



Mayor
Scott Korthuis

Council Members
Gary Bode
Ron De Valois
Gerald Kuiken
Nick H. Laninga
Brent Lenssen
Kyle Strengholt
Mark Wohlrab

City Council Agenda - Regular Meeting
City Hall Annex, 205 4th Street
September 03, 2019

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Approval of Minutes

1. Draft Council Minutes- Regular Meeting
2. Special City Council Minutes – CDC Meeting 8-28-19

Items from the Audience
Scheduled

Unscheduled (20 Minutes)

Audience members may address the Council on any issue other than those scheduled for a public hearing or those on which the public hearing has been closed. Prior to commenting please state your name, address, and topic. Please keep comments under 4 minutes.

Consent Agenda

3. Approval of Payroll and Claims
4. Contract with Whatcom County – Buildable Lands Program

Public Hearing

5. Public Hearing for Water System Plan Update - Service Area Map
6. Ordinance No. 1591 - Extension of the Pepin Creek Moratorium

Unfinished Business

New Business

- [7.](#) Public Defender Interim Contract
- [8.](#) Ordinance No. 1592- Amending Chapter 10.08.100 Parking and Loading
- [9.](#) Downtown Residential Parking Agreement – 610 Front Street
- [10.](#) Award Contract for Old Elevated Water Tank Foundation and Soil Remediation
- [11.](#) Award Construction Contract to DeKoster Excavating, Inc. – 7th Street Rehabilitation Project
- [12.](#) Ordinance No. 1589- Shoreline Master Program Update
- [13.](#) Dumpster Easement Agreement – 610 Front Street
- [14.](#) Restrictive Covenant Agreement – 610 Front Street
- [15.](#) Temporary Construction Easement – 610 Front Street

Other Business

- [16.](#) Calendar

Executive Session

Adjournment

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Other: N/A	Legal Review:
		<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:	Draft Council Minutes- Regular Meeting	
Summary Statement:	Draft Council Minutes- Regular Meeting	
Recommended Action:	For Council review.	



August 19, 2019

1. CALL TO ORDER

Mayor Korthuis called to order the August 19, 2019 regular session of the Lynden City Council at 7:00 p.m. at the Lynden City Hall Annex.

ROLL CALL

Members present: Mayor Scott Korthuis and Councilors Gary Bode, Ron De Valois, Jerry Kuiken, Nick Laninga and Kyle Strengholt.

Members absent: Councilor Lenssen and Councilor Wohlrab absent with notice.

Staff present: Finance Director Anthony Burrows, Fire Chief Mark Billmire, Parks Director Vern Meenderinck, Planning Director Heidi Gudde, Public Works Director Steve Banham, City Clerk Pam Brown and City Administrator Mike Martin.

OATH OF OFFICE - None

APPROVAL OF MINUTES

Councilor Kuiken moved and Councilor Laninga seconded to approve the regular council minutes of August 5, 2019 and the special council meeting held August 1, 2019 during the Public Safety Committee meeting. Motion approved on a 5-0 vote.

ITEMS FROM THE AUDIENCE

Scheduled:

Sandy Ward of the Bellingham Whatcom Tourism Office presented the design efforts and project status of the regional Wayfinding sign program.

Nonscheduled: None

CITY OF LYNDEN



CITY COUNCIL MINUTES OF REGULAR MEETING

2. CONSENT AGENDA

Approval of Payroll Disbursed – August 1-15, 2019

Paychex EFT	\$288,545.64
City of Lynden EFT	\$62,981.01
Warrant Liability	\$58,245.36
Subtotal	\$409,772.01
Paychex EFT Liability	\$6,667.68
Total EFT & Other Liabilities	\$416,449.69

Approval of Claims – August 20, 2019

Manual Warrants No.	<u>73539</u>	through	<u>73539</u>		\$4,122.56
EFT Payment Pre-Pays					\$3,410.07
				Sub Total Pre-Pays	\$7,532.63
Voucher Warrants No.	<u>73540</u>	through	<u>73681</u>		\$625,851.23
EFT Payments					32,490.57
				Sub Total	\$658,341.80
				Total Accts. Payable	\$665,874.43

2018 Berthusen Park Annual Report

The Berthusen Will granting Berthusen Park to the City stipulates that a financial report be reviewed by Council annually. The Finance Committee reviewed the annual report at their August 19 meeting.

Contract with NW Ecological to Update Critical Area Maps

The City of Lynden recently updated its critical area code found in Chapter 16.16 of the Lynden Municipal Code (LMC). As a supplement to the code, Planning staff rely on a critical area inventory and map to identify areas within the City where critical areas are believed to exist.

The current critical area inventory and map were created in 2002. These documents would benefit from updated field verification and revisions utilizing current terminology. Deliverables will include GIS data which can be layered into the City’s database. Northwest Ecological Services has been selected from our vendor list to assist in the update.

The proposed work of the consultant does not assume access to private property. It does not constitute an official delineation or replace the need for critical area studies as required in LMC 16.16. The update to critical areas inventory and map was included in the City’s 2019 Budget at a cost of \$8,000. It is anticipated that the final cost will be \$9,900. As such additional funding will be requested in the 2020 Budget to complete the contract. Expenses in 2019 will not exceed the budgeted amount of \$8,000.



CITY COUNCIL MINUTES OF REGULAR MEETING

Ordinance 1590- Amending LMC Chapter 13.12 – Septic to Water

The revisions to Ordinance 1590 preserve the residential waiver of sewer connection fees; but adds conditions for non-single-family septic to sewer conversions. As larger parcels want to connect

under the waiver, the City needs to consider adjacent properties that might also want to connect which might require a utility easement as a condition of the waiver. The Public Works Committee reviewed this at their August 7 meeting and concurred to recommend approval to the full City Council.

Set Public Hearing Date for Water System Plan Update Service Area Map

City staff is working with RH2 Engineering to finalize the update to the City's Water System Plan (WSP). Staff has addressed comments from the Department of Health and Department of Ecology on the draft submittal, and now it's time to resubmit the plan for final comments and approval.

Whatcom County, as part of their review, requires that the City hold a meeting to hear any public comment on City changes before including the service area map revision in the County's Coordinated Water System Plan.

At the request of the Department of Health the City has committed to provide water to adjoining water associations with nitrate contamination, should the City first obtain sufficient water rights. The Public Works Committee reviewed the information their August 7th meeting and directed staff to forward to City Council to set a public hearing date of September 3, 2019.

Set the Public Hearing to Consider Extension of the Pepin Creek Moratorium

The Pepin Creek moratorium has been in place since September of 2016. It was established in recognition of significant constraints associated with what is now known as the Pepin Creek Sub-area. The City has undertaken significant efforts to examine these constraints and develop solutions which would allow for growth in this area. Some of these key points are noted below:

May 2017 – City initiates a Pepin Creek sub-area study and the drafting of a sub-area plan

July 2018 – Value engineering study held to explore alternate creek realignment options

September 2018 - Planning Department releases a draft of the Pepin Creek Sub-Area Plan

December 2018 – City officially amends the Comprehensive Plan and establish the Pepin Creek Sub-area

March 2019 – Adoption of residential design standards in light of future growth within the sub-area

March 2019 – City initiates a Financial Mitigation Study with Berk Consulting to establish the “fair share” contribution of development to the realignment and roadway improvements with the Pepin Creek Subarea



June 2019 – Engineering team completes the review and estimation of the Value Engineering scenarios

September 2019 – Engineering team develops phasing plan for the creek realignment project to deduce a preferred scenario

It has been determined that the significant infrastructure improvements associated with the creek re-alignment and the improvement of Benson and Double Ditch Roads must be undertaken in a phased approach.

Given this approach, the engineering team and the Public Works department is developing a preferred scenario which is expected to be finalized in September. Subsequently, the financial mitigation study, which began in March, can then be completed as it must correspond closely with a specific plan for creek realignment and a corresponding transportation network.

As these final elements are defined and executed, City staff recommends that the moratorium on construction and development within the Pepin Creek area be continued an additional 6 months from the current date of expiration of September 9, 2019.

Councilor Bode moved and Councilor De Valois seconded to approve the Consent Agenda. Motion approved on a 5-0 vote.

3. PUBLIC HEARING - None

4. UNFINISHED BUSINESS- None

5. NEW BUSINESS

Final Plat Approval – North Prairie Phase 7, Division 2

In September of 2017 the City Council granted preliminary plat approval for the long plat known as North Prairie Phase 7, a proposal by Bob Libolt of North Prairie LLC. The long plat is located east of Northwood Road at the intersection of Brome Street.

The 93-lot plat is approximately 23 acres and has a single-family zoning of RS-72. On December 17, 2018 the City Council authorized an amendment to the development plan which allowed the 93-lot plat to be split into two divisions. At the same meeting the Council authorized final plat approval Division 1 which is made up of 60 lots. Mr. Libolt is now requesting final plat approval of Division 2. This includes the remaining 33 lots of the North Prairie Phase 7 Long Plat.



Staff recommends granting final plat approval based on the following conditions:

1. Completion of all punch list items.
2. Submittal and acceptance of required maintenance bonds and any necessary performance bonds.
3. Payment of final inspection fees for plat construction.
4. Submittal of final as-built drawings.
5. Submittal of final plat mylars.
6. Final development fees paid in full.

Councilor Bode moved and Councilor Strengholt seconded to grant final plat approval of Division 2 of the North Prairie Phase 7 Long Plat subject to the condition noted. Motion approved on 5-0 vote

6. OTHER BUSINESS

Council Committee Updates

Councilor Bode reporting for the Public Works Committee, involving the discussion of:

- School District request for additional parking at the old middle school on Main Street
- 25 MPH speed limit on Northwood Road
- Pedestrian improvements for Line Road
- Old water treatment plant demolition
- YMCA pool is scheduled to open Monday, August 26

Councilor Kuiken reporting for the Finance Committee, involving the discussion of:

- Presentation from satellite agencies involving 2020 budget requests
- Sales tax revenue is close to the projected budget and remains strong
- Fire & Police department overtime hours

Councilor De Valois stated that the Parks Committee meeting had been re-scheduled and would be held tomorrow, August 20, 2019 at 4:00 p.m.

7. EXECUTIVE SESSION

Council did not hold an executive session.

8. ADJOURNMENT

The August 19, 2019 regular session of the Lynden City Council adjourned at 7:40 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Special City Council Minutes – CDC Meeting 8-28-19	
Section of Agenda:	Other	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Draft Community Development Committee Meeting Minutes of August 28, 2019		
Summary Statement:		
Draft Special City Council Minutes – CDC Meeting 8-28-19 Note: Attached minutes have not yet been approved by the CDC.		
Recommended Action:		
Council Review		

CITY OF LYNDEN

PLANNING DEPARTMENT
Heidi Gudde – Planning Director
(360) 354 - 5532



Special Council Meeting

COMMUNITY DEVELOPMENT COMMITTEE MEETING AGENDA

4:00 PM August 28, 2019
1st Floor Conference Room, City Hall

1. ROLL CALL

Council: Mayor Scott Korthuis, Brent Lenssen, Nick Laninga, Gerald Kuiken, Kyle Strenholt, Gary Bode

Staff: Mike Martin, Heidi Gudde

Others: Gary Vis, Kathy Stanford, Doug Mather, Norm Sanga, Lesa Starckenberg Kroontje, Chuck Robinson, Jerilyn Klix-Luna

2. ACTION ITEMS:

A. Approval of minutes from the July 17, 2019 meeting

3. DISCUSSION ITEMS

A. Downtown Business Association (DBA) Request for General Funds -

This group was unable to attend the last Finance Committee meeting where other satellite groups' 2020 requests were heard.

Chuck Robinson – Vice President of the DBA spoke regarding the request. He noted that in the past year the DBA has updated flower pots, Christmas lighting, became a non-profit, purchased bike racks, updated agricultural info signs along Front Street, and powder coated the garbage cans.

Request for 2020 is for \$55,750 and increase of \$8,750. Looking to increase the amount of Christmas decorating for this year as well as the increase on the maintenance on the watering tractor, upgrade the water system at the cemetery entrance planters. Additional bike racks and powder coating of the existing metal parts of the benches along Front Street.

Mayor asked about the \$11k used on Christmas decorations. Chuck related that those funds came from the Main Street award not from the City's general fund.

Discussed the powder coating project which is being done in stages.

Bode asked about the award funds and how it was thought to be used for the wayfinding signs. Chuck related that the DBA was asked not to move forward on the wayfinding because of the regional program that was being developed.

Teri Treat is part of the DBA and also the group that is reviewing the regional wayfinding program.

DBA’s request to be considered as part of the 2020 budget process.

B. Residential Use Restrictions – RV and Boat Storage

HG gave a summary of the code as it has been written and the recent changes to allow for the parking of RV’s on properties between Memorial Day and Labor Day weekend.

Resident, Doug Mather has been parking his RV on his property for some time without knowing that it was in violation of the City code.

Resident, Jerilyn Klix-Luna noted that not everyone can cover the cost of RV storage not to mention the inconvenience of having your RV in storage. GB agreed that it is critical that property owners need the ability to get to their RV throughout a majority of the year.

HG noted that on-street parking pressure will be increased if more properties begin storing RV and boats in their driveways especially as some of the latest subdivisions have lots less than 10,000 sq. ft.

Storage containers enforcement supported by CDC.

Conclusions:

CDC recommended revision to the use restrictions be drafted. Details will need to include:

- Duration of time that RV storage can occur on a residential lot
- Size of a lot that can store RV’s
- Condition of the RV to be defined (licensed)
- Potentially a setback required from property lines and / or sidewalks
- Number of recreational vehicles which can be stored

C. Duffner Mobile Home Park

Lesa SK, representing property owner Norm Sanga, introduced the history and topic of Duffner Mobile Home Park (MHP).

Sanga has recognized a need for this sort of housing in the area. He is also investing money into connecting to the City’s sewer and decommissioning the septic system(s) – a public and environmental benefit.

32 units are permitted in this non-conforming use. No vacancy at the park as housing in this price range is desperately needed. Lesa related that 90% of the Park’s residents are employed in agricultural jobs. 3 are employed at Lynden Door. Residents here are gainfully employed. Lesa noted that Lynden Door has asked the City to consider opportunities for affordable housing – the type that Lynden Door employees could afford.

