC, if applicable.

(10) A copy of the findings from the FAA’s Aeronautical Study Determination regarding the proposed wireless communication support structure.

(11) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.061 20.13.091(7).

(12) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers. (Ord. 2000-006 § 1, 2000).

20.13.130 General criteria for issuance of permits.
(1) Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:

(a) The antenna must be located at the site to satisfy its function in the applicant’s local wireless service provider’s local grid system. The county may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.

(b) The height requested is the minimum height necessary to fulfill the site’s function within the grid wireless service provider’s system.

(2) In addition to standard criteria, the authority granting the permit shall find that, unless the facility will be located at the highest priority location as set forth in WCC 20.13.080, the applicant has demonstrated that none of the higher priority locations are available or if one is available it is not a feasible location for the proposed facility; or if feasible is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(3) The permit may include requirements which:

(a) Minimize visual impacts to the greatest extent possible by maximum feasible use of camouflage or screening, including but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or live or simulated vegetation, undergrounding of accessory equipment structures, incorporation of wireless communications support structures, antennas and other appurtenances into the architectural features of existing buildings or structures and by requiring compatibility with key design elements in the surrounding area; for example, use of brick or other material similar to that used in adjacent buildings or structures, incorporation of support structures into compatible architectural features such as flag poles, bell towers or cornices, or use of simulated vegetation to camouflage support structures.

(b) Locate wireless communication facilities so as to minimize the visibility of the facility to residentially zoned land and so as to minimize the obstruction of scenic views from residentially zoned land.

(c) Require the mounting of the facility on existing buildings or structures, or use of other, alternatives with less visual, aesthetic or safety impacts, as an alternative to use of a monopole or lattice tower. (Ord. 2000-006 § 1, 2000).

20.13.140 Federal requirements.
All wireless communications support structures must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the freestanding or attached wireless communication support structure, antennas and electronic
equipment governed by this chapter shall bring such wireless communication support structure, antennas and electronic equipment facility into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring such facilities wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment facility at the owner’s expense. (Ord. 2000-006 § 1, 2000).

20.13.150 Removal of antennas and support structures.
No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the abandoned components of the facility the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any antenna component or wireless communication support structure of a facility has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure or site shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure the abandoned facility or abandoned component of the facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the such facility at the owner’s expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. (Ord. 2000-006 § 1, 2000).

20.13.160 Third party review.
Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. Because of the technical nature of methodologies and analyses, the county may find it necessary to require a third party technical review of the material submitted by the applicant as part of a permitting process. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the provider’s methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the county may require changes to the provider’s application. The expert review shall address the following:

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached; and
(4) Any specific technical issues designated by the county.

In general, and if necessary, the administrator shall consider requiring a third party review of technical information submitted in support of a special exception, and technical information submitted in support of a wireless communications facility proposed at a low priority, high visual impact location.

The selection of the third party expert may be by mutual agreement between the provider and the county, or at the discretion of the county, with a provision for the provider and interested parties to comment on the proposed expert and review its qualifications. The cost of the technical review shall be borne by the applicant. (Ord. 2000-006 § 1, 2000).

20.13.170 Appeals.

The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, provided that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under WCC 20.92.210(2). (Ord. 2000-006 § 1, 2000).
MEMORANDUM

TO: Honorable Members of the Whatcom County Planning Commission

FROM: Erin Osborn, Planner

THROUGH: Mark Personius, Long Range Planning Manager

DATE: June 12, 2014

SUBJECT: Wireless Communication Code Amendments (PLN2014-00010)

This memo follows staff’s June 3rd memo which summarizes action taken at your May 22, 2014 meeting on the above referenced application.

At the May 22nd hearing, Planning Commissioners voted to hold open the public record for additional comments, and to hold a second public hearing on the proposal, scheduled for June 12, 2014.

On June 11, 2014, staff received a letter from Bush Law Firm (who represents interests of AT&T), outlining four suggested amendments for consideration by the Planning Commission. This letter was forwarded to your attention by email, and copies will also be made available at the June 12, 2014 hearing, scheduled for this evening.

The four areas covered in the Bush Law Firm letter are generally covered in staff’s June 3rd memo and it’s attached June 2nd, Exhibit “A”. Additional suggested areas for code amendment from Bush Law Firm, followed by a brief discussion on each, with staff recommendations, including alternative language for your consideration, are listed below:

1. Bonding

Staff agrees with recommendations made by Bush Law Firm to delete provisions for performance bonds and the associated application requirements. This recommendation is made after considering a variety of different viewpoints expressed by County staff including Public Works Engineering, County Finance, the County Prosecuting Attorney’s Office, and County Facilities. Staff also agrees with Bush Law Firm suggested language to add “Removal” language shown in the June 2nd Exhibit “A”, Page 25, Line 11, starting with, “In any case”. In addition, staff
recommends that the Planning Commission consider inserting City of Woodinville language at the end of this same sentence as noted on P. 3 of the June 3rd memo from staff. This language would give Whatcom County authority to obtain a court order to direct removal and to lien property to recover costs should the County take action to remove a facility and associated equipment:

**Staff recommends the following amendments per the above discussion:**

WCC 20.13.062(11) Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than $1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.

WCC 20.13.120(6) The applicant shall submit a letter of credit, performance bond or other security acceptable to the county, as described in WCC 20.13.091(11), to cover the future costs of removal of the facility.

WCC 20.13.150 Removal of antennas and support structures. No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner’s expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. (Ord. 2000-006 §1, 2000). If a facility and associated equipment are not removed within 90 days after receipt of a notice from the county requiring said removal, the Director of Whatcom County Planning and Development Services may seek and obtain a court order directing such removal and imposing a lien upon the real property upon which such wireless service facility is situated in an amount equal to the cost of removal.

2. Third Party Review

Recommendations made by Bush Law Firm to amend existing provisions for “third party review” were considered and approved by the Planning Commission at their May 22nd meeting. This is in regards to modifying specific language to state that selection of a third party expert “shall” be by mutual agreement between the
county and the provider. This was noted in the June 3rd memo and June 2nd Exhibit "A", as well.

3. Emergency and Routine Repair and Maintenance

Staff agrees with recommendations made by Bush Law Firm to keep provisions for emergency and routine repair and maintenance where it currently resides in the section on exemptions; however, staff recommends that the Planning Commission consider adding a proviso to qualify that such uses shall be required to conform to the chapter’s design and development standards. This recommendation is made after reviewing provisions in a variety of different city and county jurisdictions, and after discussion with Permit Center staff.

Staff recommends the following amendments per the above discussion:

The requirements of this chapter shall apply to all new personal wireless communications facilities and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

(1) Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.

(2) Send and receive citizen band radio antennas or antennas operated by federally licensed amateur ("ham") radio operators.

(3) Industrial, scientific and medical equipment using frequencies regulated by the FCC.

(4) Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.

(5) Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes.

(6) Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations. Provided, that compliance with design and development standards of this chapter is maintained. (Ord. 2000-006 §1, 2000).

WCC 20.13.040 Permitted Uses.
The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter; the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt.

(1) Replacement construction:
In all districts: Replacement of any component of an existing freestanding or attached wireless communication facility, and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites, provided that such replacement does increase the total number of components lawfully existing on the site at the time of application for such replacement construction, and further provided that such replacement construction does not "substantially increase change the physical dimensions" of the individual components being replaced as defined in WCC 20.13.020(19).

Determinations made as to whether or not replacement proposals substantially increase change the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially increase change the dimensions of such facilities as defined in WCC 20.13.020(19). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-Ionization emission report (NIER). Such documentation must be submitted at time of application for the required commercial building permit(s).

(2) New antenna or new antenna array construction:

In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites, provided that such new antennas or antenna arrays do not "substantially increase change the physical dimensions" of such facilities, as defined in WCC 20.13.020(19);

Determinations made as to whether or not new construction proposals substantially increase the physical dimensions of existing facilities shall be made by the administrator, as follows:

(a) The applicant or applicant's agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially increase change the dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment. Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).

(b) The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) Emission Standards. Examples of such documentation include engineered analyses, such as a Non-
Proposed changes outlined on top of P. 3 in the June 11th Bush Law Firm letter regarding existing application requirements would exempt any of the proposed permitted uses from a requirement of having to provide documentation that the applicant has the right to use the site. This would be contrary to existing requirements for issuing building permits. The County may not issue building permits on sites without documentation to verify that the applicant in fact has permission of the owner to apply for and obtain permits that authorize construction on the premises, and staff does not recommend that this language be modified.

4. Definition of Substantial Change

At the May 22, 2014 Planning Commission meeting, representatives from Bush Law Firm made recommendations to indicate that a definition for “substantial change” should match the SEPA definition for “substantial change”. This recommendation was considered and approved by the Planning Commission at their May 22nd meeting. In addition, commissioners requested that staff draft additional language to address incremental changes and limit overall facility size. These changes, along with a new definition for “substantial change” that matches the SEPA definition is reflected in the staff June 3rd memo and June 2nd Exhibit “A”. In their June 11th letter, Bush Law Firm indicates that they recommend that the Planning Commission consider draft language proposed by staff in the June 2nd Exhibit “A”.

Staff recommends the following amendments per the above discussion:

WCC 20.13.020(19) “Substantially increase change the physical dimensions” means:

(a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than ten percent, or ten twenty feet, whichever is less greater; provided that any such increase in height must conform to the provisions of this chapter; or (b) The installation or mounting of equipment that would add an appurtenance to the body of the structure protruding from the edge of the structure. The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet resulting in an increase in the overall width of the structure by more than ten percent, or 10 feet, or more than the width of the structure at the level of the appurtenance, whichever is less greater; or:

Provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in (a) or (b) above, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County.
Additional changes to definitions are outlined in the June 11th Bush Law Firm letter in regards to “collocation”, and also new definitions for wireless communications services” and “wireless communications facilities” are proposed. Staff agrees with recommendations made by Bush Law Firm on definitions for wireless communications services, and wireless communications facilities, with the proviso that the “s” in communications is deleted, and that these definitions are stricken from WCC 20.97 – Definitions.

Staff also recommends that the Planning Commission not approve a proposed definition of “collocation” that is outlined in the Bush Law Firm letter of June 11th. This recommendation is based on a review of the language proposed, and a conclusion that such language would constitute a substantive change, and would inadvertently confuse the distinction that staff maintains is necessary to differentiate between the different types of wireless communication facilities: i.e. free standing wireless communication facilities and attached wireless communication facilities.

The proposed language in this definition refers to collocation on an existing structure, and describes an existing structure as “any existing tower, pole, building, or other structure capable of supporting wireless service facilities”. (Emphasis added) The key word in the above phrase is “capable”.

While this definition appears to satisfy the intent of making determinations on what type of action may be exempt from environmental review under SEPA, if adopted in WCC 20.13 it would have the effect of blurring a necessary distinction that is required to make determinations on what is considered an “attached wireless communication facility”. For example: Existing structures such as Bonneville Power Authority Transmission Towers, Multi-Family Dwelling Units, Apartment Garages, and Water Towers may be “capable” of supporting wireless service facilities, but they are not designed specifically to support such equipment; however under the definition for “collocation” proposed by the Bush Law Firm these uses would be considered “existing”, and therefore exempt from requirements of obtaining WCF permit on new attached wireless communication facility sites, as the code currently requires.

**Staff recommends the following amendments per the above discussion:**

Note: Numbering for the proposed definitions will be considered at a later date.

WCC 20.13.020(16) “Wireless communications facilities” (WCF) means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to, antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

“Wireless communication facilities” means facilities for the provision of wireless service. Wireless communication facilities included, but are not limited to, antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic and switching equipment.
"Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

"Wireless communication service" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

WCC-20.97.456 Wireless communications facilities.
"Wireless communications facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. Wireless communications facilities includes, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronic and switching equipment. (Ord. 2000-006 § 3, 2000).

WCC-20.97.457 Wireless communications service.
"Wireless communications service" means the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services. (Ord. 2000-006 § 4, 2000).

I look forward to presenting my report, making recommendations, and answering your questions at your June 12, 2014 meeting.

Thank you.
July 14, 2014

Honorable County Councilmembers
Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

DELIVERED VIA EMAIL TO: dbrown@co.whatcom.wa.us

Re: AT&T Comments on Whatcom County Agenda Bill No. 2014-256
Proposal to Amend Whatcom County Code, Title 20, Chapter 20.13 “Wireless Communication Facilities” and Chapter 20.97 “Definitions”

Dear Councilmember Brenner
Councilmember Browne
Councilmember Buchanan
Councilmember Crawford
Councilmember Kremen
Councilmember Mann
Councilmember Weimer:

Thank you for the opportunity to provide comment on behalf of AT&T on Agenda Bill No. 2014-256 concerning wireless communication facility regulations in Whatcom County. We appreciate the Planning Commission and Planning & Development Services Staff’s willingness to listen and address some of the concerns we raised at meetings with staff in March and at the public hearings in May and June of this year. We believe that the proposed Ordinance is an improvement over the current regulations, streamlining the process to some extent for non-substantial upgrades to existing facilities. But as previously noted, the following are additional opportunities for streamlining that will benefit the process and ensure consistency with federal law.

I. Modification of Existing Facilities

We support the portion of the proposed Ordinance that allows replacement construction and new antenna or new antenna array construction that does not substantially change the physical dimensions of the components replaced or existing facility as a permitted use. This section of the Ordinance makes progress toward consistency with the federal Middle Class Tax Relief and Job Creation Act of 2012 (the “Act”). Part of the Act is Section 6409, which is called “Wireless Facilities Deployment.” The relevant provision is as follows:

Sec. 6409. WIRELESS FACILITIES DEPLOYMENT
(a) FACILITY MODIFICATION.
   (1) IN GENERAL. Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local
government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST. For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves:
(A) collocation of new transmission equipment;
(B) removal of transmission equipment; or
(C) replacement of transmission equipment.

(3) APPLICABILITY OF ENVIRONMENTAL LAWS. Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

An “eligible facilities request” is clearly defined under the Act as any request for modification of an existing wireless tower or base station, and the Act is clear that a local government may not deny, and shall approve, any request. Thus, any proposal to collocate, remove, or replace transmission equipment, so long as the request does not substantially change the physical dimensions of the tower or base station, shall be approved. The Ordinance is consistent with federal law by allowing replacement construction and new antenna or new antenna array construction not substantially changing the physical dimensions of the components replaced or existing facility as a permitted use. But the Ordinance is not consistent with federal law if the components replaced or existing facility is nonconforming. Rather than allowing an eligible facilities request for a nonconforming component or facility as a permitted use, the Ordinance subjects any “addition or enlargement” of a nonconforming facility to the additional, lengthy conditional use permit process requirements of chapter 20.83 WCC. See WCC 20.83.020(2). To make the Ordinance consistent with federal law, we suggest that the Ordinance be amended to include the following change to WCC 20.83.020(2):

20.83.020 Expansion of nonconforming use.

[...]