Additional space is located here where two older homes were removed. This space could accommodate more 8 more units. Code does not allow the use to expand as it is non-conforming. Operating as a non-conforming use also somewhat discourages investment into the property.

Property owner is asking that the code be revised to allow MHP's to be conditional uses or permitted outright in CSR for those properties that currently have an operating MHP. Property owner also asking that RV's also be permitted as permanent living situations at MHP.

Lesa noted that the City has MHP zoning at the Heartland neighborhood but that this did not develop at a manufactured home development so opportunities for MHP living in Lynden are limited.

Text amendment could reference the City's MHP codes.

BL stated that he was not concerned about the expansion of the existing park as long as other codes are met.

SK inquired about eastern expansion or if the additions would occur in the center of the property were the houses were formally located. Sanga confirmed that a neighboring property owner used the southeastern most corner under a lease agreement and that MH additions would occur at the center of the property.

GK asked about the difference between the RV sites versus the MH expansion. Lesa noted that the RV sites are less infrastructure and less permanent than if a MH needed to be moved. Looking at the potential to convert the property to commercial.

GB noted that more people seem to be living at the KOA than before and RV living seems to be needed. Sanga confirmed that at his Hidden Village property the RV spots are typically occupied by single residents.

JK asked about rules of the park as far as maintenance. Lesa noted that the rules could be reviewed and more strongly enforced. The owner would be more apt to do so if the use was permitted.

HG recommended that the criteria for a MHP in CSR zoning should be specific and especially if it is a CUP so that reviewing bodies and the property owner know what to base the review on. Lesa recommended that the use be permitted with specific performance standards which are clearly defined. CUP is an option that is more subjective but if utilized agreed that the criteria should be specific.

D. 610 Front Street Renovation

- a. Restrictive Covenant – 10' "no build easement" has been discussed before and seems ready to move to Council.
- b. Parking Agreement – easement and parking permits discussed.

Lesa SK, representing the property owner, discussed the conditions of the parking agreement and the cost. Specifically that the property owner was being asked to pay \$7000 for a 'floating' easement (no specific parking spaces will be designated) and was also being asked to purchase annual parking permit for these 3 easement spaces.

CDC agreed that the City may be willing to accept a lump sum for the parking easement spaces and collect annual fees for the other parking permits (non-easement).

Agreement to be modified and brought to Council on September 3.

- c. Temporary Construction Easement - has been discussed before and seems ready to move to Council.
- d. Dumpster Agreement

Gudde explained the need for the property owner to have a easement to place a dumpster on City property on garbage day. Noted that staff had discussed the need to screen this location or not screen it. CDC agreed that if a screen was installed it would be likely that the dumpster would remain rather than being put back inside the building.

CDC noted that the agreement should be revised to apply to garbage and recycling bins and not just a single dumpster – as this may become a more feasible option than a dumpster.

Staff to modify and bring the easement to Council on September 3.

E. Buildable Lands Program – Contract with Whatcom County for State Funds

HG gave a summary of the program and the next phase which is data collection. Noted that the funds allotted to the City would likely be put toward staff time as it is difficult to have a consultant sort through the City's permit and plat data. Both the Planning Department and the Public Works Department will be taking time to put this information together. Gudde noted that she intended to research the use of the funds for the City's planned software conversion to a program called Casselle. Ideally Casselle would be able to accommodate the data required for Buildable Lands reporting – which ultimately will need to be done on an annual basis.

Contract will be going to City Council on Sept 3.

F. Budget 2020 - Proposed Planning Department Fee Addendum

Discussion related to pre-application fees and the City's desire to be development friendly. Discussed fees for cell tower additions and other new fees. Council members requested to see fees for Whatcom County and Everson. CDC advised seeing staff proposed fees at the next CDC meeting.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Approval of Payroll and Claims	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input checked="" type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
None		
Summary Statement:		
<p>RCW 42.24.180 sets forth the conditions for issuance of warrants or checks before Council approval. The auditing officer and the City officers designated to sign the warrants shall have an official duty for the faithful discharge of his or her duties.</p> <p>The City Council has adopted contracting, hiring, purchasing, and disbursing policies that implement effective internal controls; and shall provide for its review of the documentation supporting claims paid for its approval of all warrants issued in payment of claims and/or payroll at regularly scheduled public meetings within one month of issuance.</p> <p>The City Council shall require that if, upon review, it disapproves some claims and/or payroll, the auditing officer and the officer designated to sign the warrants or checks shall jointly cause the disapproved claims to be recognized as receivables and to pursue collection diligently until the amounts disapproved are collected or until the City Council is satisfied and approves the claims and/or payroll.</p> <p>The Finance Committee and/or full City Council may stipulate that certain kinds or amounts of claims and/or payroll should not be paid before the City Council has reviewed the supporting documents.</p>		
Recommended Action:		
Approve the payment of City Payroll and Claims.		

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Contract with Whatcom County – Buildable Lands Program	
Section of Agenda:	Consent	
Department:	Planning	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Contract with Whatcom County re Buildable Lands Report Phase 2, Scope of Work, Funding Shares Spreadsheet		
Summary Statement:		
<p>The Buildable Lands program was introduced to the City Council in 2018. The State mandated program is one that examines achieved build-out densities and property availability. The report will also strive to account for in the constraints of critical areas and market factors. The planning period in focus for the first report is 2016 – 2036 with specific look at achieved build-out data from 2016 – 2020. The final report is due in June 2021.</p> <p>The Planning Department has been working Whatcom County and their consultant, Community Attributes, to develop methodology for creating the first Buildable Lands report for Whatcom County. State funding was made available for these efforts and was used toward staff time dedicated to the efforts.</p> <p>The next phase of the project is also eligible for State funds. Similar to the first phase the County has drafted the attached contract which indicates the City of Lynden’s share and the timeline for the expenditures of these funds. A \$36,432.69 share will be dispersed in two separate allocations as described in Exhibit B of the attached scope of work.</p> <p>To have access to this funding, staff is requesting review of the contract and subsequent Council approval of the contract.</p>		
Recommended Action:		
Motion to approve the Buildable Lands Program contract with Whatcom County and authorize the Mayor’s signature on the document.		

CONTRACT FOR SERVICES AGREEMENT
City of Lynden

City of Lynden, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 7,
- Exhibit A (Scope of Work), pp. 8 to 12,
- Exhibit B (Compensation), pp. 13 to 13,

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 July 2019 regardless of the date of signature, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2021.

The general purpose or objective of this Agreement is to: conduct buildable lands analysis inside city limits and engage in related tasks, 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 \$ 36,432.69. 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 _____, 2019.

CONTRACTOR:

City of Lynden

Scott Korthuis, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ___ day of _____, 20 __, before me personally appeared _____ to me known to be the _____ (title) of _____ (Company) 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 _____.
My commission expires _____.

Series 00-09: Provisions Related to Scope and Nature of Services0.1 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 Termination10.1 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 Applicable11.1 Termination for Default: Not Applicable11.2 Termination for Reduction in Funding: Not Applicable11.3 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 Payments20.1 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 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: Not Applicable

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: Not Applicable

- a. Professional Liability - \$1,000,000 per occurrence: Not Applicable

34.2 Industrial Insurance Waiver: Not Applicable

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: Mark Personius, Director, Whatcom County Planning and Development Services.

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
- 38.4 State Not Liable: The State Department of Commerce and the State of Washington are not liable for claims or damages arising from the city's performance of this contract.
- 38.5 Conformance to Interagency Agreement: The City shall follow all applicable terms of the *Interagency Agreement with Whatcom County through Washington State Department of Commerce Local Government Division Growth Management Services Buildable Lands Grants 2019-2021 Biennium*.

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, 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)

Whatcom County is one of seven counties in western Washington subject to the Growth Management Act's Review and Evaluation (Buildable Lands) Program. The State Legislature allocated funds to Whatcom County to begin this work, and the County is subcontracting with the cities to conduct Buildable Lands analysis inside their respective city limits and engage in related tasks. This subcontract covers work to be conducted in State Fiscal Years 2020 and 2021 (July 1, 2019 to June 30, 2021).

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 1	Public Participation – Work with the County and other cities to develop and implement a public participation approach for the Review and Evaluation Program	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. Participate in developing a coordinated County/City public participation approach for the Review and Evaluation Program, consistent with Whatcom County's Public Participation Plan. 2. The public participation approach will include a proposed schedule of County and City public participation activities. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Any written comments on the draft document outlining the coordinated County/City public participation approach. 	
Task 2	City/County Coordination - County/City collaboration to develop a unified Review and Evaluation Program approach	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. County/City collaboration, including City/County Planners' Group meetings, to develop a unified approach to buildable land requirements. 2. GIS coordination. 3. Work with the County and other cities to finalize methods to resolve disputes among jurisdictions. 	
Deliverable(s)	<p>N/A</p> <p>County will issue meeting agendas and maintain final dispute resolution methods document.</p>	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 3	Countywide Planning Policies – Work with the County and other cities to develop, adopt, and ratify County-wide Planning Policies (CWPPs) to establish the buildable lands program	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. City approval of interlocal agreement to establish interim procedures for amending the CWPPs. 2. County/City collaboration, including City/County Planners' Group meetings, to develop proposed CWPPs. 3. Participate in County Council review and adoption of CWPPs, if necessary. 4. City ratification of CWPPs. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Interlocal agreement signed by the City. 2. Documentation of City ratification of the CWPPs establishing the buildable lands program. 	
Task 4	Data Collection and Analysis - Collect annual data to the extent necessary to assess achieved development densities and land suitable for development and conduct preliminary analysis of data	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. County/City coordination 2. Collection of residential development data, including building permits and residential subdivisions. 3. Collection of commercial and industrial development data, including building permits. 4. Collection of land use data. 5. Work with the County and other cities on continued development and utilization of the data reporting and evaluation tool, including preliminary analysis of the data collected. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Completed data reporting tool, with all applicable data collected by the City inserted into the reporting tool. 	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 5	Methodology – Work with the County and other Cities to continue to develop and finalize the Whatcom County Review and Evaluation (Buildable Lands) Program Methodology	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. Review the updated State Buildable Lands Guidelines, as necessary. 2. Review Whatcom County Land Capacity Analysis (LCA) Methodology (2015) and consider whether the LCA Methodology should be combined with the Review and Evaluation Program Methodology. The review and evaluation (buildable lands) analysis and the land capacity analysis will be two separate reports issued at different times. Given this approach, review and provide input relating to whether a single methodology and spreadsheet format can be used for both the review and evaluation (buildable lands) analysis and land capacity analysis, recognizing that the planning periods and some inputs into the spreadsheets will be different for these two separate reports. 3. County/City collaboration, including City/County Planners' Group meetings, to develop a Review and Evaluation Program (Buildable Lands) Methodology. 4. In conjunction with the County and other cities, consult with key stakeholders, as appropriate. 5. Develop market factors for the City and its associated urban growth area. 	
Deliverable(s)	<ol style="list-style-type: none"> 1. Any written comments on the Review and Evaluation (Buildable Lands) Program Methodology 2. City market factors 	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 6	Review and Evaluation Program Report	June 30, 2021
Action(s)	<p>Work with the County and other cities to develop and finalize the Review and Evaluation Program Report with all elements required by RCW 36.70A.215.</p> <p>(a) Determine whether there is sufficient suitable land in the UGA to accommodate the population projection established in the existing Whatcom County Comprehensive Plan and city comprehensive plan.</p> <p>(b) The evaluation and identification of land suitable for development and redevelopment will include:</p> <ul style="list-style-type: none"> • A review and evaluation of the land use designations and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent planned densities from being achieved; and infrastructure gaps (including but not limited to transportation, water, sewer, and stormwater). • Use of reasonable market factors when evaluating land suitable to accommodate new development or redevelopment of land for residential, commercial, and industrial development. <p>(c) Provide an analysis of county and/or city development assumptions, targets, and objectives contained in the county and city comprehensive plans when growth targets and assumptions are not being achieved.</p> <p>(d) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan.</p> <p>(e) Compare achieved densities to growth assumptions and targets contained in the County and City comprehensive plans to determine if planned densities are being achieved. Determine whether actual development patterns are consistent with growth and development targets and assumptions.</p> <p>(e) Based on the actual density of development, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed in the UGA for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.</p> <p>(f) Identify reasonable measures that the City may consider, if necessary, during the next comprehensive plan and development regulation update to comply with the Review and Evaluation Program requirements of the Growth Management Act (RCW 36.70A.215).</p>	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Deliverable(s)	1. Final Review and Evaluation Program Report required by RCW 36.70A.215, jointly issued by the County and cities.	
Task 7	Preliminary Draft Housing Element Revisions	June 30, 2021
Action(s)	<ol style="list-style-type: none"> 1. Review "Housing Memorandum: Issues Affecting Housing Availability and Affordability" (State Department of Commerce, June 2019). 2. Review the housing element in the City comprehensive plan. 3. Work with the consultant to formulate preliminary draft revisions to the housing element, if needed, considering the Review and Evaluation Program Report and any reasonable measures identified in accordance with RCW 36.70A.070(2). 	
Deliverable(s)	1. Preliminary draft revisions, if needed, to the housing element of the City comprehensive plan.	
Task 8	On-Going Implementation	June 30, 2021
Action(s)	1. Work with the consultant to develop procedures and estimate resources needed for on-going implementation of the Review and Evaluation Program, including a user manual, projected staffing resources, and any software/equipment needs.	
Deliverable(s)	1. User manual for the Review and Evaluation Program	
Task 9	<p>Project Management</p> <ol style="list-style-type: none"> 1. Invoices and, if required, status reports. Invoices shall include attached documentation showing the amount expended on each task in the billing period. 2. Develop/administer contract with the County. 	<p>October 10, 2019 January 10, 2020 April 10, 2020 June 10, 2020 July 10, 2020 October 10, 2020 January 10, 2021 April 10, 2021 June 10, 2021 July 10, 2021</p> <p>Ongoing</p>

EXHIBIT "B"
(COMPENSATION)

The County will reimburse City of Lynden expenditures on wages (based on employee's actual hourly rate plus benefits) and contracted services (based on contractor invoices) for the tasks shown above.

The total reimbursement amount shall not exceed \$ 36,432.69, subject to the following provisions below:

- a. City reimbursable expenditures between July 1, 2019 and June 30, 2020 shall not exceed 50% of the total reimbursement amount unless approved in writing by Whatcom County Planning and Development Services.
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(SCOPE OF WORK)

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Deliverable(s)	<p>N/A</p> <p>County will issue meeting agendas and maintain final dispute resolution methods document.</p>	

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Deliverable(s)	1. User manual for the Review and Evaluation Program	
Task 9	<p>Project Management</p> <ol style="list-style-type: none"> 1. Quarterly invoices and, if required, status reports. Invoices shall include attached documentation showing the amount expended on each task in the billing period. 2. Develop/administer contract with the County. 	<p>October 10, 2019 January 10, 2020 April 10, 2020 July 10, 2020 October 10, 2020 January 10, 2021 April 10, 2021 July 10, 2021</p> <p>Ongoing</p>

EXHIBIT "B"
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- b. City reimbursable expenditures between July 1, 2020 and June 30, 2021 shall not exceed 50% of the total reimbursement amount unless approved in writing by Whatcom County Planning and Development Services.

Buildable Lands - County - City - Consultant Shares (2019-2021)

Local jurisdiction staff reimbursement:	315,000
Consultant:	135,000
Total:	450,000

Approx work hours in one year:	2,080
Holidays/Vac / Sick / Training	280
Total Available	1,800

	Equal Allocation Shares	2019 OFM Pop Est.	% of Total Pop.	Project Mgt Shares	Population Based Shares	Total 2-year allocation per jurisdiction	Annual allocation per jurisdiction	Hours per year @ \$70 per hour	% of Total work hours available (one planner)
Whatcom County	\$26,000.00	94,986	42.16%	\$6,160.00	\$61,131.69	\$93,291.69	\$46,645.85	666.37	37.02%
Bellingham	\$26,000.00	90,110	40.00%	\$1,120.00	\$57,993.56	\$85,113.56	\$42,556.78	607.95	33.78%
Blaine	\$26,000.00	5,425	2.41%	\$1,120.00	\$3,491.46	\$30,611.46	\$15,305.73	218.65	12.15%
Everson	\$8,666.67	2,800	1.24%	\$1,120.00	\$1,802.04	\$11,588.71	\$5,794.35	82.78	4.60%
Ferndale	\$26,000.00	14,300	6.35%	\$1,120.00	\$9,203.28	\$36,323.28	\$18,161.64	259.45	14.41%
Lynden	\$26,000.00	14,470	6.42%	\$1,120.00	\$9,312.69	\$36,432.69	\$18,216.35	260.23	14.46%
Nooksack	\$8,666.67	1,605	0.71%	\$1,120.00	\$1,032.96	\$10,819.62	\$5,409.81	77.28	4.29%
Sumas	\$8,666.67	1,604	0.71%	\$1,120.00	\$1,032.31	\$10,818.98	\$5,409.49	77.28	4.29%
Total	\$156,000.00	225,300	100.00%	\$14,000.00	\$145,000.00	\$315,000.00	\$157,500.00	2,250.00	

NOTE: Because Everson, Nooksack, and Sumas share a planner, the total "Equal Allocation Share" is divided by 6 planners (5 city planners and 1 county planner). Then, the Everson, Nooksack and Sumas shares are divided by 3, so that they receive a total of 1 share for 1 planner.

Everson/Nooksack/Sumas total:	\$33,227.31
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	Total City-County Allocation	Equal Allocation Shares	Project Management Shares	Population Based Shares
Task 1 - Public Participation Plan	5,000	5,000		0
Task 2 - County/City Coordination	75,000	75,000		0
Task 3 - Develop/Adopt CWPPs for Review & Eval Program	19,000	19,000		0
Task 4 - Collect annual data	125,000	0		125,000
Task 5 - Develop Review & Eval Program Methodology	20,000	20,000		0
Task 6 - Review and Evaluation Program Report	40,000	20,000		20,000
Task 7 - Preliminary Draft Housing Element Revisions	15,000	15,000		0
Task 8 - On-going Implementation	2,000	2,000		0
Project Management	14,000	0	14,000	0
Total	\$315,000	\$156,000	\$14,000	\$145,000

NOTES:

"Equal Allocation" means that all jurisdictions should spend roughly the same amount of time on a task, regardless of the size of the jurisdiction.

"Population-based" means that the larger the jurisdiction, the more time it will spend on a task.

Double Check:	315,000
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CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Public Hearing for Water System Plan Update - Service Area Map	
Section of Agenda:	Public Hearing	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Water System Plan Service Area Map Figure 2-3		
Summary Statement:		
<p>City staff has worked with RH2 Engineering to finalize the update to the City’s Water System Plan (WSP). Staff has addressed comments from the various public agencies on our draft submittal, and now it’s time to resubmit the plan for final comments and approval. Whatcom County, as part of their review, requires that the City hold a meeting to hear any public comment on City changes to the service area map per the County’s Coordinated Water System Plan. The amended service area map is attached. At their August 19th meeting, City Council approved a hearing date of September 3rd.</p> <p>The map provides a number of minor clarifications to the service area. The most significant change is that the City is, at the request of the Department of Health, offering to serve water to adjoining water associations with nitrate contamination, should the City first obtain sufficient water rights. These associations are shown on the map as Potential Future Additions to the Retail Service Area (RSA).</p> <p>Upon hearing comments, the Council may approve or reject the changes to the service area on the map.</p>		
Recommended Action:		
That City Council authorize the Mayor to submit the amended Water Service Area Map (attached map) along with any public comments to Whatcom County per their Coordinated Water System Plan.		

This map is a graphic representation derived from the City of Lynden Geographic Information System. It was designed and intended for City of Lynden staff use only; it is not guaranteed to survey accuracy. This map is based on the best information available on the date shown on this map.

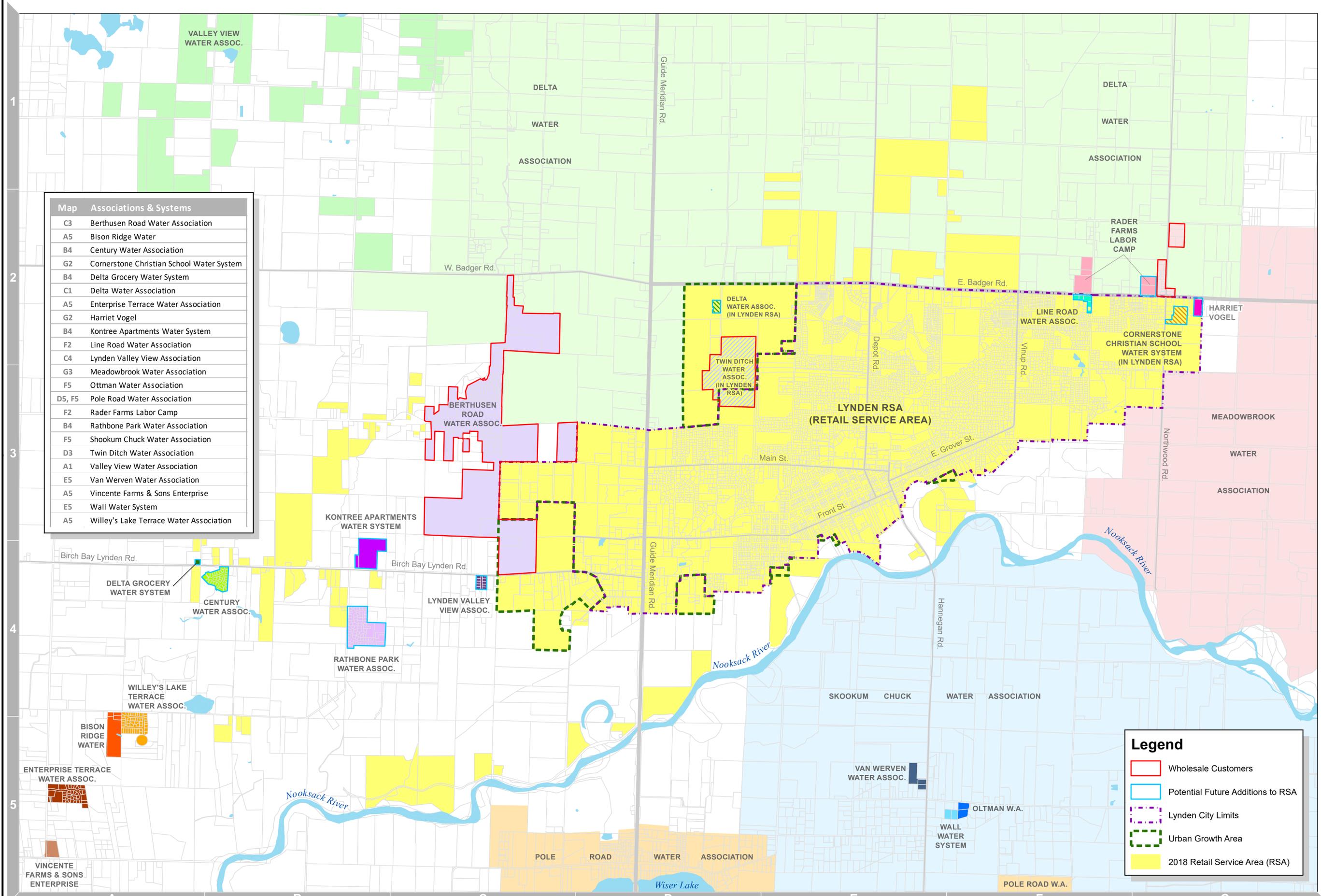
Any reproduction or sale of this map, or portions thereof, is prohibited without express written authorization by the City of Lynden.

This material is owned and copyrighted by the City of Lynden.

Vicinity Map



Figure 2-3 Service Area and Adjacent Systems City of Lynden Water System Plan



Map	Associations & Systems
C3	Berthusen Road Water Association
A5	Bison Ridge Water
B4	Century Water Association
G2	Cornerstone Christian School Water System
B4	Delta Grocery Water System
C1	Delta Water Association
A5	Enterprise Terrace Water Association
G2	Harriet Vogel
B4	Kontree Apartments Water System
F2	Line Road Water Association
C4	Lynden Valley View Association
G3	Meadowbrook Water Association
F5	Ottman Water Association
D5, F5	Pole Road Water Association
F2	Rader Farms Labor Camp
B4	Rathbone Park Water Association
F5	Shookum Chuck Water Association
D3	Twin Ditch Water Association
A1	Valley View Water Association
E5	Van Werven Water Association
A5	Vincente Farms & Sons Enterprise
E5	Wall Water System
A5	Wiley's Lake Terrace Water Association

Legend

- Wholesale Customers
- Potential Future Additions to RSA
- Lynden City Limits
- Urban Growth Area
- 2018 Retail Service Area (RSA)



1 inch = 1,600 feet
0 800 1,600 3,200 Feet
DRAWING IS FULL SCALE WHEN BAR MEASURES 2"



J:\Data\YN114-131\GIS\maps\Figure 2-3.mxd By:zschremp Plot Date: 8/12/2019 Coordinate System:NAD 1983 StatePlane Washington North FIPS 4601 Feet

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Ord 1591 - Extension of the Pepin Creek Moratorium	
Section of Agenda:	Public Hearing	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Ordinance 1591 Extending the Pepin Creek Moratorium, Moratorium Area Map,		
Summary Statement:		
<p>The Pepin Creek moratorium has been in place since September of 2016. It was established in recognition of significant constraints associated with what is now known as the Pepin Creek Sub-area. The City has undertaken significant efforts to examine these constraints and develop solutions which would allow for growth in this area.</p> <p>It has been determined that the significant infrastructure improvements associated with the creek re-alignment and the improvement of Benson and Double Ditch Roads must be undertaken in a phased approach. Given this approach, the engineering team and the Public Works department is developing a preferred scenario which is expected to be finalized in September. Subsequently, the financial mitigation study, which began in March, can then be completed as it must correspond closely with a specific plan for creek realignment and a corresponding transportation network. This is scheduled to be completed by the end of November 2019.</p> <p>As these final elements are defined and executed, City staff recommends that the moratorium on construction and development within the Pepin Creek area be continued an additional 6 months from the current date of expiration of September 9, 2019. The moratorium may be lifted earlier as sub-area planning work is completed.</p>		
Recommended Action:		
Motion to approve Ordinance 1591 extending, by 6 months, the existing moratorium of development on those properties previously identified within the Pepin Creek Sub-area and authorize the Mayor’s signature on the document.		