(2) The expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, except for nonconforming adult businesses, which shall not be expanded, and except for replacement construction and new antenna or new antenna array construction under WCC 20.13.040. The expansion must be on the parcel...

II. Application Requirements

Under the Ordinance, proposals that are not exempt are subject to the WCC 20.13.120 application requirements and WCC 20.13.130 general criteria for issuance of permits. Under these circumstances, even proposals for which the County has no discretion and that must be approved under the federal Middle Class Tax Relief and Job Creation Act of 2012 must submit at least 14 different types of documentation to the Planning & Development Services Department to proceed. This creates an unnecessary burden on the Department. The most burdensome of these requirements is that for each proposed antenna, other component, or facility, an applicant must submit a performance bond or other security acceptable to the county to cover future costs of removal for the facility. Thus, one facility with three collocation sites, each site containing 6
antennas, could mean 18 separate bonds or other forms of security to be administered by the County for the life of the facility. That number would be multiplied for each application filed with the County. To streamline the process, we suggest that WCC 20.13.120(6) and WCC 20.13.130(4) be deleted and that the Ordinance be amended to retain the existing WCC 20.13.150:

In any case, if the county finds that any wireless communication facility has not operated for a continuous period of six months, the owner or lessee of the property or site shall remove the facility within 90 days of receipt of notice to remove from the county. If the abandoned facility is not removed within said time period, the county may remove such facility at the owner’s expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure.

This section of existing code already provides for removal at the owner’s expense, with the many methods of code enforcement and cost recovery already available to the County. Moreover, antennas, equipment, and wireless support structures are commercially valuable assets and would not likely be abandoned by the owner. There is no reason to alter the County’s existing process and replace it with an unnecessary and more complicated process that is burdensome to administer.

With these two exceptions, we support the remainder of the Ordinance. We deeply appreciate the County’s work on this Ordinance and we look forward to working with the County to build a reliable, well-integrated wireless network in the future.

Respectfully submitted,

Kristen J. Larson
Busch Law Firm PLLC
## TITLE OF DOCUMENT: Reappointments to the Bellingham-Whatcom Public Facilities District.

### ATTACHMENTS: Memorandum

### 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 recommends the confirmation of the reappointment of Brent Walker and Dunham Gooding to the Bellingham-Whatcom Public Facilities District.

The City of Bellingham is concurrently confirming these reappointments.

### 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).
MEMORANDUM

TO: Members of the Whatcom County Council
FROM: Jack Louws, County Executive
DATE: July 9, 2014
SUBJECT: Public Facilities District Reappointments

Brent Walker and Dunham Gooding are serving terms on the Bellingham-Whatcom Public Facilities District board which will expire on July 30th, 2014. I and Mayor Linville wish to reappoint both gentlemen for another term, and respectfully request your confirmation.

Both Mr. Walker and Mr. Gooding have been valuable assets and we believe their continued involvement will be beneficial to the PFD Board.
## WHATCOM COUNTY COUNCIL AGENDA BILL

### Clearances

<table>
<thead>
<tr>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
</tr>
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<tbody>
<tr>
<td>RM</td>
<td>July 8, 2014</td>
<td>(RECEIVED) JUL 15 2014</td>
</tr>
<tr>
<td></td>
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<td>WHATCOM COUNTY COUNCIL</td>
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</table>

### Originator:
RM

### Division Head:

### Dept. Head:

### Prosecutor:

### Purchasing/Budget:

### Executive:

### Agenda Date

- 7/22/14 Introduction
- 8/5/14 Hearing

### Assigned to:

### Title of Document:
Amendment of Whatcom County Code 12.60 Road Naming System

### Attachments:
- Draft Ordinance
- Exhibit A: proposed changes to WCC 12.60
- 1982 Intergovernmental Agreement between Lummi Nation and Whatcom County

### SEPA review required?
- ( ) Yes  (X) No

### SEPA review completed?
- ( ) Yes  ( ) No

### Should Clerk schedule a hearing?
- (X) Yes  ( ) No

### Requested Date
August 5, 2014

### 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.)

Amendment of Whatcom County's Road Naming System; Whatcom County Code 12.60

### 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.
Memo

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

Through: Frank M. Abart, Director

From: Roland Middleton, LEG, Special Projects Manager

Date: July 9, 2014

Re: Amending Whatcom County Code 12.60; the Road Naming System

Requested Action:

The Department of Public Works requests that the proposed amendment to the Road Naming System (WCC 12.60) be introduced at the July 22, 2014 Council meeting. We then request that a Public Hearing be advertised and held August 5, 2014 at that evenings County Council meeting with the amendment ordinance adopted at said meeting.

Background and Purpose:

The current Road Naming System (WCC 12.60) does not provide a procedure for an applicant to request a change of an existing road name. In addition, Public Works has identified additional changes to WCC 12.60 to improve the implementation and administration of the code. The proposed amendment to WCC 12.60 will provide a public procedure for any applicant to request a change to a road name, and clarifies additional issues with the Whatcom County Road Naming System.

Furthermore, on September 16, 1982, the Lummi Indian Tribe and Whatcom County agreed in an Intergovernmental Agreement to provide the Lummi Nation with the opportunity to change the name of Haxton Way (Hallauer Consent Decree/ Civil Action No. 79-682R) with certain conditions (See attached inter-local). The Lummi Indian Business Council has requested Whatcom County to initiate the process to change the name of Haxton Way.

The Lummi Nation has two options in renaming Haxton Way:

1) Follow the terms of the inter-local and submit a road name following the guidelines of the inter-local with a name incorporating Haxton within the new designation. Whatcom County would facilitate the process of the name change as per the revised code without requiring the fee, but with adequate public notification to ensure a proper transition to the new name by property owners, first responders, and the post office. (Lummi Nation to provide data as needed to help facilitate the process)

2) Submit a request of name change with corresponding fees as per the new code, and follow the policies and procedures as set forth in the code. The ultimate decision of the name change approval rests with the Whatcom County Council.
PROPOSED BY: Public Works Department
SPONSORED BY: 
INTRODUCTION DATE: 

ORDINANCE NO. 

AMENDMENT TO WCC 12.60
ROAD NAMING SYSTEM

WHEREAS, on September 16, 1982, the Lummi Indian Tribe and Whatcom County agreed in an Intergovernmental Agreement to provide the Lummi Nation with the opportunity to change the name of Haxton Way (Hallauer Consent Decree/ Civil Action No. 79-682R); and

WHEREAS, the Lummi Indian Business Council has requested Whatcom County to initiate the process to change the name of Haxton way; and

WHEREAS, current Whatcom County Code (WCC 12.60) does not provide a procedure for an applicant to request a change of an existing road name; and

WHEREAS, the Public Works Department has identified additional changes to WCC 12.60 to improve the implementation and administration of the code; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Road Naming System (WCC 12.60) is hereby amended as shown on Exhibit A.

ADOPTED this ____ day of ________, 20____.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Carl Weimer, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson
Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied
Date Signed: ____________________________
Chapter 12.60
ROAD NAMING SYSTEM

12.60.010 Purpose.
The purpose of this chapter is to provide for a logical system of road naming and address numbering, which is consistent with the desires of Whatcom County residents, with the Whatcom County Comprehensive Plan, and with the practical needs of county residents, emergency service providers, and visitors. (Ord. 96-049).

12.60.020 Definitions.
A. "Address" means the appropriate combination of address number, directional prefix or suffix, road name, and road type, e.g., 100 East Bakerview Road.

B. "Address grid system" means an imaginary network of uniformly spaced horizontal and perpendicular lines used to establish regularly spaced intervals as the basis for assigning address numbers.

C. "Address marker" means a marker with numbers on two sides used to designate an address number along a road, or numbers affixed to a building.

D. "Address number" means the assigned property number which is written ahead of the road name, e.g., 525 Noon Road, and shall be numerical only.
E. "Alpha road name" means a word, usually a proper or common noun, or a combination of words used to identify a road, e.g., 'Smith' Road, 'Trout Lake Road.

F. "Applicant" means the individual(s) or entity responsible for initiating the creation or expansion of a road, or requesting the change of the name of an existing road.

G. "Block number" means the 100 number interval based on the address grid system.

H. "Building address number including building designation" means the property number assigned to a building.

I. "Directional prefix" is the word such as "West" or "East" placed ahead of the name of a road.

J. "Directional suffix" is the word such as "West" or "East" placed after the road type, e.g., Willow Lane East.

K. "Driveway": Primary function is to provide direct access to property.

L. "Joint driveway" means a driveway with primary function to provide direct access for up to four properties.

M. "Mobile home park" means any parcel of land or adjacent parcels of land in the same ownership which is utilized for occupancy by more than two mobile homes.

N. "Numeric road name" means an ordinal number used to identify a road, e.g., '2nd Street', '31st Avenue.

O. "Private road" means a road which is on private property and which is maintained with private funds.

P. "Recreational vehicle park" means a parcel of land in which three or more sites are primarily for occupancy by recreational vehicles for travel, recreation or vacation uses.

Q. "Right-of-way" means a legal right of passage over a piece of land, generally established by either dedication, ownership, or easement.

R. "Road" means a travel way intended for the use of motorized vehicles or other modes of transportation.

S. "Road name sign" means a sign designating the name of a travel way.

T. "Road name type" follows the road's alpha road name proper and indicates the type of travel way, e.g., Britton 'Road', Sunset 'Lane'. (Ord. 96-049).
Exhibit A

**12.60.030 Responsibilities of the public works department.**
A. Whatcom County department of public works, hereinafter called the department, is directed to assign and/or change address numbers to buildings and unimproved property, to facilitate and record the naming of roads, and to assure placement of road name signs, according to the provisions of this chapter.

B. The department will recommend to the executive for approval by the county council rules and regulations regarding all address numbering and road naming policies.

C. The department and the applicant shall work cooperatively and in a timely manner to facilitate and expedite the procedures required by this chapter. (Ord. 96-049).

**12.60.040 Appointment and responsibilities of the citizen address and road name appeals committee.**
A. The county council shall appoint a citizen address and road name appeals committee, hereinafter called the "citizen appeals committee", of five members representing the diversity of Whatcom County residents. Committee members shall serve three-year overlapping terms and shall be eligible for reappointment.

B. The responsibilities of the citizen appeals committee shall be as follows:

1. Consider and decide appeals of address numbering, and road name assignments and corrections;

2. Review and decide appeals in enacting the policies and procedures of this chapter;

3. Develop a list of preapproved road names from which applicants may choose;

4. May propose changes or additions in the county's address numbering, road naming, and sign policy.

C. Decisions by the citizen appeals committee may be appealed by the department to the county council. (Ord. 96-049).

**12.60.050 Requirement for road name.**
A. Road names shall be required for all public roads and private roads now existing or hereafter created when such roads:

1. Are any length and serve five or more lots; or

2. Are 1,000 feet or greater in length and serve three or more lots.

B. Roads which are not required to be named by per these standards WCC 12.60.050 A above may also be named at the unanimous request of the applicant and/or all the property owners served by the
road when said road serves three or four existing lots. There must be a minimum of three lots currently being served by the road to name the road. (Ord. 96-049).

12.60.060 Criteria for road name selection.
A. Objectives. Names should be pleasant sounding, appropriate, and easy to read and pronounce (so that the public, and children in particular, can handle the name in an emergency situation) and shall meet What-Comm (9-1-1) computer programming requirements.

B. Recommended Types of Names. Names of local historic families, individuals, landmarks and events, features of the natural terrain, plants and animals, names of aesthetic or community significance.

C. Unacceptable Names. Numeric (e.g., 42nd, 56th, Fifty-Fifth, etc.) if they have already been used or if they do not conform to the address grid system; alphabetical letters (A, B, C, etc.); frivolous, complicated or unseemly names (e.g., My Road, Slick Road).

D. Avoidance of Name Duplication. Similar sounding names shall be considered duplication regardless of spelling. No duplication of names shall be permitted within Whatcom County. Road type shall not be used to distinguish road names within these areas, except in logically compelling instances where there is contiguity (e.g. Oak Circle at the end of Oak Street; but not Oak Lane at a location not contiguous with Oak Street). Directional indicators (e.g., North, South, Northeast) shall not be allowed as street names to distinguish noncontiguous roads (i.e., if there were an existing Wilson Road, "North Wilson Road" could not be considered a distinct, nonduplicative name).

E. Road Type Designations. Due to existing road names, "view", "vista", "trail", and "plaza" shall not be permitted as a road name type. The designation "highway" shall be reserved for state and federal administered roads. The road name types "road" and "street" shall be reserved for Whatcom County public roads only.

F. Directional Prefixes. Roads running east-west which intersect (cross or abut) the Guide Meridian shall be prefixed "East" on the east side of the Guide and "West" on the west side of the Guide.

G. Directional Suffixes. Directional suffixes shall not be allowed in road names. (Ord. 96-049).

12.60.070 Name assignment procedure.
A. The applicant for a new road may propose three original names: a preferred name and two alternates. The department shall provide the road applicant with a copy of this chapter and a list of preapproved names from which a road name may be selected, if the applicant prefers not to propose an original name.

B. If preapproved name is not selected, the road name approval process shall consist of submission to the department for review including What-Comm 9-1-1 and the local fire district(s) according to the criteria set forth in WCC 12.60.060.
C. If an appeal is made, the citizen appeal committee shall evaluate the appeal with regard to compliance, review proposed road names for appropriateness, and make recommendations on new road names and road name changes.

D. When the recommendations of the department and the citizen appeals committee do not agree, or when the applicant contests the decisions of the department and the citizen appeals committee, the matter may be referred to the council for consideration. (Ord. 96-049).

12.60.080 Road name signs.
A. Signs on public county roads shall be placed and maintained by the county. When an applicant dedicates a road to the public, the applicant shall pay for the initial installation of the road name sign(s).

B. Signs on new private roads shall be installed and maintained by the applicant in accordance to Whatcom County Development Standards. On existing private roads, the responsibility for installation and maintenance of signs shall rest collectively with the owners of real property which abuts or may use the private road as access or as outlined in the plat covenants. (Ord. 96-049).