ORDINANCE NO. 1591

INTERIM ORDINANCE ESTABLISHING A MORATORIUM ON SUBDIVISION AND PLANNED RESIDENTIAL DEVELOPMENT APPLICATIONS AND CERTAIN BUILDING PERMIT APPLICATIONS FOR PROPERTY LOCATED WITHIN THE PEPIN CREEK PROJECT AREA

WHEREAS, on August 19, 2013, the City of Lynden (“City”) adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the “Pepin Creek” project (“Pepin Creek Project” or “Project”); and

WHEREAS, the Pepin Creek Project includes the relocation and combination of surface water flows from Double Ditch and Benson Ditch between Badger Road and Main Street into one “new” watercourse known as Pepin Creek; and

WHEREAS, the general vicinity of the Pepin Creek Project has experienced instances of extreme flooding in recent years, causing hundreds of thousands of dollars in property damage, closing and damaging public roads and infrastructure, cutting residents off from emergency access, and damaging agricultural land; and

WHEREAS, the Pepin Creek Project is designed to implement a new drainage pattern to protect public roads and public road infrastructure, substantially reduce flooding, facilitate improved storm water control, and provide the ancillary benefit of natural fish and wildlife habitat; and

WHEREAS, the City has completed acquisition of several properties necessary to accommodate the new Pepin Creek corridor; and

WHEREAS, the City must continue to undertake numerous complex and detailed planning, funding, design, permitting, construction and other associated issues to complete the Pepin Creek Project (“Pepin Creek Project Issues”); and

WHEREAS, Pepin Creek Project Issues include without limitation:

- corridor design and permitting for the Pepin Creek Project;
- locating and increasing stormwater capacity and coordinating the associated street and utility infrastructure locations;
- design and permitting options associated with necessary downstream bank stabilization associated with the Pepin Creek Project;
- identifying financing and equitable allocation of system construction costs; and

WHEREAS, the Council has adopted, on October 16, 2017, Resolution No. 975, which is a Resolution of Intent outlining the strategies and corresponding timeline to resolve Pepin Creek Project Issues; and

WHEREAS, that area of the city believed to be affected by Pepin Creek Project Issues at this time and for purposes of this Ordinance include without limitation the area shown on Exhibit A (“Pepin Creek Project Area”), which is incorporated herein; and

WHEREAS, Ordinance No. 1509, *An Ordinance of the City of Lynden to provide Annexation to the City of Lynden* adopted on June 6, 2016 (“Ordinance No. 1509”), annexed property in the Pepin Creek Project Area into the City of Lynden; and

WHEREAS, Ordinance No. 1509 included a clause stating that the “City has identified the need for the completion of the Pepin Creek project prior to development” of the property annexed into the City; and

WHEREAS, except as set forth herein, property development within the Pepin Creek Project Area will likely disrupt the City’s ability to effectively address Pepin Creek Project Issues; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's regulatory authority and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Ordinance No. 1513, *Ordinance Establishing an Emergency Moratorium on Subdivision and Planned Residential Development Applications and Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 19, 2016; and

WHEREAS, Ordinance No. 1514, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 17, 2016; and

WHEREAS, Ordinance No. 1525, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on April 17, 2017; and

WHEREAS, Ordinance No. 1538, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 16, 2017; and

WHEREAS, Ordinance No. 1555, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on May 7, 2018; and

WHEREAS, Ordinance No. 1562, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building*

Permit Applications for Property Located Within the Pepin Creek Project Area, was adopted by the City on September 17, 2018; and

WHEREAS, Ordinance No. 1577, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 4, 2019; and

WHEREAS, the City held a public hearing on this proposed Ordinance 1591 on the 3rd day of September 2019; and

WHEREAS, a continuation of the moratorium on development in the Pepin Creek Project Area is required to allow for proper planning and implementation of the Pepin Creek Project; and

WHEREAS, adoption of this ordinance extending the moratorium to assure that Pepin Creek Project Issues are resolved consistent with the Project addresses a public emergency and shall qualify as a public emergency ordinance; and

WHEREAS, the public emergency ordinance is necessary to protect the public health, safety, and welfare of the community, and public property; and

WHEREAS, this public emergency moratorium ordinance, as provided in RCW 35.A.12.130, when passed by a majority plus one of the whole membership of the council, is effective upon adoption; and

WHEREAS, the foregoing recitals are a material part of this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN DOES ORDAIN as follows:

Section 1. Findings of Fact. The City Council adopts the above “WHEREAS” recitals as findings of fact in support of this Ordinance. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Moratorium Established For New Subdivisions. The City shall not accept applications for any new subdivisions (including both short plats and long plats) or for any new planned residential developments for property located in whole or in part in the Pepin Creek Project Area, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 3. Moratorium Established For Certain Building Permit Applications. The City shall not accept building permit applications in the Pepin Creek Project Area for new structures intended for human occupancy or for additions to existing residential structures of more than fifty percent (50%) in square footage, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 4. Resolution of Pepin Creek Project Issues. During the term of this interim ordinance the City shall work on resolving the following issues.

- A. Corridor Design. The Pepin Creek Project Area has demonstrated stormwater capacity deficiencies. The City must complete an analysis and design of a new stormwater system with adequate capacity to fully accommodate basin flow. This would also include locating the street and utility infrastructure to function with that new system.
- B. Downstream Stabilization. The existing Double Ditch channel downstream from Main Street to the confluence with Fishtrap Creek presently has unstable banks. The City intends to identify corrective options, including necessary design, permitting, and funding, and consider construction implementation of corrective options.
- C. Financial Strategy. The City must develop a financing plan and method for equitable allocation of system construction costs and responsibilities among property owners in the Pepin Creek Project Area.

Section 5. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 6. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. This Ordinance shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR on the _____ day of September 2019,

M A Y O R

ATTEST:

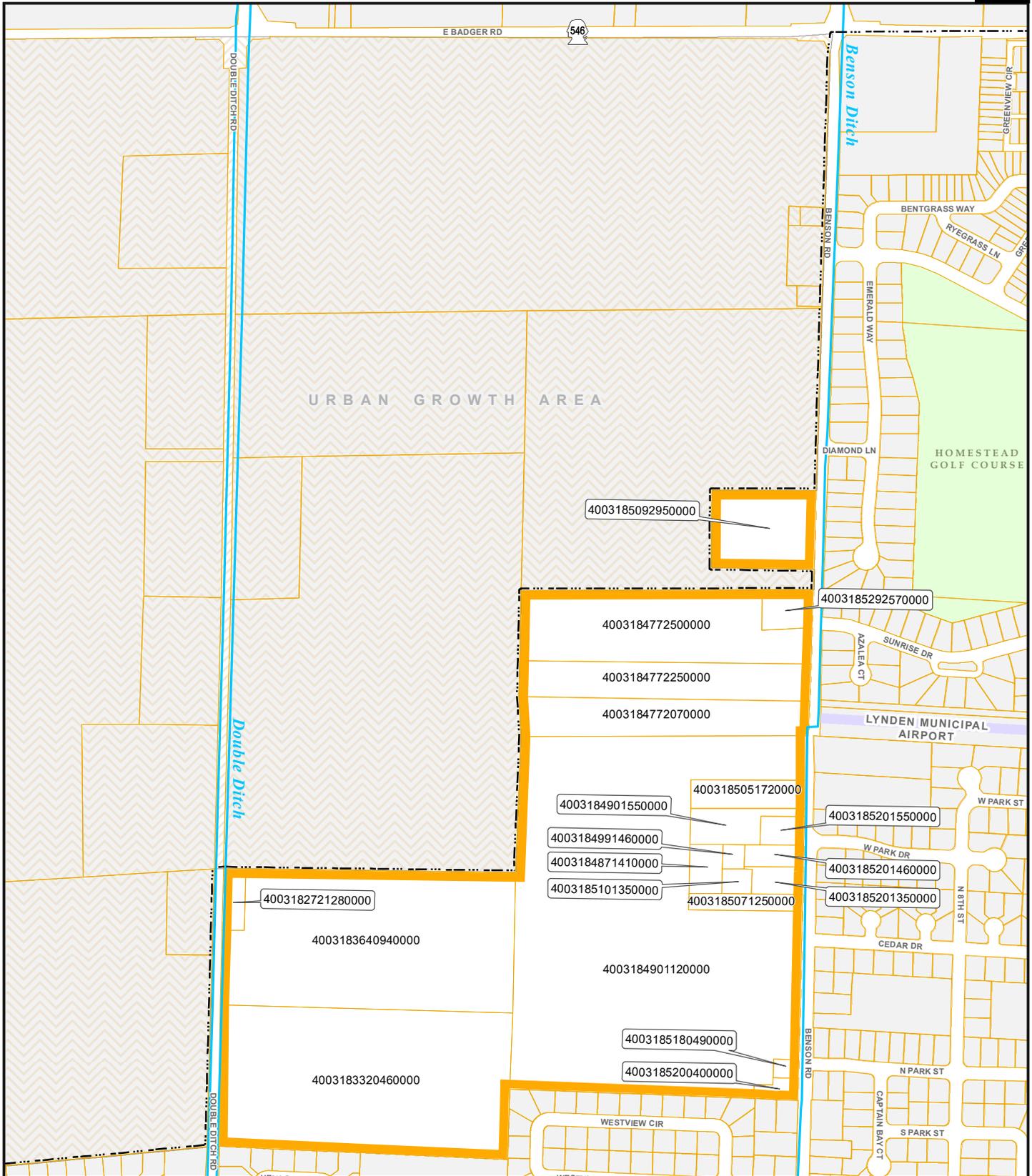
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

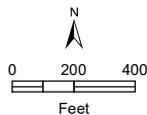
Exhibit A

Properties Located within Pepin Creek Project Area



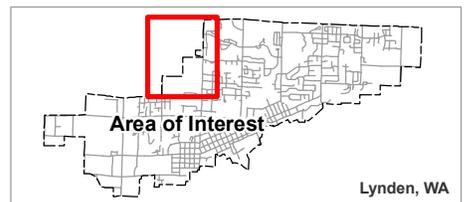
Map Key

- Properties in Pepin Creek Project Area
- Property Boundaries
- City Limit
- Urban Growth Area (Unincorporated)
- Waterway



Updated: September 19, 2016

Doc. Path: \\Saturn\gis\Projects\Public Works\PeppinCreek\ExhibitA\COPY2.mxd



Lynden, WA

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Public Defender Interim Contract	
Section of Agenda:	New Business	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input checked="" type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
1) Contract Amendment - Redlined 2) Contract Amendment - Clean		
Summary Statement:		
<p>The City of Lynden provides Public Defender services to individuals who are accused of a crime but who cannot afford an attorney. Our previous Public Defender is no longer able to provide those services. As a result, the City needs to hire an interim replacement while recruiting a permanent Public Defender.</p> <p>Sharon Westergreen, a qualified attorney living in Everson, has agreed to provide Interim Public Defender services for the City until a permanent replacement can be identified. That search is expected to take 60 to 90 days. The cost and scope of the contract are generally comparable with of the cost and scope of the previous contract the City had with the previous Public Defender.</p>		
Recommended Action:		
Approve the attached contract for Public Defender services		

**City of Lynden
Public Defender Contract for Interim
Indigent Criminal Defense Services**

This Agreement for Interim Indigent Criminal Defense Services (“Agreement”) by and between the City of Lynden, a municipal corporation, hereinafter referred to as the “City,” and Sharon D. Westergreen, Westergreen Law, hereinafter referred to as the “Contractor,” collectively referred to as “Parties,” is for the purpose of providing short-term, temporary attorney services as outlined herein, commencing ~~August~~ July 24, 2019.

Whereas, the Parties understand that the City is in the process of retaining an attorney or law firm to perform the services described in the Agreement on a long-term, non-temporary basis; and

Whereas, once the City retains an attorney or law firm as described above, the City will terminate this Agreement in accordance with its terms; and

Whereas, the above recitals are a material part of this Agreement; and

Now, therefore, the
~~The~~ Parties agree as follows:

Section I – Services

Contractor agrees to provide all professional services necessary for indigent defendants charged with misdemeanors and gross misdemeanors in the City of Lynden, Washington. Services include:

- 1) Attending regular and special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the current Lynden Municipal Court calendar (if additional court appearances are added to the Public Defender schedule that existed as of July 15, 2019, this Contract shall be re-negotiated to accommodate for the extra work);
- 2) ~~Timely contacting defendants if the defendant is incarcerated;~~
- 3) Appearing in Whatcom County Jail for hearings in the jail when necessary and as determined by the Lynden Municipal Court;
- 4) ~~Having available an all-hours pager~~ or phone number for law enforcement use to respond to calls;
- 5) ~~Accepting calls from clients and potential clients charged with crimes within the jurisdiction of the City and responding appropriately;~~
- 6) ~~Meeting with clients and conducting investigations as appropriate;~~
- 4) ~~Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and~~
- 5) ~~Performing services consistent with the standard of practice within the Lynden community.~~

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The Contractor agrees to provide professional legal services for all Lynden Municipal Court cases that have been determined to be within the scope of indigent defense. Cases shall be assigned to the Contractor at the discretion of the Lynden Municipal Court Judge. The maximum number of cases which the Contractor will be assigned shall be consistent with the Standards for Indigent Defense adopted by the Washington Supreme Court, and as hereafter amended, and which allows the Contractor the ability to give each client the time and effort necessary to ensure effective representation.

Section II – Consideration

In consideration for the services described above, the City agrees to pay the Contractor for such services as follows:

- 1) ~~An hourly rate of sixty dollars (\$60) per hour for Contractor's attorney time and thirty dollars (\$30) per hour for Contractor's paralegal time/legal assistant time spent. The sum of three hundred dollars (\$300) per on each assigned case except that probation revocation cases and probation review cases shall be paid at \$240 per case. For purposes of this paragraph, case shall mean criminal charge, on public defense services for the City of Lynden, whether the case is assigned yet or not (i.e. Contractor will not hang up on a defendant who calls, but once she realizes that the person has not had a public defender appointed, she will advise the client on the process and conclude the contact as soon as possible.)~~
 ↪

If a warrant is issued for a no show, on a defendant who is on the public defender's case load, and that warrant is not served within 45 days of the issuance of the warrant, nor the defendant found or available to be contacted within said 45 days, the ~~public defender~~ Contractor may enter a Motion to Withdraw from the case. Should the defendant later return to Lynden Municipal Court and require a public defender, the Contractor may charge the City as he/she would for a new case.

- 2) The sum of one thousand dollars (\$1000) for all appeals taken to Superior Court.

~~In addition to the flat fee for the case, bench trials and court hearings requiring witness attendance shall be paid at a rate of fifty dollars (\$50) per hour.~~

- 3) ~~The sum of three hundred dollars (\$300) per half day spent in jury trial, in addition to the per case fee set forth in subparagraph 1.~~

- 4)3) Reimbursement for the costs of investigation services as appropriate; provided that such services must be supported by documentation satisfactory to the City of Lynden.

- 5)4) Reimbursement for costs of the following nature, supported by documentation satisfactory to the City of Lynden.
 - a) The actual reasonable cost of an expert witness or interpreter ordered by the Lynden Municipal Court in connection with services performed under the terms of this Agreement.
 - b) The actual reasonable expense of service of subpoenas, if any required in connection with the services performed under the terms of this Agreement.

- 7) The Contractor’s compensation shall be paid monthly ~~on account for cases assigned during that month~~, with payment due within 30 days of the invoice date. ~~Contractor’s invoices shall list the time spent by case number except when it is administratively burdensome to do so, such as during court appearances on numerous cases. In such instances, Contractor may lump representation of numerous cases into one entry of time, without any reference to case numbers.~~ The City of Lynden Finance Department must receive invoices from Contractor by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing during the current month. The Finance Department is required to seek City Council approval of invoices during the second Council meeting of the month (third Monday) before payment can be rendered.