12.60.090 Road sign specifications.
A. For Arterial Roads. The color and letter size shall be consistent with current county road signs for all public county roads. In addition to the road name, block numbers shall be shown on all new and replacement arterial road signs.

B. For Private Roads. Signs designating private roads shall be the same style as public road signs in accordance with Whatcom County Development Standards. Block numbers shall be shown on or with all new and replacement private road signs at public road intersections. (Ord. 96-049).

12.60.100 Address numbering system.
A. An address numbering system following a grid pattern of 400 three- or four-digit numbers per mile meets current and projected future needs in Whatcom County. This system provides for one address number every 26.4 feet on either side of the road. (Ord. 96-049).

B. Except for Point Roberts, the horizontal (east-west) base line is the Whatcom County and Skagit County border. Numbers 0 to 99 are reserved for parcels in Skagit County that access and are addressed on Whatcom County roads. The base line is 100, and addresses increase to the north by 100 numbers per quarter-section line, 400 numbers per approximate mile.

C. Except for Point Roberts, the vertical (north-south) base line is the dividing line between range 2 east and range 3 east (Guide Meridian for most of the county). The base line is 100 and addresses increase going east and increase going west by 100 numbers per quarter-section line, 400 numbers per approximate mile.

D. For Point Roberts, the horizontal (east-west) base line is the theoretical western section line of 40N 3W 33. The base line is 1000 and addresses increase going east by 100 numbers per quarter-section line,
400 numbers per approximate mile. The vertical (north-south) base line is the Canadian border. The base line is 0, and numbers increase to the south by 100 numbers per quarter-section line, 400 numbers per approximate mile.

E. Addresses on the north side of an east-west running road will be even numbers; addresses on the south side of an east-west road will be odd numbers. Addresses on the east side of a north-south running road will be even numbers; addresses on the west side of a north-south road will be odd numbers.

12.60.110 Correction of address number sequence.
The department shall make corrections where necessary to accomplish full implementation of the address numbering system for all county addresses in accordance with the following time-line and criteria:

A. The department shall correct addresses beginning in 1997, and shall continue until the entire county has been reviewed and corrected.

B. One-fourth of the county shall be reviewed and corrected each year for four years. The quarter of the county being corrected shall correspond with the geographical quarters used by the county assessor's office. This review shall not preclude the department from making addressing corrections as needed.

C. Notices of address corrections shall be mailed to affected property owners in October, and become effective in April of the year following review six months after notification by the department.

D. Address changes shall become effective within six months of issuance. (Ord. 96-049).

12.60.120 Address number assignment.
A. The department shall assign address numbers to previously unaddressed lots prior to issuance of a building permit.

B. New address number assignments and address number corrections shall follow the address number system. New address numbers shall logically fit into the existing numbering system of the particular area. When incorrect address numbers are found during the permit process, corrections should be made to those addresses at that time.

C. One address per legal lot of record shall be assigned, and except in the following cases when the lot of record hosts:

1. One or more individual multiple dwelling or multiple occupant buildings (e.g., apartment buildings, condominiums, duplexes, quadplexes, office buildings, strip malls), then each building shall have its own separate address per building for multidwelling units or alternately, one address number may be assigned for the entire complex with alphabetical letters...
assigned to the individual buildings as a prefix to the individual apartment identification, with alpha designators or suite numbers to distinguish between individual residences within each multidwelling unit.

2. One or more permitted detached accessory dwelling units, then each unit shall have a separate address.

2. An alpha building designator on a legal lot shall be allowed for a permitted attached accessory dwelling unit. (Ord. 96-049).

D. For nondwelling type detached accessory structures (e.g., shops, garages, barns), separate addresses shall not be assigned different from the primary lot of record address.

E. For multiple dwelling and multiple occupant building, alpha designator or suite number suffixes shall also be used in combination with the primary lot of record address.

F. For permitted attached accessory dwelling units, alpha designator suffix use is optional in combination with the primary lot of record address.

G. For mobile home and recreational vehicle parks, site numbers shall be assigned to the individual mobile home or recreational vehicle sites and not to the mobile homes or recreational vehicles themselves. One address number shall be assigned to the mobile home or recreational vehicle park as a whole. The address of any one unit in the mobile home or recreational vehicle park shall consist of the mobile home or recreational vehicle park address followed by the site number.

12.60.130 Life, safety, and property protection standards for address designation markers.
A. The owner of real property on which any building is located which is habitable or tenantable for residential, commercial, business, storage, or other purposes shall be responsible for ensuring that the proper address numbers are placed in such a position as to be plainly visible and legible from the road fronting the property.

B. Address Designation Marker. Where the building is not visible from the road or the address is not legible from the road, or more than one building is on a site, one address designation marker per building or address shall be provided at the junction of the driveway and the named road, and another address designation marker should be provided at the intersection of the individual driveway and the joint driveway. The ultimate responsibility for health and safety issues on private property rests with the property owner.

1. Placement. Address designation markers shall be placed so that the numbers are not obstructed by grass or landscaping. Installation and maintenance are the responsibility of the property owner.
2. Installation. Installation and maintenance of temporary address designation markers during all permitted construction shall be the responsibility of the permit applicant in compliance with subsections B and C of this section.

3. Specifications. Address designation markers must be visible at night. The minimum standard shall be three-inch numbers arranged horizontally or vertically on a clearly contrasting background. Reflective numbers and reflective backgrounds are recommended. Blue and white are the recommended colors to be used on address designation markers.

C. The property owner(s) of mobile home and recreational vehicle parks are responsible for ensuring that each space is marked with the individual site number. The site number shall be easily visible and legible and affixed to some permanent structure located on the space. In mobile home and recreational vehicle parks with multiple access lanes, the access lanes shall be marked with the range of site numbers served.

C. Specifications for Mobile Home Parks. In mobile home parks, including RV parks, site numbers shall be assigned to the individual mobile home sites and not to the mobile homes themselves. One address number shall be assigned to the mobile home park as a whole. (The address of any one unit in the mobile home park shall consist of the mobile home park address followed by the site number.) The property owner(s) of mobile home parks are responsible for ensuring that each mobile home space is marked with the individual site number. The site number shall be easily visible and legible and affixed to some permanent structure located on the mobile home space. In mobile home parks with multiple access lanes, the access lanes shall be marked with the range of site numbers served.

D. Specifications for Apartment Complexes. One address number per building shall be assigned to each apartment building in the complex. The address of any one (individual apartment) unit in the apartment building shall consist of the address of the building followed by the individual apartment identification.

DE. Map Signs. In apartment complexes or mobile home parks where multiple buildings exist, map signs are recommended to be posted at the main entrance of the complex. (Ord. 96-049).

12.60.140 Road name changes and procedures.
Some road names warrant being changed in order to reduce confusion arising from duplicate names or by different names on segments of the same travel way (which may or may not change direction). In addition, a request may be made to change an existing road name. Whenever possible, road name changes shall be made concurrently with correction of address number sequencing (refer to WCC 12.60.110). The road(s) shall be renamed by the following procedure:

A. For department-initiated road name changes, the department shall notify all property owners with addresses that use the current road name (affected property owners) served by the roads that their road(s) requires a name change. Within this notification, the (affected) property owner shall be informed of the opportunity they have to participate in the selection of the new road name, and the department shall also outline the following:
Exhibit A

First Notification:

1. The reason for the road name change (duplication, merging roads, etc.);

2. The two (or more) existing affected road names;

3. The department may recommend road name(s) or changes based on the following criteria:
   a. WCC 12.60.060, Criteria for road name selection,
   b. WCC 12.60.070, Name assignment procedure,
   c. Historical records (deeds, plats, etc.),
   d. Date on which road(s) were named,
   e. Number of affected residents and/or property owners of record located on each road,
   f. Extenuating circumstances known by the department,
   g. Preapproved road name list;

4. The date at which a response is due back to the department, any additional circumstances to be considered, and the road name proposals (a three-week period).

Second Notification:

1. A brief summary of prior notice;

2. A list of all proposed road names submitted by residents;

3. A date in which the residents need to submit their top two choices (a two-week period).

Third Notification:

1. Tallied results from responses for new road name. The department will strive to obtain consensus.

2. An outline of the appeal process with the deadline to submit an appeals request (three weeks from date of third notice);

3. The department will make the official road name announcement;

4. The date when the new road name may become effective (additional three-week period). (Ord. 96-049).
B. For non-department-initiated road name changes, the applicant shall submit a road name change application form (which the department shall create and maintain consistent with this chapter) to the department, together with the fees per the Whatcom County Unified Fee Schedule.

1. Each road name change application shall include the following:
   a. A vicinity map showing the existing road.
   b. The current name of the road.
   c. The proposed name of the road.
   d. The reason for the road name change.
   e. List of names, mailing addresses, and parcel numbers of all property owners with addresses that use the current road name (affected property owners).
   f. Typed, self-adhering (self-stick) mailing labels containing the names and addresses of all affected property owners.
   g. A notarized affidavit certifying that the above statements and the information contained in any papers or plans submitted are true and accurate to the best of the applicant's knowledge, and that the list of affected property owners is complete and current.

2. The department will send a notice of the requested road name change to the affected property owners, What-Comm 9-1-1, and the local fire district(s), asking for comments on the requested road name change.

3. The notice will provide a 30 day comment period.

4. The department shall provide a staff report to the Whatcom County Council including, but not limited to, the following information:
   a. The comments received on the requested application.
   b. An analysis on the name change meeting the criteria of WCC 12.60.060.
   c. Cost of changing the road signs.

5. The Whatcom County Council will hold a public hearing and make a decision on the request.
6. If the Whatcom County Council approves the request, the ordinance changing the road name will include the requirement for the applicant to reimburse the department for the actual cost of the road sign changes.

12.60.150 Master map.
The department shall develop a master map of all public and private roads in Whatcom County in conjunction with WCC 12.60.110 and shall maintain and keep current thereafter. (Ord. 96-049).

12.60.160 Compliance requirements and penalties.
A. All address assignments or changes duly required by the department shall be recorded on title transfers.

B. Any person, firm, or corporation violating any of the provisions of this chapter, or of the codes adopted by reference by this chapter, shall be deemed guilty of a civil offense and shall be given 30 days to correct the situation and shall be fined not more than $250.00 for each offense. (Ord. 96-049).

12.60.190 Severability.
If any portion of this chapter is deemed to be invalid or inoperative, all remaining sections shall continue in effect. (Ord. 96-049).
INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and executed by and between WHATCOM COUNTY, a municipal corporation of the State of Washington, hereinafter designated as the "County", and the Lummi Indian Tribe, an Indian Tribe recognized as such by the federal government, hereinafter designed as "LIT".

WHEREAS, the parties to this Agreement recognize the need for closer governmental ties in order to promote the efficient administration of a variety of governmental services for the benefit of their constituents.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

1. The County recognizes the importance of identifying the boundaries of the Lummi Reservation and hereby acknowledges the propriety of placing suitable signs identifying same at appropriate boundary points.

2. The County shall recognize and give effect to building, construction, zoning, shoreline management, development, and other similar permits issued by the LIT planning office for property located upon the Lummi Reservation; provided, that the standards for issuance of such permits by the Tribe shall be the same as those imposed by the County.

This provision is not intended to limit or remove the County's authority to issue permits for those properties within the Reservation subject to County jurisdiction.

3. With regard to land located within the Lummi Reservation, the County shall cause a stamp to be placed upon all deeds, permits, records and tax statements filed with or issued by the County to the effect that such land is located within the Lummi Indian Reservation and tribal laws may apply to the land and activities occurring thereon. The stamp shall give the address and telephone number of the LIT offices.
4. The County and LIT shall seek to obtain grants or other funding for the purpose of repairing and/or upgrading Lummi Shore Road.

5. The County Engineer shall determine whether access for children to the beach area on Lummi Shore Road, at the Portage, is feasible either through removal of a portion of the rip rap, construction of a walkway, or by some other means which will not adversely affect the roadway or incur significant cost. If such access is feasible, the County and LIT will jointly undertake implementation of such project.

6. A name, to be chosen by LIT, shall be added to Haxton Way so as to create a new roadway designation incorporating both names. Ten years subsequent to creation of the new designation the parties shall determine, by mutual agreement, whether the designation shall be retained, altered, or otherwise changed.

7. The LIT is working on plans for the development of the Gooseberry Point Small Boat Harbor. The County recognizes that this project involves LIT property located exclusively within the boundaries of the Lummi Reservation and, therefore, that the LIT has jurisdiction over said project. LIT agrees that the construction, use and enjoyment of the Gooseberry Point Small Boat Harbor shall be conducted in such a manner as not to interfere with the operation of the County ferry service to Lummi Island.

8. The County Sheriff shall recommend members of the tribal police force to the State Patrol Academy; provided, that the tribal police meet the Sheriff's standards for deputies.

9. Whereas, the County has agreed to formally recognize the LIT as the government of the Lummi Indian Reservation
within the framework of Federal, Tribal and State law, and to treat the Lummi Indian Tribe as a self-governing entity, the LIT hereby agrees to exercise its governmental powers, as to all people coming within its jurisdiction, in accordance with the requirements and principles of due process of law and the equal protection of the laws.

10. This Agreement is conditioned upon the entrance, and approval by the court, of a Consent Decree by the parties hereto in the federal district court under Civil Action No. 79-682R.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 16th day of September, 1982.

LUMMI INDIAN TRIBE

BY: Edward Jones

WHATCOM COUNTY

BY: John Louws
County Executive
CLEARANCES

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**TITLE OF DOCUMENT:**
A resolution approving recommendations on one application for open space current use assessment on lands located within the City of Ferndale.

**ATTACHMENTS:**
Cover Memo, Draft Resolution, Planning Commission Facts & Findings, and
Planning Commission June 26, 2014 Work Session Draft Minutes
Background Documents on file with the Council Office: Staff Report, Maps, Photos, and other Documents.

**SEPA review required?** ( ) Yes ( X ) No
**SEPA review completed?** ( ) Yes N/A
**Should Clerk schedule a hearing?** ( X ) Yes () No
**Requested Date:** August 5, 2014

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**
In accordance with WCC, 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 one application for open space current use assessment as authorized by the Open Space Taxation Act (Chapter 84.34 RCW).

The lands that are subject of this application are located entirely within the corporate boundaries of the City of Ferndale. The Open Space Taxation Act provides that the City and County may meet as one body to act on such applications or hold separate hearings. The City of Ferndale Planning Director has indicated that the City has elected to take separate action and expects to hold a separate hearing on this application on or about August 18, 2014. Official action taken by City of Ferndale after a second hearing will complete the approval/denial on this application in accordance with RCW 84.34.037(1).

A draft resolution has been prepared to initiate Council action should they wish to approve Planning Commission recommendations, and a copy of this resolution has been forwarded to the City of Ferndale for review in making its decision on whether to approve in whole or in part or deny the subject application.

* Distribution Request: Assessors Office – Janice Judge

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:** OS2014-1

**Ordinance or Resolution Number:**

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

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

THROUGH: J.E. "Sam" Ryan, Planning & Development Services, Director

FROM: Erin Osborn, Planner

DATE: July 14, 2014

SUBJECT: Open Space Application in City of Ferndale

Presented here for your consideration is an attached packet containing Planning Commission recommendations to approve one application for open space tax classification located within the City of Ferndale. A draft resolution is also attached should the Council wish to approve recommendations made by the Planning Commission, after a public hearing is held on the application.

The applicant is requesting reclassification of land currently classified as designated forest land (Chapter 84.33 RCW) to Timber Land as authorized under the Open Space Taxation Act (Chapter 84.34 RCW). This application was reviewed as part of a larger group of applications presented to the Planning Commission last month, but because the land is located in an incorporated area, it requires a slightly different approval process.

The County Council, acting as granting authority, may approve in whole or in part or deny applications to classify or reclassify land in the unincorporated areas of the county. Applications to classify or reclassify land located within the jurisdiction of an incorporated area may be approved after a decision is made by a joint granting authority that assembles as one body (composed of three members of the County and three members of the City), or by each body taking separate identical affirmative acts. (RCW 84.34.037)

The City of Ferndale has indicated that instead of assembling as a one body, it prefers to take separate action at its own hearing likely to be held on August 18, 2014. The City has expressed an inclination to approve the application subject to a condition, paraphrased: 'approval will not exempt current or land owners or heirs from the requirement of obtaining City of Ferndale land use development permits'.

I look forward to presenting a brief overview on this application at an upcoming public hearing.

Thank you.
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: Open Space Land, Farm & Agricultural Conservation Land, Farm and Agricultural 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, Pursuant to Whatcom County Ordinance # 95-040 applications for Timber Land are no longer reviewed under the County's PBRS, and are instead reviewed for consistency with the definition of Timber Land as defined in RCW 84.34.020(3) and the required Timber Management Plan is reviewed for conformance with RCW 84.34.041; and

WHEREAS, On June 26, 2014, the Whatcom County Planning Commission held a work session and considered staff recommendations, asked clarifying questions from applicants or their agents who were present on applications referenced in Master File Number OS2014-1, and voted to make recommendations
to the Whatcom County Council on whether to approve in whole or in part or deny each application; and

WHEREAS, Pursuant to RCW 84.34.037, applications to classify or reclassify lands that are located entirely within unincorporated Whatcom County are approved or disapproved by the County Council who acts as the granting authority; and

WHEREAS, One of the applications referenced under Master File Number OS2014-1 (E. Bailey & Bailey Trust) was a split jurisdiction application, comprising lands located both in the City of Ferndale and also comprising lands located within unincorporated Whatcom County; and

WHEREAS, Applications to classify or reclassify land that are located entirely within an incorporated area must be acted upon by a joint granting authority, whereby applications may be approved by each legislative authority taking separate but affirmative actions, or by three members of each legislative body meeting together as one body to act on applications for the purposes of approval or denial; and

WHEREAS, The City of Ferndale Planning Director indicated that due to various challenges associated with scheduling, the Ferndale City Council would likely prefer to act separately on the applications, and proposed that the City Council would likely schedule and hold a separate hearing on the subject applications on or about August 18, 2014; and

WHEREAS, On August 5, 2014, in good faith that the City of Ferndale would take its own action on the subject applications, the Whatcom County Council held its own public hearing and considered recommendations from the Whatcom County Planning Commission, staff recommendations, and considered all input from the public on the application referenced in Master File Number OS2014-1 that is located on lands located within the City of Ferndale; and

WHEREAS, Pursuant to WAC 197-11-800(6)(c), matters relating to Open Space Current Use Assessment are 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 pertinent Findings of Fact and Reasons for Action:

1. Whatcom County Planning and Development Services received five 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 and on lands located within the City of Ferndale. These applications were processed as a group under Master File Number OS2014-1.
2. Of the five applications referenced in OS2014-1: one is for Open Space Land (OSL), one is for Farm and Agricultural Conservation Land (a subclassification of open space land) (OSFACL), and three applications are for the classification of Timber Land (OSTL). Upon receipt of these applications, Planning and Development Services staff evaluated the open space land and farm and agricultural conservation land applications with the Public Benefit Rating System (PBRS), and evaluated applications for timber land for conformance with Subsection 84.34.020(3) & 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 (as applicable). 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 June 26, 2014.

4. At the June 26, 2014 Planning Commission Work Session, staff gave an approximately 30 minute overview presentation on the Open Space Current Use Program, its statutory and local authority, a brief overview on the Open Space Taxation Act, and outlined the respective roles of the Planning Commission, County Council, County Assessor's Office, and Joint Granting Authority (for applications located within incorporated areas) in reviewing these type of applications. 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". Staff also noted, that based on earlier Planning Commission suggestions, and per direction from the County Council and County Executive a preliminary draft report had been prepared by staff which summarized the PDS open space current use program, analyzed key issues in program administration, and that this report (dated December 6, 2013) had been submitted to PDS management and County Executive for their review.

5. Upon conclusion of the staff overview on the open space current use program, staff then made an approximately 45 minute presentation going over each of the individual applications referenced in Master File OS2014-1, pausing to answer questions from commissioners. The single application for the classification of open space land was presented first, followed by the single application for farm and agricultural conservation land, and then a presentation on the three timber land applications. Staff noted that of the applications for timber land one was a "split jurisdiction", noting that after the application was received portions of the land subject of application was annexed by the City of Ferndale. Staff suggested that commissioners wait to deliberate and make motions on each application until after staff presentation on individual applications.

6. After staff presentations and Planning Commission deliberation and votes on the Open Space Land and Farm and Agricultural Conservation Land applications, staff presented the timber land applications.

7. Staff explained to the Planning Commission that staff recommendations of
approval on timber land applications are based on whether the application meets the definition of timber land as defined in RCW 84.34.020(3), and whether the Timber Management Plan submitted on file as part of the application is consistent with RCW 84.34.041 which outlines the elements of a timber management plan. Based on staff review and site inspections, staff recommended approval on all three of the timber land applications. Staff recommendations of approval were based on 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.

8. Prior to voting on timber land applications, one of the Planning Commissioners asked for information about the loss of revenue or shift in taxes that would result from approving an application for timber land, and asked why this information was not provided on the timber land applications. Staff indicated that this information was not provided because it is not one of the criteria considered for approval or disapproval. The commissioner asked if staff would be prohibited from providing this information, and staff indicated that while there is no prohibition on the provision of this information, adding that it could be provided in the future, it can't be the basis on which a decision to approve or not approve is based, because this information is not a criteria for approval. The commissioner indicated that he would vote to deny all of the timber land applications because information on loss of revenue or shift in taxes was not provided.

9. Whatcom County Planning Commissioners considered staff findings and recommendations on the E. Bailey and Bailey Trust application, and staff suggested that two separate votes be taken on the E. Bailey and Bailey Trust application respective of the jurisdiction in which the subject property was located.

10. After deliberations, the Planning Commission voted to recommend that the County Council approve the portion of the E. Bailey and Bailey Trust timber land application in the jurisdiction of the City.

11. The Planning Commission also voted to recommend that the County Council approve the E. Bailey and Bailey Trust timber land application unincorporated Whatcom County.

12. On July 1, 2014, PDS staff contacted City of Ferndale Planning Director, Jori Burnett and a discussion was held to learn about the City’s preferences on review of the subject applications. Mr. Burnett indicated that due to various challenges with scheduling, it would probably be best if the City would hold its own hearing to approve a separate resolution to act on the subject application. Mr. Burnett requested that any approval by the County Council include a granting condition affirming that ‘any approval granted does not exempt the owner or subsequent heirs from land use development permits required by the City of Ferndale’. PDS staff agreed to forward this to the Whatcom County Council, adding it as a proposed condition in a draft resolution prepared for the County Council’s consideration.

14. On July 8, 2014, Planning & Development Services prepared an Agenda Bill, Draft Resolution and attachments including all relevant information on file in regards to one application on lands located within the City of Ferndale, referenced under OS2014-1, and forwarded these materials 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 July 22, 2014, and also included a request for a public hearing to be scheduled on August 5, 2014.

15. On July 22, 2014, a draft resolution was introduced to the Council agenda for consideration by the County Council at a later date.

16. A public hearing was scheduled to take place before the County Council at their regularly scheduled evening meeting, to be held on August 5, 2014. 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 August 5, 2014.

17. On August 5, 2014, the Whatcom County Council held a public hearing on applications to classify or reclassify lands that are located within the City of Ferndale as referenced under OS2014-1, 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 the application referenced under OS2014-1 that is on lands located within the City of Ferndale.

NOW, THEREFORE, BE IT RESOLVED BY THE WHATCOM COUNTY COUNCIL:

1. Recommendations on the application for open space current use assessment referenced in Master File Number OS2014-1 that is located on lands located within the City of Ferndale, listed below, is hereby approved subject to conditions as noted herein:

Timber Land (OSTL)

OSP2014-00001 – E. Bailey and Loren H. Bailey SR Credit Shelter Trust (application to reclassify lands located within the City of Ferndale)

Application to reclassify as Timber Land from Designated Forest Land
Loren H. Bailey SR Credit Shelter Trust
GEO ID: 390208 060364 0000 (PID: 90425): Application OSTL acres = 5.06
GEO ID: 390208 105297 0000 (PID: 90440): Application OSTL acres = 5.06
GEO ID: 390208 124252 0000 (PID: 90445): Application OSTL acres = 1.28

E. Bailey
GEO ID: 390208 022379 0000 (PID: 90406): Application OSTL acres = 5.06
GEO ID: 390208 087338 0000 (PID: 90433): Application OSTL acres = 5.06

Total Application OSTL acres in City of Ferndale = 21.52

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 pursuant to RCW 84.34.041
3. Hold Harmless Agreement
4. Approval for reclassification from Designated Forest Land to Timber Land does not exempt the applicant/owner or any subsequent heir subject to this approval from requirements to obtain land use and development permits that are required by the City of Ferndale

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

ATTEST:

Dana Brown-Davis
Clerk of the Council

Carl Weimer
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 OS2014-1

THE WHATCOM COUNTY PLANNING COMMISSION ENTERS THE FOLLOWING
FINDINGS OF FACT, REASONS FOR ACTION, AND RECOMMENDATIONS:

FINDINGS OF FACT AND REASONS FOR ACTION

1. Whatcom County Planning and Development Services received five
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 and on lands located within the City of
Ferndale. These applications were processed as a group under Master
File Number OS2014-1.

2. Of the five applications referenced in OS2014-1: one is for Open Space
Land (OSL), one is for Farm and Agricultural Conservation Land (a sub-
classification of open space land) (OSFACL), and three applications are
for the classification of Timber Land (OSTL). Upon receipt of these
applications, Planning and Development Services staff evaluated the
open space land and farm and agricultural conservation land
applications with the Public Benefit Rating System (PBRS), and
evaluated applications for timber land for conformance with Subsection
84.34.020(3) & 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 (as applicable). 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 June 26, 2014.

4. At the June 26, 2014 Planning Commission Work Session, staff gave an
approximately 30 minute overview presentation on the Open Space
Current Use Program, its statutory and local authority, a brief overview
on the Open Space Taxation Act, and outlined the respective roles of the
Planning Commission, County Council, County Assessor's Office, and
Joint Granting Authority (for applications located within incorporated
areas) in reviewing these type of applications. 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”. Staff also noted, that based on earlier Planning Commission suggestions, and per direction from the County Council and County Executive a preliminary draft report had been prepared by staff which summarized the PDS open space current use program, analyzed key issues in program administration, and that this report (dated December 6, 2013) had been submitted to PDS management and County Executive for their review.

5. Upon conclusion of the staff overview on the open space current use program, staff then made an approximately 45 minute presentation going over each of the individual applications referenced in Master File OS2014-1, pausing to answer questions from commissioners. The single application for the classification of open space land was presented first, followed by the single application for farm and agricultural conservation land, and then a presentation on the three timber land applications. Staff noted that of the applications for timber land one was a “split jurisdiction”, noting that after the application was received portions of the land subject of application was annexed by the City of Ferndale. Staff suggested that commissioners wait to deliberate and make motions on each application until after staff presentation on individual applications.

6. Staff recommended approval on the application for Open Space Land (Hurlbut). Staff recommendation of approval on this application was based on an assigned Public Benefit Rating (PBR) score of 45 points or higher which, pursuant to Whatcom County Open Space Policies and Criteria and Public Benefit Rating System is consistent with a staff recommendation of approval. Staff recommended approval after scoring the application with a public benefit rating (PBR) of 92.75.

The Hurlbut proposal included public access to the rear of the lots under consideration from the access that is provided to Stimpson Reserve and Lake Geneva Preserve abutting their .044 (+/-) parcel acres. Proposed public access to the wooded and grassy area north of the subject acres could be used for a viewpoint overlooking the lake, and for viewing birds and terrestrial species that frequent the site.

7. After deliberation, Planning Commissioners came to a consensus to recommend that the County Council approve the Hurlbut application in its entirety subject to staff’s recommended conditions.

8. Staff recommended approval on the single application for Farm and Agricultural Conservation Land (Hemnes). Staff recommendation of approval on this application was based on an assigned Public Benefit Rating (PBR) score of 45 points or higher, which pursuant to Whatcom County Open Space Policies and Criteria and Public Benefit Rating System is consistent with a staff recommendation of approval. Staff recommended approval after scoring the application with a public benefit rating (PBR) of 57.12.
9. The Hemnes property was purchased in 2014. The land was (and at time of review was still) classified as Farm and Agricultural Land. Staff explained that current classification that applies to the land is different than the farm and agricultural conservation land classification being sought in that farm and agricultural land requires the owners to show income from commercial agriculture, but farm and agricultural conservation land does not. At the time of sale, it was discovered by the Assessor that the previous owners could not demonstrate income from commercial agriculture; therefore the Assessor signed off on the Notice of Continuance pending reclassification to a different classification authorized under the Open Space Taxation Act, by the new owners, Lucas and Amy Hemnes.