Section III – Review & Supervision

The City reserves the right to assure that indigent clients referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this section shall be construed or applied in any manner that may violate the confidentiality of any privileged information.

Section IV – Maintenance of Office

The Contractor shall be responsible for (1) access to an office that accommodates confidential meetings with clients (2) a postal address and (3) adequate telephone services to ensure prompt responses to client contact.

Section V – Licensing

The Contractor agrees to remain licensed to practice law in the State of Washington during the term of any criminal defense contract with the City, and will further, at all times pertinent thereto, abide by the code of professional responsibility.

Section VI—Standards for Indigent Defense Services

The Contractor agrees to perform services consistent with the requirements contained in the Standards for Indigent Defense Services adopted by the Washington Supreme Court and as hereafter amended.

Section VII – Malpractice Insurance

The Contractor shall furnish to the City and file with the City Clerk and at all times during the existence of this Contract, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, each with a minimum liability of \$1,000,000 per occurrence/ \$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Contract and cause for termination at any time. A policy naming the individual Contractor, among others named in the policy, shall be considered in compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the City prior to the signing of this Contract. Written notice of cancellation or reduction in coverage shall be delivered to the City thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance policy is obtained shall be approved by the state insurance commissioner pursuant to Title 48 RCW, and shall have at least an A or an A+ Best Rating.

Section VIII – Assignment or Subcontracting

The Contractor shall not assign or subcontract any case provided under the terms of this Agreement without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from the approved list of attorneys attached as Exhibit A to assist with the services provided under the terms of this Agreement. Any request for an addition to the approved list of qualified attorneys shall be submitted to the City Administrator for approval prior to said attorney providing services under this Agreement, which approval may be withheld in the City's sole discretion. If after three (3) business days, no decision is made by the City Administrator on a requested addition to the approved list set forth in Exhibit A, the addition shall be deemed accepted by the City. A qualified attorney shall mean an attorney licensed to practice law in the state of Washington who is able to certify that he or she complies with the applicable Standards for Indigent Defense Services as adopted by the Washington Supreme Court and as hereafter amended. All terms and conditions of this Agreement shall apply to any approved subcontract related to this Agreement. Contractor shall remain fully responsible for compliance with the terms and conditions of this Agreement on any case assigned to Contractor, including cases in which services are subcontracted by Contractor to another attorney as provided herein.

The Contractor may have a qualified attorney fill-in for the Contractor should the Contractor require coverage on an occasional ad-hoc basis. Abuse of this provision shall be grounds for the City to terminate this Contract.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney at Law other than to the Contractor herein; except that, the City shall assign an indigent defendant with whom the Contractor has a conflict of interest, to an Attorney-at-Law of the City's choice. Except as otherwise provided, assignment of indigent defendant cases

to an Attorney-at-Law other than the Contractor shall constitute a material breach of this agreement by the City, and the City shall be liable to the Contractor for the fee that the Contractor would have received from the City had the case been properly assigned to the Contractor.

Section IX – Non-Discrimination

During the term of this Agreement, the Contractor agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. The Contractor shall not discriminate against any employee or applicant for employment for the above reasons, provided the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents performance of the particular work involved.

Section X – Relationship of Parties

The Parties intend that this Agreement shall create an independent Contractor relationship between the Contractor and the City. The Contractor shall not be considered to be agent, employee, servant or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and/or sub-contractors during the term of this Agreement.

In the performance of the services herein contemplated, the Contractor shall be deemed to be an independent Contractor with the authority to control and direct the performance of the details of the work; subject however, to direction by the Lynden Municipal Court and the City's right of inspection and review.

Section XI – Communication Between Parties

Communication between the Contractor and the City shall be addressed to the regular place of business of each party.

In the case of the Contractor, all communications to the Contractor, and referrals of cases, shall be sent to:

Sharon D. Westergreen
P.O. Box 174
Everson, WA 98247

In the case of the City, all communications to the City shall be sent to:

City of Lynden,
Court Clerk
300 4th Street
Lynden, WA 98264

Section XII – Termination of Parties

In the event that the City in its sole discretion determines that the work of the Contractor or another qualified attorney hired by the Contractor, is unsatisfactory, the City shall notify the Contractor by serving, at least fourteen (14) days prior, written notice to the Contractor stating reasons why this Agreement is being terminated.

Either the City or the Contractor may terminate this Agreement without cause. To terminate this Agreement without cause, the party terminating shall notify the other party at least fourteen (14) days in advance of the proposed date of termination and, during that fourteen-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the Parties. Either Party may waive this fourteen-day notice and the Parties may mutually agree on the termination date.

Following termination of this Agreement, Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide indigent defense services. Pending cases shall mean cases being temporarily handled by assigned to Contractor, in accordance with this Agreement which have not been resolved. ~~Should the City pay the selected attorney on a monthly basis, Contractor shall withdraw from pending cases and substitute the selected attorney for all said cases. Should the City pay the selected attorney on a per case basis, at Contractor's discretion, Contractor may move to withdraw from pending cases and substitute the selected attorney.~~

Following termination of this Agreement, Contractor shall provide to the attorney selected by the City to provide permanent indigent defense services all pending case files and discovery in Contractor's possession and be available to assist with the transition. If selected as the City's permanent indigent defense attorney, Contractor intends to provide a credit to the City for work performed on pending cases.

Section XIII-Remedies for Breach and attorney's fees and costs

All remedies available in law and equity shall be available in the event of a breach of this Agreement. In the event, legal action is initiated by either party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled by this Agreement, to its reasonable attorney's fees and costs, including those incurred on appeal.

Section XIV-Nonwaiver of Breach

Failure of either party to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

Section XV – Venue Stipulation

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Agreement shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

Section XVI-Integration

This writing supersedes all prior agreements between the Parties (whether written or oral) and constitutes the full and only agreement between the Parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in writing. This Agreement may only be amended or modified by written agreement of the Parties.

Section XVII-Severability

If any portion of this Agreement is deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected thereby.

In Witness Whereof, the Parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the Parties have executed this Agreement on the day and year indicated.

Contractor
Sharon D. Westergreen, Westergreen Law

Scott Korthuis
Mayor, City of Lynden

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

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

Dated: _____

NOTARY PUBLIC in and for the State of WA.

My commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Sharon D. Westergreen signed this instrument and acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledges it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA.

My commission expires _____

EXHIBIT A

Bratlien, Mark, WSBA #33819
Lackie, Patrick, WSBA # 31484

**City of Lynden
Public Defender Contract for Interim
Indigent Criminal Defense Services**

This Agreement for Interim Indigent Criminal Defense Services (“Agreement”) by and between the City of Lynden, a municipal corporation, hereinafter referred to as the “City,” and Sharon D. Westergreen, Westergreen Law, hereinafter referred to as the “Contractor,” collectively referred to as “Parties,” is for the purpose of providing short-term, temporary attorney services as outlined herein, commencing July 24, 2019.

Whereas, the Parties understand that the City is in the process of retaining an attorney or law firm to perform the services described in the Agreement on a long-term, non-temporary basis; and

Whereas, once the City retains an attorney or law firm as described above, the City will terminate this Agreement in accordance with its terms; and

Whereas, the above recitals are a material part of this Agreement; and

Now, therefore, the Parties agree as follows:

Section I – Services

Contractor agrees to provide all professional services necessary for indigent defendants charged with misdemeanors and gross misdemeanors in the City of Lynden, Washington. Services include:

- 1) Attending regular and special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the current Lynden Municipal Court calendar (if additional court appearances are added to the Public Defender schedule that existed as of July 15, 2019, this Contract shall be re-negotiated to accommodate for the extra work);
- 2) Appearing in Whatcom County Jail for hearings in the jail when necessary and as determined by the Lynden Municipal Court;
- 3) Having available an all-hours pager or phone number for law enforcement use;
- 4) Accepting calls from clients and potential clients charged with crimes within the jurisdiction of the City and responding appropriately;
- 5) Meeting with clients and conducting investigations as appropriate;
- 6) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 7) Performing services consistent with the standard of practice within the Lynden community.

The Contractor agrees to provide professional legal services for all Lynden Municipal Court cases that have been determined to be within the scope of indigent defense. Cases

shall be assigned to the Contractor at the discretion of the Lynden Municipal Court Judge. The maximum number of cases which the Contractor will be assigned shall be consistent with the Standards for Indigent Defense adopted by the Washington Supreme Court, and as hereafter amended, and which allows the Contractor the ability to give each client the time and effort necessary to ensure effective representation.

Section II – Consideration

In consideration for the services described above, the City agrees to pay the Contractor for such services as follows:

- 1) An hourly rate of sixty dollars (\$60) per hour for Contractor’s attorney time and thirty dollars (\$30) per hour for Contractor’s paralegal time/legal assistant time spent on each assigned case on public defense services for the City of Lynden, whether the case is assigned yet or not (i.e. Contractor will not hang up on a defendant who calls, but once she realizes that the person has not had a public defender appointed, she will advise the client on the process and conclude the contact as soon as possible.)

If a warrant is issued for a no show, on a defendant who is on the public defender’s case load, and that warrant is not served within 45 days of the issuance of the warrant, nor the defendant found or available to be contacted within said 45 days, the Contractor may enter a Motion to Withdraw from the case. Should the defendant later return to Lynden Municipal Court and require a public defender, the Contractor may charge the City as he/she would for a new case.

- 2) The sum of one thousand dollars (\$1000) for all appeals taken to Superior Court.
- 3) Reimbursement for the costs of investigation services as appropriate; provided that such services must be supported by documentation satisfactory to the City of Lynden.
- 4) Reimbursement for costs of the following nature, supported by documentation satisfactory to the City of Lynden.
 - a) The actual reasonable cost of an expert witness or interpreter ordered by the Lynden Municipal Court in connection with services performed under the terms of this Agreement.
 - b) The actual reasonable expense of service of subpoenas, if any required in connection with the services performed under the terms of this Agreement.
- 5) The Contractor’s compensation shall be paid monthly with payment due within 30 days of the invoice date. Contractor’s invoices shall list the time

spent by case number except when it is administratively burdensome to do so, such as during court appearances on numerous cases. In such instances, Contractor may lump representation of numerous cases into one entry of time, without any reference to case numbers. The City of Lynden Finance Department must receive invoices from Contractor by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing during the current month. The Finance Department is required to seek City Council approval of invoices during the second Council meeting of the month (third Monday) before payment can be rendered.

Section III – Review & Supervision

The City reserves the right to assure that indigent clients referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this section shall be construed or applied in any manner that may violate the confidentiality of any privileged information.

Section IV – Maintenance of Office

The Contractor shall be responsible for (1) access to an office that accommodates confidential meetings with clients (2) a postal address and (3) adequate telephone services to ensure prompt responses to client contact.

Section V – Licensing

The Contractor agrees to remain licensed to practice law in the State of Washington during the term of any criminal defense contract with the City, and will further, at all times pertinent thereto, abide by the code of professional responsibility.

Section VI—Standards for Indigent Defense Services

The Contractor agrees to perform services consistent with the requirements contained in the Standards for Indigent Defense Services adopted by the Washington Supreme Court and as hereafter amended.

Section VII – Malpractice Insurance

The Contractor shall furnish to the City and file with the City Clerk and at all times during the existence of this Contract, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, each with a minimum liability of \$1,000,000 per occurrence/ \$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Contract and cause for termination at any time. A policy naming the individual Contractor, among others named in the policy, shall be considered in compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the City prior to the signing of this Contract. Written notice of cancellation or reduction in coverage shall be delivered to the

City thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance policy is obtained shall be approved by the state insurance commissioner pursuant to Title 48 RCW, and shall have at least an A or an A+ Best Rating.

Section VIII – Assignment or Subcontracting

The Contractor shall not assign or subcontract any case provided under the terms of this Agreement without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from the approved list of attorneys attached as Exhibit A to assist with the services provided under the terms of this Agreement. Any request for an addition to the approved list of qualified attorneys shall be submitted to the City Administrator for approval prior to said attorney providing services under this Agreement, which approval may be withheld in the City's sole discretion. If after three (3) business days, no decision is made by the City Administrator on a requested addition to the approved list set forth in Exhibit A, the addition shall be deemed accepted by the City. A qualified attorney shall mean an attorney licensed to practice law in the state of Washington who is able to certify that he or she complies with the applicable Standards for Indigent Defense Services as adopted by the Washington Supreme Court and as hereafter amended. All terms and conditions of this Agreement shall apply to any approved subcontract related to this Agreement. Contractor shall remain fully responsible for compliance with the terms and conditions of this Agreement on any case assigned to Contractor, including cases in which services are subcontracted by Contractor to another attorney as provided herein.

The Contractor may have a qualified attorney fill-in for the Contractor should the Contractor require coverage on an occasional ad-hoc basis. Abuse of this provision shall be grounds for the City to terminate this Contract.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney at Law other than to the Contractor herein; except that, the City shall assign an indigent defendant with whom the Contractor has a conflict of interest, to an Attorney-at-Law of the City's choice. Except as otherwise provided, assignment of indigent defendant cases to an Attorney-at-Law other than the Contractor shall constitute a material breach of this agreement by the City, and the City shall be liable to the Contractor for the fee that the Contractor would have received from the City had the case been properly assigned to the Contractor.

Section IX – Non-Discrimination

During the term of this Agreement, the Contractor agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. The Contractor shall not discriminate against any employee or applicant for employment for the above reasons, provided the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents performance of the particular work involved.

Section X – Relationship of Parties

The Parties intend that this Agreement shall create an independent Contractor relationship between the Contractor and the City. The Contractor shall not be considered to be agent, employee, servant or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and/or sub-contractors during the term of this Agreement.

In the performance of the services herein contemplated, the Contractor shall be deemed to be an independent Contractor with the authority to control and direct the performance of the details of the work; subject however, to direction by the Lynden Municipal Court and the City's right of inspection and review.

Section XI – Communication Between Parties

Communication between the Contractor and the City shall be addressed to the regular place of business of each party.