10. The Hemnes family manages a herd of approximately 55 head of beef cattle and uses the 3.81 acres to pasture about 4 head of beef (yearlings) as part of the larger operation. The long term plan is to continue to raise beef on the subject parcel, rotating stock during the winter months over to a barn and additional rented agricultural land on the Siper Road. Beef from the Hemnes herd is processed at a facility in Bow, Washington, and is sold locally to Boundary Bay Brewery, located in the city of Bellingham.

11. A proposed public access statement was discussed verbally between the applicant and staff, and then later confirmed with a written public access statement and proposed rules of public conduct. The proposal was that the applicants would give farm tours to prospective customers, and would be willing to provide farm educational opportunities to youth groups such as 4-H by appointment. Staff noted, there is ample off-street parking, and an open space sign could be posted at the corner of Sand Road and Sundown View Lane.

12. Staff explained to the Planning Commission that the Open Space Taxation Act authorizes counties to approve Open Space Land and Farm and Agricultural Conservation Land applications subject to specific conditions. Given that the owners expressed a desire to continue a long term agricultural operation on the subject property; they may at some point in the next 3-5 years be able to qualify for the Farm and Agricultural Land classification administered by the Assessor. To qualify for that classification, and although subject to change, current income requirements (revenue from commercial agriculture) would be $1,500.00 per year for three out of the five years preceding the date of application. The County Council could approve this application subject to a farm plan that outlines a program for meeting income requirements associated with the Farm and Agricultural Land classification, and eventual reclassification back to the Farm and Agricultural Land classification within a certain time frame.

Staff provided the Planning Commission with a Property Tax Advisory
from the Department of Revenue which states: "...additional eligibility requirements for the open space and timber classifications must not conflict with state law and not arbitrarily or capriciously restrict access to either classification."

13. After deliberation, and after considering staff input, Planning Commissioners came to a consensus that they would be willing to recommend that the County Council approve the Hemnes application subject to a condition requiring the applicants within four years of approval for Farm and Agricultural Conservation Land as defined in RCW 84.34.020(1)(c)(8)(a) to apply for and be approved for the classification of Farm and Agricultural land as defined in RCW 84.34.020(2)(c). Subject to this proposed condition, the Planning Commission voted to recommend that the County Council approve the Hemnes application in its entirety.

14. Staff discussed the special condition in the above finding (No. 13) with PDS County attorney and with Department of Revenue staff. After these discussions, staff concluded that it might be more consistent with the purpose of classification if the condition was worded differently, as follows: "Within four years of application approval, the applicants must apply for and demonstrate that they meet income requirements established in the Open Space Taxation Act for approval of the Farm and Agricultural Land classification as it is defined in RCW 84.34.020(2)(c)."

Staff's conclusion was based on a reconsideration of the purpose of the reclassification and the definition of the classification being sought, i.e. land previously classified as farm and agricultural land that is no longer able to meet income requirements associated with qualification as farm and agricultural land. If a condition required an approval by independent entity, if for some reason it was not approved, even though the applicants might show income to qualify for classification as farm and agricultural land, and even though they might apply, the act of approval would be outside of the applicant's control, and a disapproval might not be consistent with state law or the purpose of classification.

In addition, staff noted that it would be in the interest of the applicant to return to farm and agricultural land, because the reduction in assessed value would likely to be more than in the farm and agricultural conservation land classification.

15. Staff presented information that described the estimated resulting tax shift that would occur if the Hurlbut and Hemnes' applications were to be approved. Using figures provided by the County Assessor's Office, it was noted that the assessed property value reduction would result in an estimated tax shift of approximately $170.10 (Hurlbut) and $705.99 (Hemnes) to other tax payers per year if the applications were to be approved.

Staff was not able to provide information to the Planning Commission about what how the overall tax shift would affect individual property owners because it would be a very difficult calculation to perform. This
is because 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 a per parcel basis.

16. After staff presentations and Planning Commission deliberation and votes on the Open Space Land and Farm and Agricultural Conservation Land applications, staff presented the timber land applications.

17. Staff explained to the Planning Commission that staff recommendations of approval on timber land applications are based on whether the application meets the definition of timber land as defined in RCW 84.34.020(3), and whether the Timber Management Plan submitted on file as part of the application is consistent with RCW 84.34.041 which outlines the elements of a timber management plan. Based on staff review and site inspections, staff recommended approval on all three of the timber land applications. Staff recommendations of approval were based on 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.

18. Prior to voting on timber land applications, one of the Planning Commissioners asked for information about the loss of revenue or shift in taxes that would result from approving an application for timber land, and asked why this information was not provided on the timber land applications. Staff indicated that this information was not provided because it is not one of the criteria considered for approval or disapproval. The commissioner asked if staff would be prohibited from providing this information, and staff indicated that while there is no prohibition on the provision of this information, adding that it could be provided in the future, it can’t be the basis on which a decision to approve or not approve is based, because this information is not a criteria for approval. The commissioner indicated that he would vote to deny all of the timber land applications because information on loss of revenue or shift in taxes was not provided.

19. Whatcom County Planning Commissioners considered staff findings and recommendations on the E. Bailey and Bailey Trust application, and staff suggested that two separate votes be taken on the E. Bailey and Bailey Trust application respective of the jurisdiction in which the subject property was located.

20. After deliberations, the Planning Commission voted to recommend that the County Council approve the portion of the E. Bailey and Bailey Trust timber land application in the jurisdiction of the City.

21. The Planning Commission voted to recommend that the County Council approve the E. Bailey and Bailey Trust timber land application unincorporated Whatcom County.

22. Whatcom County Planning Commissioners considered staff findings and recommendations on the Engelund application for timber land and voted
to recommend approval to the County Council.

23. Whatcom County Planning Commissioners considered staff findings and recommendations on the Sunset SW LLC application and voted to recommended denial. During Planning Commissioner review, it was noted that the land that is subject of application is located on the shoreline of Lake Whatcom, and is designated Rural under the Whatcom County Shoreline Management Program (SMP).

24. Staff acknowledged that the land that was subject to application was located within the jurisdiction of the SMP, and indicated that staff had researched the matter to determine whether or not the land subject to the application could be harvested. 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 (5.63 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 according to PDS Natural Resource staff the owner could harvest of timber in the Rural SMP designation after a Shoreline Substantial Development Permit was applied for and approved, subject to specific conditions to protect the lake and its habitat functions.

25. The Planning Commission vote on a motion to recommend that the County Council approve the Sunset SW LLC application for Timber Land was 3 in favor and 3 against, which is a tie, indicating that the motion failed to recommend that the County Council approve the subject application.

**RECOMMENDATION**

Whatcom County Planning Commission recommendations to the Whatcom County Council on open space current use classification applications referenced under Master File Number OS2014-1 are listed below:

**Open Space Land (OSL)**

**OSP2014-00002 – Hurlbut**

New application to classify property as Open Space Land
GEO ID: 380335 523242 0000: (PID: 82464)
GEO ID: 380335 525241 0000: (PID: 82465)
GEO ID: 380335 538230 0000: (PID: 82477)
Total Parcel acres = 0.44 (+/-); OSL acres= 0.44 (+/-)

**PBR 92.75**

ESTIMATED SHIFT IN TAXES IF APPROVED: $170.10

Whatcom County Planning Commission Recommendation:

Approval: subject to the following conditions:
1. Public Access as described in the Application Narrative
2. Small Open Space Sign posted on Lot # 19
3. Hold Harmless Agreement

Farm & Agricultural Conservation Land (OSFACL)

OSP2014-00005 – Hemnes

Application to re-classify property from Farm & Agricultural Land to Farm and Agricultural Conservation Land (a sub-classification of Open Space Land)

GEO ID: 390429 041191 0000: (PID: 107711)
Total Parcel acres = 4.81; OSFACL acres= 3.81; Homesite acres = 1.00

PBR 57.12
ESTIMATED SHIFT IN TAXES IF APPROVED: $705.99

Whatcom County Planning Commission Recommendation:

Approval: subject to the following conditions:

2. Open Space Sign posted at corner of Sundown Lane and Sand Rd.
3. Within four years of date of approval for reclassification to Farm and Agricultural Conservation Land the applicant must apply for and be approved for reclassification back to the Farm and Agricultural Land as defined in RCW 84.34.020(2)(c).
4. Hold Harmless Agreement

Timber Land (OSTL)

OSP2014-00001 – E. Bailey and Loren H. Bailey SR Credit Shelter Trust
(application to reclassify lands located within the City of Ferndale)

Application to reclassify as Timber Land from Designated Forest Land

Loren H. Bailey SR Credit Shelter Trust

GEO ID: 390208 060364 0000 (PID: 90425): Application OSTL acres = 5.06
GEO ID: 390208 105297 0000 (PID: 90440): Application OSTL acres = 5.06
GEO ID: 390208 124252 0000 (PID: 90445): Application OSTL acres = 1.28

E. Bailey

GEO ID: 390208 022379 0000 (PID: 90406): Application OSTL acres = 5.06
GEO ID: 390208 087338 0000 (PID: 90433): Application OSTL acres = 5.06

Total Application OSTL acres in City of Ferndale = 21.52

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 pursuant to RCW 84.34.041
3. Hold Harmless Agreement

OSP2014-00001 – E. Bailey and Loren H. Bailey SR Credit Shelter Trust
(application to reclassify lands located within unincorporated Whatcom County)

Loren H. Bailey SR Credit Shelter Trust
GEO ID: 390208 235213 0000 (PID: 90564): Application OSTL acres = 4.57

E. Bailey
GEO ID: 390208 185232 0000 (PID: 90457): Application OSTL acres = 4.58

Total Application OSTL acres in the unincorporated Whatcom County = 9.15

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 pursuant to RCW 84.34.041
3. Hold Harmless Agreement

OSP2014-00003 – Engelund
New application to classify property as Timber Land
GEO ID: 400101 259478 0000 (PID: 112929)
Parcel acres = 10.56; OSTL acres= 8.5; Homesite acres = 2.06

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 pursuant to RCW 84.34.041
3. Hold Harmless Agreement

OSP2014-00004 – Sunset SW LLC
New application to classify property as Timber Land
GEO ID: 380429 020020 0000 (PID: 83486): Parcel acres = 3.91 acres currently classified as OSTL
GEO ID: 380432 025554 0000 (PID: 83946); 1.72 acres of which 1.36 is currently classified as OSTL (according to Assessor’s records)
Application OSTL acres = 0.28 (0.28 acres is according to survey. Survey shows an apparent discrepancy between Assessor’s records which indicate 0.36 acres)

NOTE: If approved, the additional 0.28 acres in this application it would bring the total OSTL acres covered under the application to 5.63 (+/-) acres, all subject to a new taxation agreement.

Whatcom County Planning Commission Recommendation:

Denial: Based on a finding expressed by dissenting commissioners that it would not be in the best interests of the public to harvest timber on the shore of Lake Whatcom.

WHATCOM COUNTY PLANNING COMMISSION

David Onkels, Chair

Becky Boxx, Secretary

July 10, 2014

Commissioners present at the June 26, 2014 meeting when votes were taken to approve the above listed recommendations on one application for Open Space Land, one application for Farm and Agricultural Conservation Land and three applications for Timber Land: David Onkels; Mary Beth Teigrobe; Gary Honcoop; Natalie McClendon; Walter Haugen; David Hunter.

Commissioners Absent: Ben Elenbaas, Ken Bell, Gerald Vekved.

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, David Onkels, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call
Present: Gary Honcoop, David Onkels, Mary Beth Teigrob, Walter Haugen, Natalie McClendon, David Hunter
Absent: Ben Elenbaas, Jerry Vekved, Ken Bell

Staff Present: Mark Personius, Erin Osborn, Becky Boxx

Department Update
Mark updated the commission on the following:
- Items before the County Council.
- Upcoming commission schedule.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
Commissioner Honcoop commented on his visit on the USS Nimitz.

Approval of Minutes
May 22, 2014: Approval of the minutes was put on hold until the next meeting due to lack of members needed for approval.

Open Space Applications
Erin Osborn presented an overview of the Open Space Program.

The open space current use program is a property tax reduction program. In the 1960’s the state constitution was amended to enact the program. It authorizes three classifications and one sub-classification. Open Space Land is about conservation of a broad scope of resources. It has a sub-classification, Farm and Agricultural Conservation Land. There is also Timber Land, and Farm and Agricultural Land.

State law provides that applications for the Open Space Land and the Farm and Agricultural Conservation Land are processed in same manner as an amendment to the Comprehensive Plan. Therefore they come before the Planning Commission. When the Planning Commission reviews the applications they are to consider the overall benefit of preserving the land relative to the monetary shift in taxes. The higher the score on the application the greater the tax shift. Regarding Timber Land there is nothing in state law that assigns a role to the Planning Commission. However, until 1995 they were reviewed with the Public Benefit Rating System. After ordinance 1995-040 Timber Land was removed from Planning Commission review, however another ordinance that is codified in WCC 2.28 states that they are still reviewed by the Planning Commission, and so
therefore they are. The County Council has asked staff to put together an analysis of the program which staff has done but Council has not reviewed it yet. The Timber Land classification requires at least five acres be devoted to the growth and harvest of timber for commercial purposes. A Timber Management Plan is required for approval. Recently the legislature amended the Designated Forest Land Program changing the minimum allowed to five acres. This may result in less Timber Land applications.

The commission reviewed the applications.

Open Space Land – Hurlbut

This is approximately .48 acres. The zoning is R5A. It is located above Lake Whatcom Boulevard. It is very steep. The owners purchased the land for the sole purpose of conservation and to protect the hillside from further erosion. It has been prone to mudslides. A slide in 1992 destroyed the owner’s house. Two of the lots are subject to a restrictive covenant prohibiting development until 2027. There is public access to the Stimson Reserve property. The application was given a score of 92.75 with a recommendation of approval.

Farm & Agricultural Conservation Land – Hemnes

This land used to be owned and farmed by some dairy farmers in the area. The property was sold and short platted. It is a 4.81 acre parcel with one acre for the homesite. The previous owners (who sold to the Hemnes family) could not continue to keep the property in Farm and Agricultural Land because they couldn’t demonstrate income requirements so they applied for the conservation program. The 3.81 is used to raise beef cattle. The application was given a score of 57.12 with a recommendation of approval. The score is somewhat low because of the small size of the property. For public access, the owners are offering to engage with youth or agriculture groups to teach sustainable beef farming.