In the case of the Contractor, all communications to the Contractor, and referrals of cases, shall be sent to:

Sharon D. Westergreen
P.O. Box 174
Everson, WA 98247

In the case of the City, all communications to the City shall be sent to:

City of Lynden,
Court Clerk
300 4th Street
Lynden, WA 98264

Section XII – Termination of Parties

In the event that the City in its sole discretion determines that the work of the Contractor or another qualified attorney hired by the Contractor, is unsatisfactory, the City shall notify the Contractor by serving, at least fourteen (14) days prior, written notice to the Contractor stating reasons why this Agreement is being terminated.

Either the City or the Contractor may terminate this Agreement without cause. To terminate this Agreement without cause, the party terminating shall notify the other party at least fourteen (14) days in advance of the proposed date of termination and, during that fourteen-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the Parties. Either Party may waive this fourteen-day notice and the Parties may mutually agree on the termination date.

Following termination of this Agreement, Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide indigent defense services. Pending cases shall mean cases being temporarily handled by Contractor.

Following termination of this Agreement, Contractor shall provide to the attorney selected by the City to provide permanent indigent defense services all pending case files and discovery in Contractor's possession and be available to assist with the transition. If selected as the City's permanent indigent defense attorney, Contractor intends to provide a credit to the City for work performed on pending cases.

Section XIII-Remedies for Breach and attorney's fees and costs

All remedies available in law and equity shall be available in the event of a breach of this Agreement. In the event, legal action is initiated by either party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled by this Agreement, to its reasonable attorney's fees and costs, including those incurred on appeal.

Section XIV-Nonwaiver of Breach

Failure of either party to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

Section XV – Venue Stipulation

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Agreement shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

Section XVI-Integration

This writing supersedes all prior agreements between the Parties (whether written or oral) and constitutes the full and only agreement between the Parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in writing. This Agreement may only be amended or modified by written agreement of the Parties.

Section XVII-Severability

If any portion of this Agreement is deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected thereby.

In Witness Whereof, the Parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the Parties have executed this Agreement on the day and year indicated.

Contractor
Sharon D. Westergreen, Westergreen Law

Scott Korthuis
Mayor, City of Lynden

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

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

Dated: _____

NOTARY PUBLIC in and for the State of WA.

My commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Sharon D. Westergreen signed this instrument and acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledges it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA.

My commission expires _____

EXHIBIT A

Bratlien, Mark, WSBA #33819
Lackie, Patrick, WSBA # 31484

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Ordinance No. 1592 Amending Chapter 10.08.100 Parking and Loading	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Ordinance No. 1592	
Summary Statement:	<p>At the August 7th Public Works Committee meeting, Jim Frey, Lynden School District Superintendent, submitted a letter explaining that the District is repurposing the old middle school facilities to be used for early childhood classrooms and district offices. Part of the plan is to include a bus loop and parent drop off next to the school along Main Street. The school district would like to add 8 parallel parking spaces on Main Street. Currently parking is not allowed along the sidewalk next to the school as previously that would have created unsafe circumstances.</p> <p>At their August 7th meeting, the Public Works Committee reviewed this request and directed staff to amend Section 10.08.100 of the Lynden Municipal Code to reflect this change and submit it to the full City Council for approval.</p>	
Recommended Action:	That City Council approves Ordinance No. 1592 - Amendment to Chapter 10.08.100 Parking and Loading and authorize the Mayor's signature	

ORDINANCE NO. 1592

AN ORDINANCE OF THE CITY OF LYNDEN, AMENDING SECTION 10.08
PARKING AND LOADING

WHEREAS, Section 10.08 of the Lynden Municipal Code regulates parking and loading zone restrictions and allowances, including infractions for violations; and

WHEREAS, from time to time certain chapters of the Lynden Municipal Code need updating in order provide clarification and to reflect minor changes needed in order to accurately reflect changes in parking needs; and

WHEREAS, parking on Main Street between 300 and 604 Main Street was previously restricted due to the location of the former Middle School; and

WHEREAS, the relocation of the Middle School and the planned future use of the existing facilities by the Lynden School District can be safely and effectively served with that parking prohibition removed;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 10.08.100 of the Lynden Municipal Code is hereby repealed and replaced as follows:

Section 10.08.100 - Parking prohibited on certain streets.

- A. It is unlawful for any person to park any motor vehicle on any portion of Bradley Road within the city limits of Lynden.
- B. ~~It is unlawful for any person to park, stop or let stand any vehicle on any portion of Main Street between 300 Main Street and 604 Main Street.~~
- C. It is unlawful for any person to park on any portion of Evergreen Street within the city limits of Lynden.
- D. It is unlawful for any person to park on any portion of Agronomy Way within the city limits of Lynden.
- E. Any person violating this provision shall be deemed guilty of an infraction and shall be fined not less than five dollars and not more than two hundred fifty dollars

(Ord. 1531 § A, 2017: Ord. 1290 § A, 2007: Ord. 1154 § A, 2002: Ord. 944 § A, 1994).

Section 2 – Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity

of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 3 – Effective Date.

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, ___ IN FAVOR ___ AGAINST AND SIGNED BY THE MAYOR THIS ___ DAY OF _____, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Downtown Residential Parking Agreement – 610 Front Street	
Section of Agenda:	New Business	
Department:	Planning Department	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Downtown Residential Parking Agreement with edits by the CDC		
Summary Statement:		
<p>Property owners of 610 Front Street (the liquor store location), (represented as TWIGA NW & RAH) are developing plans for a significant renovation of the existing building. Parking requirements have been a concern as the renovation would add two additional floors and 6 residential units.</p> <p>Properties located within the Historic Business District are exempt from providing onsite parking. However, when new floor area is created, LMC 19.51.160 states that residential units must provide a minimum of one parking stall per unit. While this is a 50% reduction in what is typically required for residential units, providing onsite parking at this location is a challenge as the building covers nearly the entire the lot.</p> <p>The property owner is exploring other options including parking agreements with nearby property owners however opportunities are few and the solutions short-term in nature.</p> <p>Recognizing the value of residential development within the downtown core, City staff has worked with the property owners to develop the attached parking agreement. The agreement would provide a parking easement for the necessary code required parking stalls. (In this case this equals 3 spaces as the property owner will be providing 3 alley-accessed garage spaces.) The value of the parking easement is outlined in the agreement. In addition, the parking agreement also proposes to offer as many as 6 annual parking passes at a rate set out by the agreement and subject to adjustment.</p> <p>This issue has been discussed with both the Community Development Committee and the Public Works Committee. Subsequently, the City’s legal counsel has created the attached parking agreement for the Council’s consideration.</p>		
Recommended Action:		
Motion to approve the downtown residential parking agreement with TWIGA NW & RAH, the owners of 610 Front Street, and to approve the Mayor’s signature on the document.		

After recording return document to:

City of Lynden
 Planning Department
 300 4TH Street
 Lynden WA 98264

DOCUMENT TITLE:

AGREEMENT FOR SHARED PARKING

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTORS:

CITY OF LYNDEN, a municipal corporation

GRANTEES:

TWIGA NW LLC & RAH Properties LLC, Washington limited liability companies

ABBREVIATED LEGAL DESCRIPTION FOR 610 FRONT STREET ("Mural Building Property"):

Lot 3 and ptn Lot 2, Block 9, Supplemental and Corrected Plat of Lynden
 Full legal description on Page _____ hereto.

LEGAL DESCRIPTION FOR CITY PARKING PROPERTIES:

Lot 1 and ptn Lot 2, Block 9; Ptns Lots 3-4, Block 10; and Lot 1 and ptn Lot 2, Block 12, all of Supplemental and
 Corrected Plat of Lynden
 Full legal description on Page _____ hereto.

ASSESSOR'S TAX PARCEL NUMBER(S):

400320 202260 0000
 400320 322333 0000
 400320 240304 0000

400320 206263 0000

AGREEMENT FOR SHARED PARKING

THIS AGREEMENT FOR SHARED PARKING (“Agreement”) is made and entered into this _____ day of _____, 2019, by and between the City of Lynden, a municipal corporation organized under the laws of the state of Washington (“City” or “Lynden”) and TWIGA NW LLC & RAH Properties LLC (“TWIGA NW & RAH”), limited liability companies, organized under the laws of the state of Washington (individually, Party; together, “Parties”).

RECITALS

WHEREAS, the Vision Policies within the City Comprehensive Plan promotes cooperation between business owners, citizens and city officials to encourage economic vitality in the City; and

WHEREAS, the City Downtown Development Plan calls for economic enhancement of the Historic Business District of Lynden by encouraging diversity and mixed uses, improving economics for business owners, encouraging joint public/private partnerships, making the Historic Business District attractive to visitors, and increasing the community’s tax base; and

WHEREAS, TWIGA NW & RAH are in the process of adding six (6) residential units in the downtown Historic Business District at 610 Front St, Lynden, WA (the “Mural Building Property”); and

WHEREAS, the Mural Building Property is benefited by this Agreement and is identified and legally described on Exhibit A, attached hereto; and

WHEREAS, the Mural Building Property, per Lynden Municipal Code 19.51.160(C), is required to provide one on-site parking stall per residential unit; and

WHEREAS, the Mural Building Property is dominated by the existing structure, has limited ability to provide on-site parking, and will only be developed with three (3) parking stalls on-site; and

WHEREAS, the Mural Building Property will need an additional three (3) parking stalls to meet the requirements of LMC 19.51.160(C); and

WHEREAS, the City and TWIGA NW & RAH desire to have available six (6) additional parking stalls beyond the six (6) stalls required by LMC 19.51.160(C); and

WHEREAS, the City owns certain property currently used for parking in the vicinity of the Mural Building Property, for which it has excess capacity; and

WHEREAS, City-owned properties currently used for parking in the vicinity of the Mural Building Property and burdened by this Agreement, are legally described in Exhibit B attached hereto and illustrated in Exhibit C (“City Parking Properties”); and

WHEREAS, parking for retail and professional services during peak business hours and parking for the residences in off-peak hours can be complementary uses rather than competing uses; and

WHEREAS, current use patterns have demonstrated a capacity for additional parking use in off-peak hours; and

WHEREAS, the residential units within the Historic Business District will generate additional customers within walking distance of downtown business; and

WHEREAS, the redevelopment of the Mural Building Property will create an attractive new entrance to the Historic Business District; and

WHEREAS, the redevelopment of the Mural Building Property in the Historic Business District will enable the preservation in perpetuity of a valued installation of public art, the mural located on the west façade of the structure on the Mural Building Property; and

WHEREAS, to accommodate the development of the Mural Building Property and financing thereof, the Parties wish to provide (i) an easement for the three (3) parking stalls required by LMC 19.51.160(C), and (ii) a license for six (6) additional parking stalls; and

WHEREAS, the City intends to issue to residents of the Mural Building Property parking permits (“Permits”) to manage and enforce the rights and privileges created by the easement and the license the City grants TWIGA NW & RAH herein; and

WHEREAS, the City intends to issue up to six (6) Permits pursuant to the license (“License-Based Permits”), up to three (3) Permits issued pursuant to the easement (“Easement-Based Permits”), and the Parties shall keep track of which Permits are License-Based Permits and which Permits are Easement-Based Permits for purposes of managing rights and responsibilities under this Agreement; and

WHEREAS, each Permit shall allow its holder to park one (1) vehicle in one (1) parking space, consistent with the terms herein; and

WHEREAS, the foregoing recitals are a material part of this Agreement;

AGREEMENT

NOW THEREFORE the Parties agree as follows:

I. Easement

- A. Grant of Easement. The City hereby grants TWIGA NW & RAH a non-exclusive easement for ingress and egress over City Parking Properties, and nonexclusive possession for purposes of parking, of three (3) automobile parking stalls on City Parking Properties (“Easement”). The Easement shall be terminable or revocable only as set forth herein and shall be assignable by TWIGA NW & RAH only as set forth herein.
- B. Consideration. Upon execution and prior to recording of this Agreement, TWIGA NW & RAH shall pay to the City Seven Thousand Dollars (\$7,000.00) as consideration for this Easement. ~~The annual Permit fee described in Section III(C)(ii) below shall be additional consideration required to maintain the Permits in good standing.~~
- C. Number of Permits. Up to a maximum of three (3) Easement-Based Permits shall be issued pursuant to this Easement.
- D. Termination of Easement-Based Permits. The three (3) Easement-Based Permits issued pursuant to the Easement shall remain in place, consistent with the terms herein, for so long as the Easement remains in effect ~~and the annual fees referenced in Section III(C)(ii) are paid current.~~

II. License

- A. Grant of License. The City hereby grants TWIGA NW & RAH a license for ingress and egress over City Parking Properties, and nonexclusive possession for purposes of parking, of six (6) automobile parking stalls on City Parking Properties (“License”). The License shall be terminable or revocable only as set forth herein and shall be assignable by TWIGA NW & RAH only as set forth herein.

- B. Consideration. The consideration for this License shall be the annual Permit fee described in Section III(C)(ii), which must be timely paid to maintain the Permits in good standing.
- C. Number of Permits. Up to a maximum of six (6) License-Based Permits shall be issued pursuant to this License.
- D. Termination of License and License-Based Permits. The City may, at its sole option, refuse to re-issue or renew some or all of the six (6) License-Based Permits, without cause, when said Permits become due for annual renewal. If the City intends to exercise this termination option, it shall inform TWIGA NW & RAH in writing at least one hundred eighty (180) days in advance. If the City refuses to re-issue or renew all six (6) License-Based, the License granted under subsection A herein shall be terminated.

III. Additional Terms

- A. Scope. This Agreement allows residents of the Mural Building Property in possession of a valid and unexpired Permit the right to park on City Parking Properties, to accommodate up to six (6) residential units as described herein:
 - i. Scope of Parking. The Permits will allow residents of the Mural Building Property to park vehicles overnight and as needed on the City Parking Properties for typical residential use. The use of the City Parking Properties by residents is subordinate to the City’s use of the City Parking Properties and may be temporarily suspended on an as-needed basis, such as to accommodate the City’s special event permits which utilize City parking lots, and development, maintenance, repair, or snow clearing of the City Parking Properties. Neither this Agreement nor the Permits are intended grant or assign any particular parking spot(s) on City Parking Properties or provide a right to park on a particular lot designated as one of the City Parking Properties. This Agreement and the Permits do not expand the privileges of the residents of Mural Building Property at any other parking location, including street parking.
 - ii. Nonexclusive Use. Subject to the terms herein, this Agreement grants TWIGA NW & RHA nonexclusive use of the City Parking Properties. The City reserves the right to use the City Parking Properties as it sees fit and reserves the right

to grant other licenses, easements, and parking permits for the City Parking Properties without notice to TWIGA NW & RAH. This Agreement does not guarantee such parking will be available to Permit holders at the designated City Parking Properties at any given time, nor does it provide TWIGA NW & RAH or their residents with the right to remove or cause the removal of vehicles parked at the City Parking Properties.

- iii. Lot on 7th and Front Street to be Primary Parking Lot. The City Parking Property on tax parcel number 400320 202260 0000, located on the northeast corner of the intersection of 7th and Front Streets, shall be the primary parking for residents of the Mural Building Property with valid Permits. Other City Parking Properties shall be used only when this primary parking lot is in use or otherwise has limited availability. Parking availability may be limited when these parking lots accommodate the City's special event permits, development, maintenance, repair, or snow clearing of City Properties.
 - iv. Applicability of Lynden Municipal Code and Additional Prohibitions. This Agreement and the Permits do not exempt Permit holders from conforming to the Lynden Municipal Code and any other City rules or restrictions on parking on City Parking Properties as they exist now or in the future, except as otherwise specifically stated in this Agreement. Permit holders are prohibited from conducting any type of vehicle cleaning, maintenance, or repair while parked in City Parking Properties.
- B. Addition or Removal of City Parking Properties from this Agreement. The City may permanently remove any one City Parking Property from this Agreement by so notifying TWIGA NW & RAH in writing. No prior notice of such removal is required. The City may permanently remove a second City Parking Property from this Agreement with one hundred eighty (180) days' prior written notice to TWIGA NW & RAH. The Parties anticipate that they may amend this Agreement to add additional city-owned parking lots to the City Parking Properties or to swap a city-owned parking lot not included in this Agreement for one of the City Parking Properties.
- C. Parking Permits – Issuance, Use, and Termination.
- i. Permits Issued Annually. Upon receipt of the annual fees due, the City shall annually issue the Permits to TWIGA NW & RAH to distribute to owners and /

or renters of units within the Mural Building Property. Prior to issuance of the Permits, TWIGA NW & RAH shall provide to the City the name of each resident to be issued a License-Based Permit and each resident to be issued an Easement-Based Permit. The City shall mark the Easement-Based Permits by adding a capital "E" in a prominent place on the face of the Permit; Permits without such a mark will be the License-Based Permits.

- ii. Fee for Permits. An annual fee for a Historic Business District residential parking permit, established by City ordinance and subject to annual review and adjustment, will be due at the time of issuance. The initial annual fee will be two hundred and forty dollars (\$240.00) per License-Based Permit and there shall be ~~the same no annual fee~~ for Easement-Based Permits and License-Based Permits.
- iii. Permit Use. Valid Permits must be displayed in the vehicles parking overnight in the City Parking Properties. Permits shall only be used by the resident to which it was issued and shall not be used by third parties. Permits found to be used by third parties who are not residents of the Mural Building Property shall be subject to City action under subsections (C)(iii) and (C)(iv) herein. Vehicles displaying expired Permits or vehicles parking overnight in parking areas not included in this Agreement will be subject to parking enforcement.
- iv. Suspension and Revocation of License-Based Permits and Termination of License for Cause. In the event that the City believes TWIGA NW & RAH or a License-Based Permit holder has improperly used any Permits issued under grant of the License, the City agrees to contact TWIGA NW & RAH. Should such Permit-related issues not be resolved to the City's satisfaction, the City may in its sole discretion temporarily suspend or permanently revoke the License-Based Permit(s) without issuing a refund of the Permit fee. In the event of such a Permit revocation, the City may in its discretion terminate the License upon which said Permit was granted, effective upon providing written notice thereof to TWIGA NW & RH. Upon termination of the License authorizing issuance of License-Based Permits, the City may record an extinguishment of the License with the County Auditor.
- v. Improper Use of Easement-Based Permits. In the event that the City believes TWIGA NW & RAH or an Easement-Based Permit holder has improperly used

any Permits issued under grant of the Easement, the City agrees to contact TWIGA NW & RAH. Should such Permit-related issues not be resolved to the City's satisfaction, the City may in its sole discretion temporarily suspend the Easement-Based Permit until the improper use is resolved, or issue a new Easement-Based Permit for distribution to a different resident of the Mural Building Property.

- vi. Termination of License-Based Permits Without Cause. The City may in its sole discretion decline to renew or re-issue up to all six (6) of the Permits issued pursuant to the grant of License, as set forth in Section II.D herein.
 - vii. Termination of Easement and Easement-Based Permits. Subject to conformance with the terms of this Agreement, the Easement and the three (3) Easement-Based Permits issued pursuant hereto shall remain in effect for so long as the Mural Building Property is intended or used for residential purposes. However, notwithstanding an intent to use the Mural Building Property for residential purposes, the Easement shall automatically terminate if the Mural Building Property is not used for residential purposes for twenty-four (24) consecutive months. In this event, the City may record an extinguishment of the Easement and this Agreement with the County Auditor.
- D. Specific to Residential Use at the Mural Building Property. This Agreement is specific to the Mural Building Property for use in association with operation of the residential units located in the Mural Building Property. This Agreement and the License and Easement granted herein run with the land and shall be recorded with the County Auditor's office. This Agreement and the License and Easement granted herein shall also be assignable or transferable to any subsequent owner or operator of the Mural Building Property, provided such assignee or transferee executes such documents reasonably requested by the City confirming such assignee's or transferee's consent to be bound by the obligations of TWIGA NW & RAH under this Agreement.
- E. Term. The term of this Agreement initiates upon issuance of the initial certificate of occupancy for residential use at the Mural Building Property. This Agreement shall automatically terminate upon termination of the Easement.

- F. Indemnification. TWIGA NW & RAH shall fully indemnify and hold the City harmless from any claims, losses, liabilities, damages, and expenses (including reasonable attorney’s fees) arising out of ingress, egress, use or occupation of one or more of the City Parking Properties by an owner, employee, resident, invitee of a resident, agent, contractor, or subcontractor of the owner or operator of the TWIGA NW & RAH or by any person doing business with the Mural Building Property or other commercial or non-profit tenant located at the TWIGA NW & RAH Properties Property.

- G. Insurance. TWIGA NW & RAH shall maintain, at its own expense, for the benefit of itself and the City, insurance against liability for property damage or loss and against liability for personal injury or death, arising from acts or omissions of TWIGA NW & RAH, its owners, agents, subcontractors, employees, tenants, residents, invitees of tenants or residents or persons doing business with the Mural Building Property or other commercial or non-profit tenant located at the Mural Building Property. Prior to the commencement of this Agreement, TWIGA NW & RAH shall deliver to the City certificates or binders evidencing the existence of the insurance required herein. Such policy or policies shall name the City as an additional insured and shall contain a provision whereby the City must receive at least thirty (30) days' prior written notice of any cancellation or reduction in TWIGA NW & RAH’s insurance coverage. In addition, should TWIGA NW & RAH be notified or have reason to expect a termination or cancellation action by its insurance company, TWIGA NW & RAH will provide the City with at least thirty (30) days advance written notice. Any reduction or cancellation in the coverage or limits shown here, or any failure to provide proof of the required insurance or to timely provide the notice required herein shall constitute a material breach of this Agreement and be cause for immediate termination of this Agreement and the License and Easement granted herein, and immediate revocation of all Permits issued.

TWIGA NW & RAH shall possess the following insurance with coverage amounts not less than as specified below:

<u>Type</u>	<u>Amount</u>
Worker's Compensation	Statutory
Professional Liability	\$ One Million (errors and omissions)

M. Complete Agreement; Modification in Writing. This Agreement constitutes the entire agreement as to the matters contained herein. No oral or written statements shall be considered a part of this License unless expressly incorporated herein in writing. This Agreement may not be modified or amended except by the written agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date specified above.

CITY OF LYNDEN:

TWIGA NW LLC:

By: Scott Korthuis
Its: Mayor

By: _____
Its: _____

RAH Properties LLC:

By: _____
Its: _____

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

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

Dated: _____, 2019.

NOTARY PUBLIC in and for the State of
Washington. My Commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

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

Dated: _____, 2019.

NOTARY PUBLIC in and for the State of Washington. My Commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

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

Dated: _____, 2019.

NOTARY PUBLIC in and for the State of Washington. My Commission expires _____.

EXHIBIT A
TWIGA NW & RAH PROPERTIES PROPERTY

610 Front St.: Parcel Number 400320 2062630000

The Northeasterly two feet of Lot 2 and the Southwesterly thirty feet of Lot 3, in Block 9, "Supplemental and Corrected Plat of Lynden," according to the plat thereof, recorded in Volume 3 of Plats, Page 48, records of Whatcom County, Washington.

DRAFT

EXHIBIT B
CITY PARKING PROPERTIES

618 Front Street (7th Street Parking Lot): Parcel Number 400320 202260

Lots 1 and 2 of Block 9, except the easterly 2 feet of said Lot 2 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M. Together with rights in party wall agreement recorded in Volume 240 of Deeds, Page 79.

324 Front Street (4th Street Parking Lot): Parcel Number 400320 322333

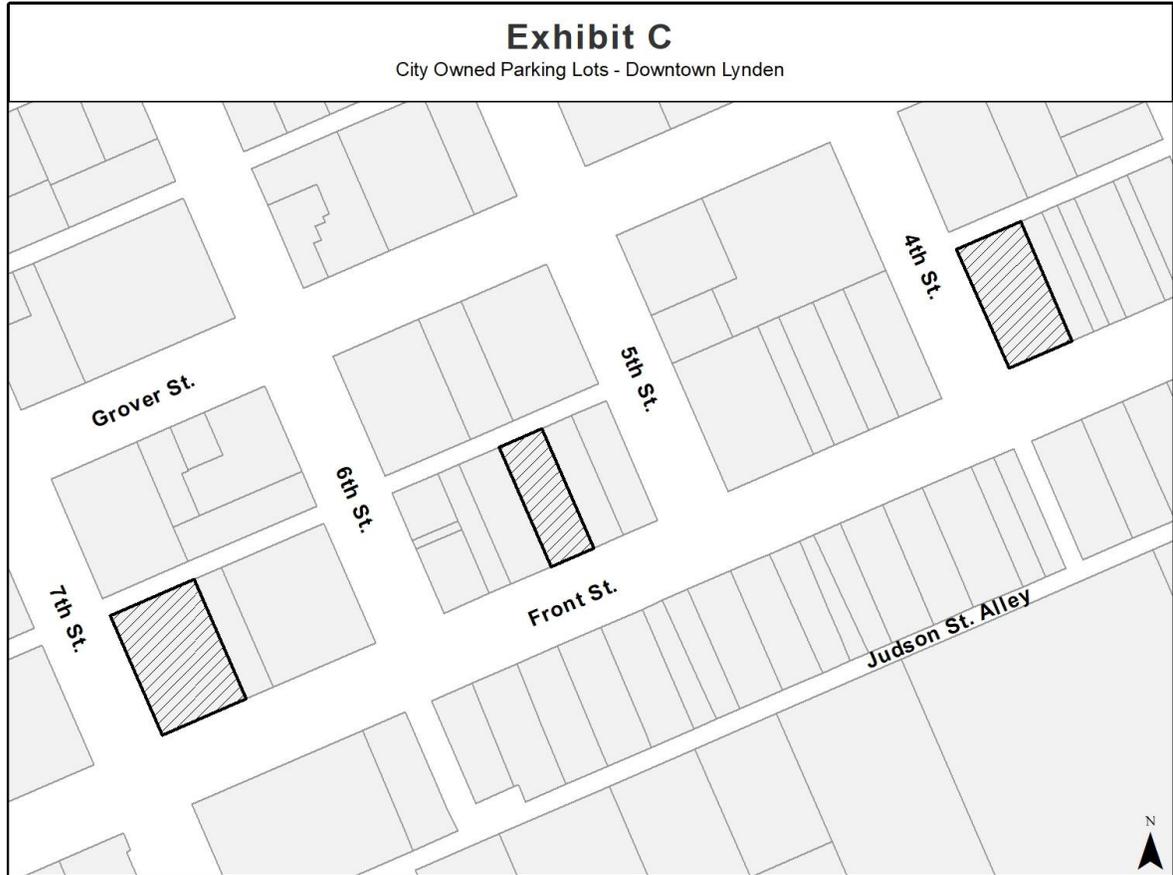
All of Lot 1 together with the west half of Lot 2 in Block 12 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M.

Parking Lot between 5th and 6th Streets: Parcel Number 400320 240304

The east 25 feet of Lot 3 together with the west 25 feet of Lot 4 in Block 10 of the Supplemental and corrected Plat of Lynden, as per the map thereof recorded in Book 3 of Plats, Page 48, in the Auditor's office of Whatcom County, Washington. Being within Section 20, Township 40 North, Range 3 East of W.M.