Open Space Timber Land – Bailey Trust

Shortly after this application came in in 2010 the City of Ferndale annexed the property east of the freeway. Because of joint granting authority the application was put on hold. All of the property is under the Designated Forest Land Program which at the time of application required a 20 acre minimum. Also the property ownership names were changed for estate planning purposes. This disqualified them from the Designated Forest Land Program because the property was not in one ownership. In 2011 the statute changed the term contiguous to mean land in same ownership (one family). The application included an excellent timber management plan. Reforestation will need to be done if approved. There are 9.51 acres in the county and 21.52 acres in the City of Ferndale. Staff recommends approval.

Open Space Timber Land – Engelund

This parcel is heavily forested with an excellent Timber Management Plan. It is 10.56 acres. They are asking to classify approximately 8.5 acres. The zoning is R10A. Staff recommends approval.
Open Space Timber Land – Sunset SW LLC

This property is on Lake Whatcom and is .28 acres. The acreage to the north is already classified as Timber Land. This piece of land appears to have been inadvertently left out when the other acreage was classified, but the record is not clear on this. The property is subject to a Rural Shoreline Management Program designation, and this designations allows timber harvest subject to issuance of a shoreline substantial development permit and conditions to protect the shoreline.

Commissioner Haugen noted there is no mention of the tax shift dollar value.

Ms. Osborn stated there are no laws, codes, etc. that requires consideration of the tax shift when approving a Timber Land application. The value of timber land is based on soil classification and operability.

Commissioner Haugen stated that if the commission is asked to make a decision all the information should be given otherwise the commission is in limbo. Is staff prohibited from giving the commission that information?

Ms. Osborn stated they are not prohibited.

Commissioner Haugen stated he wanted it.

Commissioner Honcoop stated there has to be findings to support their decisions otherwise they are considered arbitrary and capricious.

Commissioner Haugen did not agree.

Commissioner Teigrob did not see how it was possible to harvest trees there without impacting the lake.

Commissioner Honcoop said they could look at the operability of harvest there which is one of the conditions they can review.

Ms. Osborn stated the commission could put conditions on the harvest.

Commissioner McClendon asked why this application is for timber not open space land.

Ms. Osborn stated the parcel across the road is classified as Timber Land. They are applying for Timber Land because they want the best possible tax reduction and the same tax classification as the other parcel they plan to harvest in the future.

Commissioner McClendon asked if it is very hard to classify as operable does that lower the value?

Ms. Osborn stated it does.
Commissioner Honcoop stated it appears some of the trees are in the public right-of-way which can’t be harvested.

Commissioner Teigrob asked how many trees are in that small area.

Ms. Osborn stated it is considered fully stocked by the plan. In order to be fully stocked there has to be 100 trees per acre so there would have to be approximately 25 trees on the lot.

Commissioner Haugen asked the applicant’s representative how many trees there are.

Jesse Stoner stated he did not know how many trees are there. None of them are in the water or the county right-of-way.

Commissioner Honcoop asked if the surveyed area includes the shore area outside the water.

Mr. Stoner stated yes.

The commission acted on the applications as follows:

Open Space Land – Hurlbut

Commissioner Honcoop moved to recommend approval. Commissioner McClendon seconded. The motion carried.

Farm & Agricultural Conservation Land – Hemnes

Commissioner Hunter moved to recommend approval. Commissioner Haugen seconded.

Commissioner Honcoop asked about the sale of the property. Did the new owners sign a continuance to stay in open space?

Ms. Osborn stated the previous owners did not maintain the finance requirements to stay in open space so the Hemnes continued it pending reclassification. If they don’t get approved they have to pay back taxes.

Commissioner Honcoop asked where the public benefit is. What is there to ensure they will continue to use it as outlined?

Ms. Osborn stated they can add conditions.

Commissioner Honcoop asked who would enforce those conditions.

There was no response to this question.
Commissioner Teigrob stated that being in Open Space Agricultural Conservation versus Open Space Farm and Agriculture leaves no incentive to continue to farm because the monetary requirements go away.

Ms. Osborn stated that this issue has been a point of discussion for some time regarding this classification. The commission can assign conditions if they want.

Commissioner Hunter stated he sees no benefit to the county if this is put into Open Space Farm and Agricultural Conservation because he doesn’t believe it will change the use of the land.

Commissioner Teigrob made a friendly amendment requiring the applicant to apply and be approved Open Space Farm and Agricultural Land within four years. Commission McClendon seconded. The amendment carried.

The vote on the main motion to recommend approval carried.

Open Space Timber Land – Bailey Trust

Commissioner Teigrob moved to recommend approval for the parcel within the City of Ferndale. Commissioner Hunter seconded.

Commissioner Haugen stated the tax shift is not known. As such he has no choice but to vote no on the Timber Land applications. He has an issue with the protocol and procedure.

The vote on the motion to recommend approval carried.

Commission Honcoop moved to recommend approval for the parcel within the county. Commissioner McClendon seconded. The motion carried.

Open Space Timber Land – Engelund

Commissioner Honcoop moved to recommend approval. Commissioner Teigrob seconded. The motion carried.

Open Space Timber Land – Sunset SW LLC

Commissioner Teigrob moved to recommend approval. Commissioner Honcoop seconded.

Commission Onkels asked Mr. Stoner the reason for the application.

Mr. Stoner stated when the application was originally done, many years ago, the owner thought this parcel was included. This application takes care of that oversight. The timber management plan was actually written including this property.

Commission Hunter asked if the property has been harvested in the last 20 years.
Mr. Stoner stated it has not.

Commissioner Onkels stated the typical harvest cycle is 70 years.

Ms. Osborn stated that conifer species are generally a 50 year crop.

Commissioner Hunter asked Ms. Osborn if this parcel is in fact harvestable. Ms. Osborn stated yes it is based on her research.

**The vote on the motion to recommend approval failed.**

The meeting was adjourned at 8:50 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair  
Becky Boxx, Secretary
BACKGROUND

INFORMATION ON

FILE

IN THE

COUNCIL OFFICE
title of document:
A resolution approving recommendations on five applications for open space current use assessment on lands located within unincorporated Whatcom County.

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 five applications for open space current use assessment as authorized by the Open Space Taxation Act (Chapter 84.34 RCW). The lands that are the subject of these applications are located entirely within unincorporated Whatcom County. A draft resolution has been prepared to initiate Council action should the Council wish to approve Planning Commission recommendations.

Note: Because this group of applications contained a “split” jurisdiction application on lands located within the City of Ferndale, a separate agenda bill has also been prepared to introduce a separate resolution, and to request a separate hearing so that the County Council can act on the portion of the land in one particular application on lands located within the City of Ferndale, separately from its action on lands that are in this group of applications located entirely in unincorporated Whatcom County. The City of Ferndale has indicated that it will likely hold a public hearing on this portion of the subject application (E. Bailey/Bailey Trust) on or about August 18, 2014.

* Distribution Request: Assessors Office – Janice Judge
MEMORANDUM

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

THROUGH: J.E. "Sam" Ryan, Planning & Development Services, Director

FROM: Erin Osborn, Planner

DATE: July 9, 2014

SUBJECT: Open Space Applications in Unincorporated Whatcom County

Presented here for your consideration is an attached packet containing recommendations from the Planning Commission on five applications to classify or reclassify land, for the purposes of open space taxation, on lands located entirely within unincorporated Whatcom County. A draft resolution is also attached should the Council wish to approve recommendations made by the Planning Commission.

You are also being asked to review a second open space application packet that is being introduced at the same time. This is an application to reclassify land located within the City of Ferndale, and because the land is located within an incorporated area, the application requires a slightly different approval process. All of these applications were reviewed as one group by the Planning Commission last month, and are now separated according to their different approval processes.

Staff recommended approval on all of the applications. Planning Commissioners voted to approval all of the applications except for one. They voted to recommend denial on the Sunset SW LLC application for Timber Land which is located on the shore of Lake Whatcom. However, staff review indicates that this application should be approved because it conforms to application approval criteria.

Note: Open Space Land (including its sub-classification Farm and Agricultural Conservation Land), and Timber Land applications may be approved by the County Council subject to conditions, so long as these conditions do not "...conflict with state law and not arbitrarily or capriciously restrict access to either classification." (DOR, PTA NUMBER 16.1.2011).

The Planning Commission voted to recommend that Council approve the Hemnes application to reclassify Farm and Agricultural Land to Farm and Agricultural Conservation Land subject to a unique and unprecedented condition. Staff recommends approval of this application, and strongly supports the intent of the Planning Commission’s recommendation; however after discussion with County legal staff and Department of Revenue staff, staff is requesting that Council
consider a slightly different wording for the condition. The language contained in the Planning Commission condition is listed below, followed by staff's recommended language.

Planning Commission Recommendation:

"Within four years of date of approval for reclassification to Farm and Agricultural Conservation Land the applicants (owners) must apply for and be approved for reclassification back to the Farm and Agricultural Land as defined in RCW 84.34.020(2)(c)."

Staff Recommendation:

"Within four years of application approval for reclassification to Farm and Agricultural Conservation Land, the applicants must apply for and demonstrate that they meet income requirements established in the Open Space Taxation Act for approval of the Farm and Agricultural Land classification as it is defined in RCW 84.34.020(2)(c)."

Staff's recommendation is based on a reconsideration of the purpose of the reclassification and the definition of the classification being sought, i.e. land previously classified as farm and agricultural land that no longer meets income requirements associated with that classification:

If a condition requires approval by independent entity, and if for some reason it was not approved, even though the applicants might show income to qualify for returning to classification as farm and agricultural land, and even though they might apply, so if disapproved, a condition to require approval might not be consistent with state law or the purpose of classification, and failure to meet the condition (as described) would be outside of the applicant's control.

Staff also notes that it would be in the interest of the applicant to apply for farm and agricultural land classification, because if approved, the reduction in assessed value would likely be more than with the farm and agricultural conservation land classification.

I look forward to presenting a brief overview on these applications, and answering questions at an upcoming public hearing.

Thank you.
Residential 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: Open Space Land, Farm & Agricultural Conservation Land, Farm and Agricultural 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, Pursuant to Whatcom County Ordinance # 95-040 applications for Timber Land are no longer reviewed under the County’s PBRS, and are instead reviewed for consistency with the definition of Timber Land as defined in RCW 84.34.020(3) and the required Timber Management Plan is reviewed for conformance with RCW 84.34.041; and

WHEREAS, On June 26, 2014, the Whatcom County Planning Commission held a work session and considered staff recommendations, asked clarifying questions from applicants or their agents who were present on applications referenced in Master File Number OS2014-1, and voted to make recommendations to the Whatcom County Council on whether to approve in whole or in part or deny each application; and

WHEREAS, Pursuant to RCW 84.34.037, applications to classify or reclassify lands that are located entirely within unincorporated Whatcom County are approved or disapproved by the County Council who acts as the granting authority; and

WHEREAS, One of the applications referenced under Master File Number OS2014-1 (E. Bailey & Bailey Trust) was a split jurisdiction application, comprising lands located both in the City of Ferndale and also comprising lands located within unincorporated Whatcom County; and

WHEREAS, Applications to classify or reclassify land that are located entirely within an incorporated area must be acted upon by a joint granting authority composed of members from each respective jurisdictions legislative authority, whereby applications may be approved by each legislative authority taking separate but affirmative acts, or by three members of each legislative body meeting together to act as one body for the purposes of approval or denial; and

WHEREAS, The City of Ferndale Planning Director indicated that due to various challenges associated with scheduling, the Ferndale City Council would likely prefer to act separately on the applications, and proposed that the City would schedule and hold a separate hearing on the subject applications on or about August 18, 2014; and

WHEREAS, On August 5, 2014, in good faith that the City of Ferndale would take its own action on the application within its jurisdiction, the Whatcom County Council held its own 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 OS2014-1 that are located on lands located entirely within unincorporated areas of Whatcom County, and held another separate hearing on the application on lands located in the City of Ferndale; and

WHEREAS, Pursuant to WAC 197-11-800(6)(c), matters relating to Open Space Current Use Assessment are categorically 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. Whatcom County Planning and Development Services received five 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 and on lands located within the City of Ferndale. These applications were processed as a group under Master File Number OS2014-1.

2. Of the five applications referenced in OS2014-1: one is for Open Space Land (OSL), one is for Farm and Agricultural Conservation Land (a sub-classification of open space land) (OSFACL), and three applications are for the classification of Timber Land (OSTL). Upon receipt of these applications, Planning and Development Services staff evaluated the open space land and farm and agricultural conservation land applications with the Public Benefit Rating System (PBRS), and evaluated applications for timber land for conformance with Subsection 84.34.020(3) & 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 (as applicable). 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 June 26, 2014.

4. At the June 26, 2014 Planning Commission Work Session, staff gave an approximately 30 minute overview presentation on the Open Space Current Use Program, its statutory and local authority, a brief overview on the Open Space Taxation Act, and outlined the respective roles of the Planning Commission, County Council, County Assessor’s Office, and Joint Granting Authority (for applications located within incorporated areas) in reviewing these type of applications. 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”. Staff also noted, that based on earlier Planning Commission suggestions, and per direction from the County Council and County Executive a preliminary draft report had been prepared by staff which summarized the PDS open space current use program, analyzed key issues in program administration, and that this report (dated December 6, 2013) had been submitted to PDS management and County Executive for their review.

5. Upon conclusion of the staff overview on the open space current use program, staff then made an approximately 45 minute presentation going over each of the individual applications referenced in Master File OS2014-1, pausing to answer questions from commissioners. The single application for the classification of open space land was presented first, followed by the single application for farm and agricultural conservation land, and then a presentation on the three timber land applications. Staff noted that of the applications for timber land one was a “split jurisdiction”, noting that after the application was received portions of the land subject of application was annexed by the City of Ferndale. Staff suggested that commissioners wait to deliberate and make motions on each application until after staff presentation on individual applications.

6. Staff recommended approval on the application for Open Space Land (Hurlbut). Staff recommendation of approval on this application was based on an assigned Public Benefit Rating (PBR) score of 45 points or higher which, pursuant to Whatcom County Open Space Policies and Criteria and Public Benefit Rating System is consistent with a staff recommendation of approval. Staff recommended approval after scoring the application with a public benefit rating (PBR) of 92.75.

The Hurlbut proposal included public access to the rear of the lots under consideration from the access that is provided to Stimpson Reserve and Lake Geneva Preserve abutting their .044 (+/-) parcel acres. Proposed public access to the wooded and grassy area north of the subject acres could be used for a view point overlooking the lake, and for viewing birds and terrestrial species that frequent the site.

7. After deliberation, Planning Commissioners came to a consensus to recommend that the County Council approve the Hurlbut application in its entirety subject to staff’s recommended conditions.

8. Staff recommended approval on the single application for Farm and Agricultural Conservation Land (Hemnes). Staff recommendation of approval on this application was based on an assigned Public Benefit Rating (PBR) score of 45 points or higher, which pursuant to Whatcom County Open Space Policies and Criteria and Public Benefit Rating System is consistent with a staff recommendation of approval. Staff recommended approval after scoring the application with a public benefit rating (PBR) of 57.12.

9. The Hemnes property was purchased in 2014. The land was (and at time of review was still) classified as Farm and Agricultural Land. Staff
explained that current classification that applies to the land is different than the farm and agricultural conservation land classification being sought in that farm and agricultural land requires the owners to show income from commercial agriculture, but farm and agricultural conservation land does not. At the time of sale, it was discovered by the Assessor that the previous owners could not demonstrate income from commercial agriculture; therefore the Assessor signed off on the Notice of Continuance pending reclassification to a different classification authorized under the Open Space Taxation Act, by the new owners, Lucas and Amy Hemnes.

10. The Hemnes family manages a herd of approximately 55 head of beef cattle and uses the 3.81 acres to pasture about 4 head of beef (yearlings) as part of the larger operation. The long term plan is to continue to raise beef on the subject parcel, rotating stock during the winter months over to a barn and additional rented agricultural land on the Siper Road. Beef from the Hemnes herd is processed at a facility in Bow, Washington, and is sold locally to Boundary Bay Brewery, located in the city of Bellingham.

11. A proposed public access statement was discussed verbally between the applicant and staff, and then later confirmed with a written public access statement and proposed rules of public conduct. The proposal was that the applicants would give farm tours to prospective customers, and would be willing to provide farm educational opportunities to youth groups such as 4-H by appointment. Staff noted, there is ample off-street parking, and an open space sign could be posted at the corner of Sand Road and Sundown View Lane.

12. Staff explained to the Planning Commission that the Open Space Taxation Act authorizes counties to approve Open Space Land and Farm and Agricultural Conservation Land applications subject to specific conditions. Given that the owners expressed a desire to continue a long term agricultural operation on the subject property; they may at some point in the next 3-5 years be able to qualify for the Farm and Agricultural Land classification administered by the Assessor. To qualify for that classification, and although subject to change, current income requirements (revenue from commercial agriculture) would be $1,500.00 per year for three out of the five years preceding the date of application. The County Council could approve this application subject to a farm plan that outlines a program for meeting income requirements associated with the Farm and Agricultural Land classification, and eventual reclassification back to the Farm and Agricultural Land classification within a certain time frame.

Staff provided the Planning Commission with a Property Tax Advisory from the Department of Revenue which states: "...additional eligibility requirements for the open space and timber classifications must not conflict with state law and not arbitrarily or capriciously restrict access to
either classification.”

13. After deliberation, and after considering staff input, Planning Commissioners came to a consensus that they would be willing to recommend that the County Council approve the Hemnes application subject to a condition requiring the applicants within four years of approval for Farm and Agricultural Conservation Land as defined in RCW 84.34.020(1)(c)(8)(a) to apply for and be approved for the classification of Farm and Agricultural Land as defined in RCW 84.34.020(2)(c). Subject to this proposed condition, the Planning Commission voted to recommend that the County Council approve the Hemnes application in its entirety.

14. Staff discussed the special condition in the above finding (No. 13) with PDS County attorney and with Department of Revenue staff. After these discussions, staff concluded that it might be more consistent with the purpose of classification if the condition was worded differently, as follows: “Within four years of application approval, the applicants must apply for and demonstrate that they meet income requirements established in the Open Space Taxation Act for approval of the Farm and Agricultural Land classification as it is defined in RCW 84.34.020(2)(c).” Staff’s conclusion was based on a reconsideration of the purpose of the reclassification and the definition of the classification being sought, i.e. land previously classified as farm and agricultural land that is no longer able to meet income requirements associated with qualification as farm and agricultural land. If a condition required an approval by independent entity, if for some reason it was not approved, even though the applicants might show income to qualify for classification as farm and agricultural land, and even though they might apply, the act of approval would be outside of the applicant’s control, and a disapproval might not be consistent with state law or the purpose of classification.

In addition, staff noted that it would be in the interest of the applicant to return to farm and agricultural land, because the reduction in assessed value would likely to be more than in the farm and agricultural conservation land classification.

15. Staff presented information that described the estimated resulting tax shift that would occur if the Hurlbut and Hemnes’ applications were to be approved. Using figures provided by the County Assessor’s Office, it was noted that the assessed property value reduction would result in an estimated tax shift of approximately $170.10 (Hurlbut) and $705.99 (Hemnes) to other tax payers per year if the applications were to be approved.

Staff was not able to provide information to the Planning Commission about what how the overall tax shift would affect individual property owners because it would be a very difficult calculation to perform. This is because 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 a per parcel basis.
16. After staff presentations and Planning Commission deliberation and votes on the Open Space Land and Farm and Agricultural Conservation Land applications, staff presented the timber land applications.

17. Staff explained to the Planning Commission that staff recommendations of approval on timber land applications are based on whether the application meets the definition of timber land as defined in RCW 84.34.020(3), and whether the Timber Management Plan submitted on file as part of the application is consistent with RCW 84.34.041 which outlines the elements of a timber management plan. Based on staff review and site inspections, staff recommended approval on all three of the timber land applications. Staff recommendations of approval were based on 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.

18. Prior to voting on timber land applications, one of the Planning Commissioners asked for information about the loss of revenue or shift in taxes that would result from approving an application for timber land, and asked why this information was not provided on the timber land applications. Staff indicated that this information was not provided because it is not one of the criteria considered for approval or disapproval. The commissioner asked if staff would be prohibited from providing this information, and staff indicated that while there is no prohibition on the provision of this information, adding that it could be provided in the future, it can't be the basis on which a decision to approve or not approve is based, because this information is not a criteria for approval. The commissioner indicated that he would vote to deny all of the timber land applications because information on loss of revenue or shift in taxes was not provided.

19. Whatcom County Planning Commissioners considered staff findings and recommendations on the E. Bailey and Bailey Trust application, and staff suggested that two separate votes be taken on the E. Bailey and Bailey Trust application respective of the jurisdiction in which the subject property was located.

20. After deliberations, the Planning Commission voted to recommend that the County Council approve the portion of the E. Bailey and Bailey Trust timber land application in the jurisdiction of the City.

21. The Planning Commission voted to recommend that the County Council approve the E. Bailey and Bailey Trust timber land application unincorporated Whatcom County.

22. Whatcom County Planning Commissioners considered staff findings and recommendations on the Engelund application for timber land and voted to recommend approval to the County Council.

23. Whatcom County Planning Commissioners considered staff findings and recommendations on the Sunset SW LLC application and voted to recommended denial. During Planning Commissioner review, it was noted that the land that is subject of application is located on the shoreline of
Lake Whatcom, and is designated Rural under the Whatcom County Shoreline Management Program (SMP).

24. Staff acknowledged that the land that was subject to application was located within the jurisdiction of the SMP, and indicated that staff had researched the matter to determine whether or not the land subject to the application could be harvested. 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 (5.63 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 according to PDS Natural Resource staff the owner could harvest of timber in the Rural SMP designation after a Shoreline Substantial Development Permit was applied for and approved, subject to specific conditions to protect the lake and its habitat functions.

25. The Planning Commission vote on a motion to recommend that the County Council approve the Sunset SW LLC application for Timber Land was 3 in favor and 3 against, which is a tie, indicating that the motion failed to recommend that the County Council approve the subject application.

26. On July 8, 2014, 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 OS2014-1, and this report was reviewed for accuracy and signed by the Planning Commission Chair and Planning Commissioner, Secretary.

27. On July 8, 2014, 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 OS2014-1, 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 July 22, 2014, and also included a request for a public hearing to be scheduled on August 5, 2014.

28. On July 22, 2014, a draft resolution was introduced.

29. A public hearing was scheduled to take place before the County Council at their regularly scheduled evening meeting, held on August 5, 2014. 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 August 5, 2014.

30. On August 5, 2014, the Whatcom County Council held a public hearing on applications to classify or reclassify lands that are located within the unincorporated areas of Whatcom County as referenced under OS2014-1, 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 applications to classify or reclassify lands located within the unincorporated areas of Whatcom County as referenced under
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 OS2014-1 listed below are hereby approved subject to conditions and applicable scores as noted herein:

**Open Space Land (OSL)**

**OSP2014-00002 – Hurlbut**
New application to classify property as Open Space Land
GEO ID: 380335 523242 0000: (PID: 82464)
GEO ID: 380335 525241 0000: (PID: 82465)
GEO ID: 380335 538230 0000: (PID: 82477)
Total Parcel acres = 0.44 (+/-); OSL acres = 0.44 (+/-)
PBR 92.75
ESTIMATED SHIFT IN TAXES IF APPROVED: $170.10

**Whatcom County Planning Commission Recommendation:**

Approval: subject to the following conditions:

1. Public Access as described in the Application Narrative
2. Small Open Space Sign posted on Lot # 19
3. Hold Harmless Agreement

**Farm & Agricultural Conservation Land (OSFACL)**

**OSP2014-00005 – Hemnes**
Application to reclassify property from Farm & Agricultural Land to Farm and Agricultural Conservation Land (a sub-classification of Open Space Land)
GEO ID: 390429 041191 0000: (PID: 107711)
Total Parcel acres = 4.81; OSFACL acres = 3.81; Homesite acres = 1.00
PBR 57.12
ESTIMATED SHIFT IN TAXES IF APPROVED: $705.99

**Whatcom County Planning Commission Recommendation:**

Approval: subject to the following conditions:

2. Open Space Sign posted at corner of Sundown Lane and Sand Rd.
3. Within four years of date of approval for reclassification to Farm and Agricultural Conservation Land the applicant must apply for and be
approved for reclassification back to the Farm and Agricultural Land as defined in RCW 84.34.020(2)(c).

4. Hold Harmless Agreement

**Timber Land (OSTL)**

**OSP2014-00001 – E. Bailey and Loren H. Bailey SR Credit Shelter Trust**

*(portion of the application to reclassify lands that are located within unincorporated Whatcom County)*

Loren H. Bailey SR Credit Shelter Trust
GEO ID: 390208 235213 0000 (PID: 90564): Application OSTL acres = 4.57

E. Bailey
GEO ID: 390208 185232 0000 (PID: 90457): Application OSTL acres = 4.58

Total Application OSTL acres in the unincorporated Whatcom County = 9.15

**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 pursuant to RCW 84.34.041
3. Hold Harmless Agreement

**OSP2014-00003 – Engelund**

New application to classify property as Timber Land
GEO ID: 400101 259478 0000 (PID: 112929)
Parcel acres = 10.56; OSTL acres= 8.5; Homesite acres = 2.06

**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 pursuant to RCW 84.34.041
3. Hold Harmless Agreement

**OSP2014-00004 – Sunset SW LLC**

New application to classify property as Timber Land
GEO ID: 380429 020020 0000 (PID: 83486): Parcel acres = 3.91 acres currently classified as OSTL
GEO ID: 380432 025554 0000 (PID: 83946); 1.72 acres of which 1.36 is currently classified as OSTL (according to Assessor’s records) Application OSTL acres = 0.28 (0.28 acres is according to survey. Survey shows an apparent discrepancy between Assessor’s records which indicate 0.36 acres)

NOTE: If approved, the additional 0.28 acres in this application it would bring the total OSTL acres covered under the application to 5.63 (+/-) acres, all subject to a new taxation agreement.

Whatcom County Planning Commission Recommendation:

Denial: Based on a finding expressed by dissenting commissioners that it would not be in the best interests of the public to harvest timber on the shore of Lake Whatcom.

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

ATTEST:

Dana Brown-Davis
Clerk of the Council

Carl Weimer
Council Chair

APPROVED AS TO FORM:

[Signature]

Civil Deputy Prosecutor
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, David Onkels, in the Northwest Annex Conference Room at 6:30 p.m.

Roll Call
Present: Gary Honcoop, David Onkels, Mary Beth Teigrob, Walter Haugen, Natalie McClendon, David Hunter
Absent: Ben Elenbaas, Jerry Vekved, Ken Bell

Staff Present: Mark Personius, Erin Osborn, Becky Boxx

Department Update
Mark updated the commission on the following:
- Items before the County Council.
- Upcoming commission schedule.

Open Session for Public Comment
There was no public comment.

Commissioner Comments
Commissioner Honcoop commented on his visit on the USS Nimitz.

Approval of Minutes
May 22, 2014: Approval of the minutes was put on hold until the next meeting due to lack of members needed for approval.

Open Space Applications
Erin Osborn presented an overview of the Open Space Program.

The open space current use program is a property tax reduction program. In the 1960’s the state constitution was amended to enact the program. It authorizes three classifications and one sub-classification. Open Space Land is about conservation of a broad scope of resources. It has a sub-classification, Farm and Agricultural Conservation Land. There is also Timber Land, and Farm and Agricultural Land.

State law provides that applications for the Open Space Land and the Farm and Agricultural Conservation Land are processed in same manner as an amendment to the Comprehensive Plan. Therefore they come before the Planning Commission. When the Planning Commission reviews the applications they are to consider the overall benefit of preserving the land relative to the monetary shift in taxes. The higher the score on the application the greater the tax shift. Regarding Timber Land there is nothing in state law that assigns a role to the Planning Commission. However, until 1995 they were reviewed with the Public Benefit Rating System. After ordinance 1995-040 Timber Land was removed from Planning Commission review, however another ordinance that is codified in WCC 2.28 states that they are still reviewed by the Planning Commission, and so
therefore they are. The County Council has asked staff to put together an analysis of the program which staff has done but Council has not reviewed it yet. The Timber Land classification requires at least five acres be devoted to the growth and harvest of timber for commercial purposes. A Timber Management Plan is required for approval. Recently the legislature amended the Designated Forest Land Program changing the minimum allowed to five acres. This may result in less Timber Land applications.

The commission reviewed the applications.

**Open Space Land – Hurlbut**

This is approximately .48 acres. The zoning is R5A. It is located above Lake Whatcom Boulevard. It is very steep. The owners purchased the land for the sole purpose of conservation and to protect the hillside from further erosion. It has been prone to mudslides. A slide in 1992 destroyed the owner’s house. Two of the lots are subject to a restrictive covenant prohibiting development until 2027. There is public access to the Stimson Reserve property. The application was given a score of 92.75 with a recommendation of approval.

**Farm & Agricultural Conservation Land – Hemnes**

This land used to be owned and farmed by some dairy farmers in the area. The property was sold and short platted. It is a 4.81 acre parcel with one acre for the homesite. The previous owners (who sold to the Hemnes family) could not continue to keep the property in Farm and Agricultural Land because they couldn’t demonstrate income requirements so they applied for the conservation program. The 3.81 is used to raise beef cattle. The application was given a score of 57.12 with a recommendation of approval. The score is somewhat low because of the small size of the property. For public access, the owners are offering to engage with youth or agriculture groups to teach sustainable beef farming.

**Open Space Timber Land – Bailey Trust**

Shortly after this application came in in 2010 the City of Ferndale annexed the property east of the freeway. Because of joint granting authority the application was put on hold. All of the property is under the Designated Forest Land Program which at the time of application required a 20 acre minimum. Also the property ownership names were changed for estate planning purposes. This disqualified them from the Designated Forest Land Program because the property was not in one ownership. In 2011 the statute changed the term contiguous to mean land in same ownership (one family). The application included an excellent timber management plan. Reforestation will need to be done if approved. There are 9.51 acres in the county and 21.52 acres in the City of Ferndale. Staff recommends approval.

**Open Space Timber Land – Engelund**

This parcel is heavily forested with an excellent Timber Management Plan. It is 10.56 acres. They are asking to classify approximately 8.5 acres. The zoning is R10A. Staff recommends approval.
Open Space Timber Land – Sunset SW LLC
This property is on Lake Whatcom and is .28 acres. The acreage to the north is already
classified as Timber Land. This piece of land appears to have been inadvertently left out
when the other acreage was classified, but the record is not clear on this. The property is
subject to a Rural Shoreline Management Program designation, and this designations
allows timber harvest subject to issuance of a shoreline substantial development permit
and conditions to protect the shoreline.

Commissioner Haugen noted there is no mention of the tax shift dollar value.
Ms. Osborn stated there are no laws, codes, etc. that requires consideration of the tax
shift when approving a Timber Land application. The value of timber land is based on soil
classification and operability.
Commissioner Haugen stated that if the commission is asked to make a decision all the
information should be given otherwise the commission is in limbo. Is staff prohibited from
giving the commission that information?
Ms. Osborn stated they are not prohibited.
Commissioner Haugen stated he wanted it.
Commissioner Honcoop stated there has to be findings to support their decisions
otherwise they are considered arbitrary and capricious.
Commissioner Haugen did not agree.
Commissioner Teigrob did not see how it was possible to harvest trees there without
impacting the lake.
Commissioner Honcoop said they could look at the operability of harvest there which is
one of the conditions they can review.
Ms. Osborn stated the commission could put conditions on the harvest.
Commissioner McClendon asked why this application is for timber not open space land.
Ms. Osborn stated the parcel across the road is classified as Timber Land. They are
applying for Timber Land because they want the best possible tax reduction and the same
tax classification as the other parcel they plan to harvest in the future.
Commissioner McClendon asked if it is very hard to classify as operable does that lower
the value?
Ms. Osborn stated it does.
Commissioner Honcoop stated it appears some of the trees are in the public right-of-way which can’t be harvested.

Commissioner Teigrob asked how many trees are in that small area.

Ms. Osborn stated it is considered fully stocked by the plan. In order to be fully stocked there has to be 100 trees per acre so there would have to be approximately 25 trees on the lot.

Commissioner Haugen asked the applicant’s representative how many trees there are.

Jesse Stoner stated he did not know how many trees are there. None of them are in the water or the county right-of-way.

Commissioner Honcoop asked if the surveyed area includes the shore area outside the water.

Mr. Stoner stated yes.

The commission acted on the applications as follows:

Open Space Land – Hurlbut

Commissioner Honcoop moved to recommend approval. Commissioner McClendon seconded. The motion carried.

Farm & Agricultural Conservation Land – Hemnes

Commissioner Hunter moved to recommend approval. Commissioner Haugen seconded.

Commissioner Honcoop asked about the sale of the property. Did the new owners sign a continuance to stay in open space?

Ms. Osborn stated the previous owners did not maintain the finance requirements to stay in open space so the Hemnes continued it pending reclassification. If they don’t get approved they have to pay back taxes.

Commissioner Honcoop asked where the public benefit is. What is there to ensure they will continue to use it as outlined?

Ms. Osborn stated they can add conditions.

Commissioner Honcoop asked who would enforce those conditions.

There was no response to this question.
Commissioner Teigrob stated that being in Open Space Agricultural Conservation versus Open Space Farm and Agriculture leaves no incentive to continue to farm because the monetary requirements go away.

Ms. Osborn stated that this issue has been a point of discussion for some time regarding this classification. The commission can assign conditions if they want.

Commissioner Hunter stated he sees no benefit to the county if this is put into Open Space Farm and Agricultural Conservation because he doesn’t believe it will change the use of the land.

Commissioner Teigrob made a friendly amendment requiring the applicant to apply and be approved Open Space Farm and Agricultural Land within four years. Commission McClendon seconded. The amendment carried.

The vote on the main motion to recommend approval carried.

Open Space Timber Land – Bailey Trust

Commissioner Teigrob moved to recommend approval for the parcel within the City of Ferndale. Commissioner Hunter seconded.

Commissioner Haugen stated the tax shift is not known. As such he has no choice but to vote no on the Timber Land applications. He has an issue with the protocol and procedure.

The vote on the motion to recommend approval carried.

Commission Honcoop moved to recommend approval for the parcel within the county. Commissioner McClendon seconded. The motion carried.

Open Space Timber Land – Engelund

Commissioner Honcoop moved to recommend approval. Commissioner Teigrob seconded. The motion carried.

Open Space Timber Land – Sunset SW LLC

Commissioner Teigrob moved to recommend approval. Commissioner Honcoop seconded.

Commission Onkels asked Mr. Stoner the reason for the application.

Mr. Stoner stated when the application was originally done, many years ago, the owner thought this parcel was included. This application takes care of that oversight. The timber management plan was actually written including this property.

Commissioner Hunter asked if the property has been harvested in the last 20 years.
Regular Meeting

Mr. Stoner stated it has not.

Commissioner Onkels stated the typical harvest cycle is 70 years.

Ms. Osborn stated that conifer species are generally a 50 year crop.

Commissioner Hunter asked Ms. Osborn if this parcel is in fact harvestable.

Ms. Osborn stated yes it is based on her research.

The vote on the motion to recommend approval failed.

The meeting was adjourned at 8:50 p.m.

Minutes prepared by B. Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

David Onkels, Chair

Becky Boxx, Secretary
BACKGROUND

INFORMATION ON FILE

IN THE COUNCIL OFFICE
### TITLE OF DOCUMENT: 2014 Supplemental Budget Request #14

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

<table>
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<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>Yes</th>
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<td>SEPA review completed?</td>
<td>Yes</td>
<td>NO</td>
<td>Requested Date:</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Supplemental #14 requests funding from the General Fund:

1. To appropriate $28,813 in Planning and Development Services to fund one code enforcement staff position.
2. To appropriate $32,000 in Parks to fund Hovander driveway relocation.

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**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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ORDINANCE NO.
AMENDMENT NO. 14 OF THE 2014 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 2014 budget included therein:

<table>
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<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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<tbody>
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<td>General Fund</td>
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<tr>
<td>Planning and Development Services</td>
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<td>Total General Fund</td>
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<td>Parks Special Revenue Fund</td>
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<td>Total Supplemental</td>
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In addition, Exhibit B to the 2013-2014 Budget Ordinance entitled “Authorized Positions” should be amended to provide for the following FTE changes:

- Add 1 FTE Planner position in Planning & Development Services.
- Close 1 FTE Clerk II position in Auditor – Recording.

ADOPTED this ___ day of __________________, 2014.

ATTEST:

Dana Brown-Davis, Council Clerk

Carl Weimer, Chair of the Council

APPROVED AS TO FORM:

( ) Approved   ( ) Denied

Jack Louws, County Executive

Date: __________________________
## Summary of the 2014 Supplemental Budget Ordinance No. 14

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<td>Total General Fund</td>
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<td>28,813</td>
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<td>Parks Special Revenue Fund</td>
<td>To fund Hovander driveway relocation.</td>
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Memorandum

TO: Jack Louws, Executive
    Tyler Schroeder, Special Projects Manager

FROM: J.E. “Sam” Ryan, Director

DATE: June 09, 2014

SUBJECT: Code Enforcement Staff Supplemental Budget Request

Attached is a Supplemental Budget Request for the current 2014 budget for an additional staff person for our Code Enforcement area. There is a pressing need for additional staff for processing and responding to code violations. The requests for enforcement investigations have exceeded our department's capacity to do adequate compliance follow up and processing of new violations.

Normally this request would come as an ASR for the 2015-2016 budget process, but the need for additional Code Enforcement staff is immediate. I have council members and the public calling and emailing to ask about status of ongoing cases. We have a back log of cases and staff is not able to work through them in a timely manner.

With this new staff person we would propose a short term proactive change to enforcement cases with an emphasis on voluntary compliance. If we can’t get compliance then we already have a penalty assessment process that can be used. In the long term, PDS will seek to get regulations approved to place a lien on properties that have failed to get into compliance.

This request is separate from the ½ FTE PIC Enforcement position and the NPDES FTE position proposed by Public Works.

Thank you for taking the time to review this request. Please let me know if you need any further information.
1a. Description of request:
This will add one FTE to work as a full time Code Enforcement staff person.

1b. Primary customers:
Whatcom County residents

2. Problem to be solved:
The requests for Code Enforcement investigations have exceeded the department's capacity to do adequate compliance follow up and processing. PDS has council members and community members calling, emailing and asking about the status of ongoing cases. The goal would be to use this new person and develop a short term proactive change to enforcement case management with an emphasis on voluntary compliance. If we can’t get compliance then we already have a penalty assessment process that can be used.

3a. Options / Advantages:
We are utilizing staff in other departments for the initial intake and review of cases and are using the department clerk/receptionist to assist with clerical tasks. However, PDS is running at minimum staff in all departments and all areas are already working hard to manage their own workloads and do not have the time to assist with Code Enforcement beyond what they are already providing.

3b. Cost savings:

4a. Outcomes:
The new staff person would focus on current and incoming Code Enforcement cases working to resolve ongoing issues and work through the backlog so new enforcement cases can be prioritized and handled in a timely manner.

4b. Measures:
When the back log of cases is diminished and Code Enforcement cases are current in responding to compliance request.

5a. Other Departments/Agencies:
No
Supplemental Budget Request

Planning & Development Services  Administration

<table>
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<th>Supp'l ID #</th>
<th>Fund</th>
<th>Cost Center</th>
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<td>1884</td>
<td>1</td>
<td>842</td>
<td>Denise Smith</td>
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5b. Name the person in charge of implementation and what they are responsible for:

   n/a

6. Funding Source:

   General Fund
MEMORANDUM

TO: Jack Louws, Executive
FROM: Michael McFarlane, Director
DATE: July 9th, 2014
RE: Budget Supplemental- Hovander Driveway Relocation #1883

Attached please find a request for a budget supplemental to facilitate the relocation and construction of a portion of the drive to the group picnic area at Hovander Homestead Park. This project parallels the newly constructed multi use trail and will provide separation of pedestrians and motor vehicles for safety purposes. Adequate funding exists in the Parks Special Revenue Fund and the department would like to complete this project before the autumn rains. All permits and quotes have been obtained.

Thank you
1a. Description of request:
A portion of the drive to the group picnic area and shelter at Hovander Homestead Park will be relocated to accommodate the recently constructed multi use trail. Accessible parking spaces will also be constructed to facilitate shelter and picnic users and better serve special events. This project will improve accessibility, separate different users to avoid safety issues and accommodate individuals with disabilities.

1b. Primary customers:
Park visitors and volunteers who attend special events and use the picnic areas, shelters and gardens at the park.

2. Problem to be solved:
In 2013 a new multi use trail was constructed on portions of the existing drive. Trail use and motorized vehicles should be separated for safety purposes particularly during peak use periods and special events. A portion of this drive is on turf which at times of the year can present challenges due to moisture conditions. This relocated drive will improve vehicle access and address pedestrian, bicycle and vehicle safety concerns.

3a. Options / Advantages:
No action will result in the degradation of the trail surface and potential safety issues with pedestrians and motorized vehicles. This option maintains a separation and accommodates all users regardless of conditions.

3b. Cost savings:
N/A

4a. Outcomes:
Separation of use and improved access upon completion.

4b. Measures:
N/A

5a. Other Departments/Agencies:
Permits have already been acquired from WC Planning and Development Services.

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

6. Funding Source:
This project is proposed to be funded from the Parks Special Revenue Fund.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:**
Ord. amend WCC 3.06, grant applications, to clarify requirements & exceptions

**ATTACHMENTS:**
Ordinance

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

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

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This ordinance amends WCC 3.06 to amend the grant application process and to clarify exemption provisions.

**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.
AMENDING WHATCOM COUNTY CODE SECTION 3.06, GRANT APPLICATIONS, TO CLARIFY REQUIREMENTS FOR GRANT APPROVAL AND APPROVAL EXEMPTIONS

WHEREAS, Whatcom County Code Section 3.06 sets forth requirement for grant application approval and approval exemptions; and

WHEREAS, it has been brought to the Council's attention that the Code should be amended to streamline the grant application process and clarify exemption provisions.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 3.06 is hereby amended as outlined Exhibit A to this ordinance.

ADOPTED this ______ day of _____, 2014

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Council Clerk

Carl Weimer, Chairperson

APPROVED as to form:

( ) Approved
( ) Denied

Civil Deputy Prosecutor

Jack Louws, Executive

Date: ____________________________
Chapter 3.06
GRANTS APPLICATIONS

Sections:

3.06.010 Approval by council – Exemptions.

3.06.010 Approval by council – Exemptions.

A. Copies of all federal and/or state grant applications that propose county direct or indirect cost sharing in an amount exceeding $5,000 or provide for additional personnel, must be sent to council at the time it is submitted to the funding agency and must be approved by the council before the grant may be accepted.

B. Any direct pass through grants that ultimately fund contractual service vendors are exempt from this section, provided that the county’s administrative costs are funded.

C. The requirements of this section shall not apply to emergencies declared by the county executive.

(Ord. 84-109).