EXHIBIT C

DIAGRAM OF CITY OWNED PARKING PROPERTIES DESCRIBED IN EXHIBIT B



CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Award Contract for Old Elevated Water Tank Foundation and Soil Remediation	
Section of Agenda:	New Business	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:		
1) Bid Tabulation 2) Reichhardt & Ebe Recommendation Letter		
Summary Statement:		
<p>On May 30th staff solicited bids from seven qualified firms on the City's Small Works Roster for the "Old Elevated Water Tank Foundation and Soil Remediation Project." No bids were received. It was determined that the schedule and limited working days during this busy construction season might be the problem. So bids were re-solicited on June 28th. Again, no bids were received. After consulting the City Attorney on next steps, negotiations were held with three interested bidders to determine appropriate amendments to the specifications. After making these changes and soliciting small works bids a third time two companies submitted bids - Strider Construction and DeKoster Excavating.</p> <p>Reichhardt & Ebe Engineering reviewed the bids determined that Strider Construction Company, Inc. provided the lowest responsive and responsible bid in the amount of \$242,048.81, including tax.</p> <p>The Public Works Committee reviewed the progress on this bid process at their June, July and August meetings; and were sent the bid tabulation prior to this meeting.</p>		
Recommended Action:		
<p>That City Council award the contract for the Old Elevated Water Tank Foundation and Soil Remediation work to Strider Construction Company, Inc. in the amount of \$242,048.81, including sales tax and authorize the Mayor to sign.</p>		



August 23, 2019

City of Lynden
300 4th Street
Lynden, WA 98264

Attn: Mark Sandal
Program Manager

Re: City of Lynden
Old Elevated Water Tank
Agency Contract No. 2018-08

Recommendation to Award

Dear Mark Sandal;

We have reviewed all construction proposals for the above referenced project. Strider Construction Company, Inc. provided the lowest responsive bid for Schedules A at \$242,048.81, including tax. Strider Construction has also committed to the most favorable project completion schedule.

We recommend that you award the contract to Strider Construction Company, Inc. subject to the following:

1. Required project funds are available.

Sincerely,

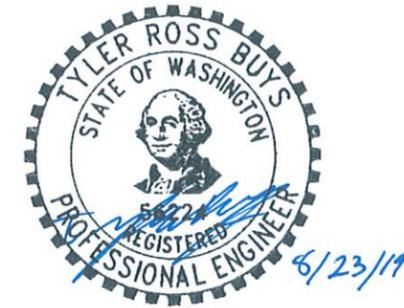
A handwritten signature in blue ink, appearing to read 'Tyler Buys', is written over a light blue horizontal line.

Tyler Buys, P.E
Reichhardt & Ebe Engineering, Inc.



423 Front Street
 Lynden, WA 98264
 Phone: (360) 354-3687

Called By:	City of Lynden		Bidder's Name		Engineer's Estimate		1 Strider		2 DeKoster		Average (Excluding Engineer's Estimate)	Standard Deviation (Excluding Engineer's Estimate)
For:	OLD ELEVATED WATER TANK FOUNDATION AND SOIL REMOVAL 300 4th Street Lynden, WA 98264		Address									
By:	CERTIFIED TABULATION OF BIDS RECEIVED											
Date:	Tyler Buys, P.E. June 18, 2019											
Item No.	Item Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount			
1	Mobilization	1	LS	\$ 15,000.00	\$ 15,000.00	\$34,000.00	\$ 34,000.00	\$ 30,000.00	\$ 30,000.00	\$32,000.00	\$ 2,000.00	
2	SPCC Plan	1	LS	\$ 1,000.00	\$ 1,000.00	\$500.00	\$ 500.00	\$ 250.00	\$ 250.00	\$375.00	\$ 125.00	
3	Clearing and Grubbing	1	LS	\$ 2,000.00	\$ 2,000.00	\$1,000.00	\$ 1,000.00	\$ 5,500.00	\$ 5,500.00	\$3,250.00	\$ 2,250.00	
4	Removal of Structures and Obstructions	1	LS	\$ 3,600.00	\$ 3,600.00	\$9,000.00	\$ 9,000.00	\$ 4,000.00	\$ 4,000.00	\$6,500.00	\$ 2,500.00	
5	Sawcut ACP	275	LF-IN	\$ 2.00	\$ 550.00	\$2.00	\$ 550.00	\$ 1.50	\$ 412.50	\$1.75	\$ 0.25	
6	Removal of Foundations	1	LS	\$ 32,000.00	\$ 32,000.00	\$44,000.00	\$ 44,000.00	\$ 53,000.00	\$ 53,000.00	\$48,500.00	\$ 4,500.00	
7	Hazardous Material Handling and Disposal	1	EST	\$ 60,000.00	\$ 60,000.00	\$60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$60,000.00	\$ -	
8	Hazardous Material Excavating Incl. Haul	370	CY	\$ 35.00	\$ 12,950.00	\$16.00	\$ 5,920.00	\$ 9.00	\$ 3,330.00	\$12.50	\$ 3.50	
9	Water Main Removal and Disposal	250	LF	\$ 10.00	\$ 2,500.00	\$14.00	\$ 3,500.00	\$ 30.30	\$ 7,575.00	\$22.15	\$ 8.15	
10	AC Pipe Water Main Removal and Disposal	250	LF	\$ 70.00	\$ 17,500.00	\$47.00	\$ 11,750.00	\$ 51.25	\$ 12,812.50	\$49.13	\$ 2.13	
11	Gravel Borrow Incl. Haul	1,050	TON	\$ 15.00	\$ 15,750.00	\$15.50	\$ 16,275.00	\$ 16.00	\$ 16,800.00	\$15.75	\$ 0.25	
12	Water Main Removal and Disposal	30	MG	\$ 55.00	\$ 1,650.00	\$50.00	\$ 1,500.00	\$ 5.00	\$ 150.00	\$27.50	\$ 22.50	
13	Gravel Base	22	TON	\$ 15.00	\$ 330.00	\$25.00	\$ 550.00	\$ 20.00	\$ 440.00	\$22.50	\$ 2.50	
14	Crushed Surfacing Top Course	6	TON	\$ 60.00	\$ 360.00	\$65.00	\$ 390.00	\$ 50.00	\$ 300.00	\$57.50	\$ 7.50	
15	Commercial HMA	15	TON	\$ 125.00	\$ 1,875.00	\$285.00	\$ 4,275.00	\$ 470.00	\$ 7,050.00	\$377.50	\$ 92.50	
16	ESC Lead	5	DAY	\$ 100.00	\$ 500.00	\$130.00	\$ 650.00	\$ 100.00	\$ 500.00	\$115.00	\$ 15.00	
17	Street Cleaning	4	HR	\$ 150.00	\$ 600.00	\$160.00	\$ 640.00	\$ 300.00	\$ 1,200.00	\$230.00	\$ 70.00	
18	High Visibility Silt Fence	444	LF	\$ 8.00	\$ 3,552.00	\$4.00	\$ 1,776.00	\$ 5.00	\$ 2,220.00	\$4.50	\$ 0.50	
19	Erosion/Water Pollution Control	1	EST	\$ 5,000.00	\$ 5,000.00	\$5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$5,000.00	\$ -	
20	Sod Lawn Lawn Installation Incl. Topsoil	250	SY	\$ 20.00	\$ 5,000.00	\$40.00	\$ 10,000.00	\$ 22.25	\$ 5,562.50	\$31.13	\$ 8.88	
21	Chain Link Fence Type 3	60	LF	\$ 40.00	\$ 2,400.00	\$90.00	\$ 5,400.00	\$ 30.00	\$ 1,800.00	\$60.00	\$ 30.00	
22	Pothole Existing Underground Utility	2	EA	\$ 500.00	\$ 1,000.00	\$500.00	\$ 1,000.00	\$ 250.00	\$ 500.00	\$375.00	\$ 125.00	
23	Repair Existing Public and Private Facilities	1	EST	\$ 5,000.00	\$ 5,000.00	\$5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$5,000.00	\$ -	
Subtotal					\$ 190,117.00		\$ 222,676.00		\$ 223,402.50			
Sales Tax				8.70%	\$ 16,540.18		\$ 19,372.81		\$ 19,436.02			
Total					\$ 206,657.18		\$ 242,048.81		\$ 242,838.52			
Proposed Completion Date					-		11/15/2019		11/29/2019			



CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Award Construction Contract to DeKoster Excavating, Inc. – 7 th Street Rehabilitation Project	
Section of Agenda:	New Business	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	1) Reichhardt & Ebe Recommendation to Award 2) Official Bid Tabulation 3) Approval from Transportation Improvement Board	
Summary Statement:	<p>Bids for the 7th Street Rehabilitation Project were submitted on August 1st 2019. This project provides for the improvement of approximately 800 linear feet of 7th Street, between Judson Street and Grover Street. Improvements include roadway construction, curb, gutter, driveways; the installation of a storm drain system and water main improvements. Work also includes improvement of 250 feet of existing alley between 6th Street and 7th Street and the reconstruction and restriping of the public parking lot adjacent to 7th Street.</p> <p>Reichhardt and Ebe Engineering reviewed the 8 bids submitted and determined that DeKoster Excavating, Inc. submitted the lowest responsive and responsible bid for Schedules A, B, C, D and E in the amount of \$1,722,450.83, including tax. This is below the engineer's estimate of \$1.8 million. This project is funded in part by a Transportation Improvement Board (TIB) Street Pavement Restoration Grant of \$750,000.</p> <p>At their August 7th meeting, the Public Works Committee authorized staff to forward the final recommendation for this project directly to City Council if all the bid criteria were met and TIB gave their approval; which has now been received.</p>	
Recommended Action:	That City Council Awards the Contract for the 7 th Street Rehabilitation Project to DeKoster Excavating Inc. in the amount of \$1,722,450.83, including tax, and authorizes the Mayor to sign	



August 16, 2019

City of Lynden
300 4th Street
Lynden, WA 98264

Attn: Mark Sandal
Program Manager

Re: City of Lynden
7th Street Rehabilitation

Recommendation to Award

Dear Mark Sandal;

We have reviewed all construction bid proposals for the above referenced project. DeKoster Excavating, Inc. provided the lowest responsive bid for Schedules A, B, C, D, and E at \$1,722,450.83.

The Certified Tabulation of Bids Received and the Bidder's Checklist are attached for your information and review.

We recommend that you award the contract to DeKoster Excavating, Inc. subject to the following:

- 1. Required project funds are available.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nathan Zylstra', written over a light blue horizontal line.

Nathan Zylstra, P. E.
Reichhardt & Ebe Engineering, Inc.



Washington State Transportation Improvement Board

TIB Members

Chair
Mayor Glenn Johnson
City of Pullman

Vice Chair
Commissioner Richard Stevens
Grant County

Amy Asher
RiverCities Transit

Alyssa Ball
Office of Financial Management

Aaron Butters, P.E.
HW Lochner Inc.

Barbara Chamberlain
WSDOT

Elizabeth Chamberlain
City of Walla Walla

Mike Dahlem, P.E.
City of Sumner

Sue Dreier
Pierce Transit

John Klekotka, P.E.
Port of Everett

Commissioner Robert Koch
Franklin County

John Koster
County Road Administration Board

Colleen Kuhn
Human Services Council

Mark Kulaas
Douglas County

Mayor Ron Lucas
Town of Steilacoom

Mick Matheson, P.E.
City of Mukilteo

David Ramsay
Feet First

Steve Roark, P.E.
WSDOT

Councilmember Mike Todd
City of Mill Creek

Jennifer Walker
Thurston County

Ashley Probart
Executive Director

P.O. Box 40901
Olympia, WA 98504-0901
Phone: 360-586-1140
Fax: 360-586-1165
www.tib.wa.gov

August 20, 2019

Mr. Stephen Banham, P.E.
Public Works Director
City of Lynden
300 4th Street
Lynden, WA 98264-0650

Dear Mr. Banham:

Based on your Updated Cost Estimate for the FY 2019 Rehabilitation Project, TIB # 3-W-839(003)-1, your authorized TIB funds are \$750,000.

You may now award the construction contract.

We are happy to assist you with any questions. You can contact Chris Langhoff, TIB Project Engineer, at (360) 586-1157 or via e-mail at ChrisL@TIB.wa.gov.

Sincerely,

Ashley Probart
Executive Director

Table with columns: Item No., Item Description, Quantity, Unit, Unit Price, Amount, and columns for various contractors (1-8). Includes a 'Total Schedule A' row at the bottom.



Item No.	Item Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount																	
Schedule B - 7th Street Water																								
66	PVC Pipe for Water Main 8 In. Diam.	765	LF	\$ 50.00	\$ 38,250.00	\$ 58.00	\$ 44,370.00	\$ 50.00	\$ 38,250.00	\$ 57.00	\$ 43,605.00	\$ 54.50	\$ 41,692.50	\$ 31.00	\$ 23,715.00	\$ 64.00	\$ 49,960.00	\$ 58.00	\$ 44,370.00	\$ 57.00	\$ 43,605.00	\$ 53.69	\$ 9.32	
67	Shoring or Extra Excavation Trench	3,200	SF	\$ 1.00	\$ 3,200.00	\$ 0.25	\$ 800.00	\$ 1.00	\$ 3,200.00	\$ 0.01	\$ 32.00	\$ 0.10	\$ 320.00	\$ 0.10	\$ 320.00	\$ 1.00	\$ 3,200.00	\$ 0.50	\$ 1,600.00	\$ 0.10	\$ 320.00	\$ 0.38	\$ 0.38	
68	Connect to Existing Water Main	7	EA	\$ 2,000.00	\$ 14,000.00	\$ 640.00	\$ 4,480.00	\$ 2,000.00	\$ 14,000.00	\$ 400.00	\$ 2,800.00	\$ 1,800.00	\$ 12,600.00	\$ 1,750.00	\$ 12,250.00	\$ 1,708.00	\$ 11,956.00	\$ 2,000.00	\$ 14,000.00	\$ 2,200.00	\$ 15,400.00	\$ 1,562.25	\$ 622.93	
69	Gate Valve 8 In.	7	EA	\$ 1,800.00	\$ 12,600.00	\$ 1,370.00	\$ 9,590.00	\$ 3,000.00	\$ 21,000.00	\$ 1,260.00	\$ 8,820.00	\$ 1,800.00	\$ 12,600.00	\$ 1,300.00	\$ 9,100.00	\$ 1,833.00	\$ 12,831.00	\$ 1,700.00	\$ 11,900.00	\$ 1,480.00	\$ 10,360.00	\$ 1,717.88	\$ 527.50	
70	Gate Valve 12 In.	2	EA	\$ 2,500.00	\$ 5,000.00	\$ 4,235.00	\$ 8,470.00	\$ 4,000.00	\$ 8,000.00	\$ 2,200.00	\$ 4,400.00	\$ 2,800.00	\$ 5,600.00	\$ 2,200.00	\$ 4,400.00	\$ 3,084.00	\$ 6,168.00	\$ 2,500.00	\$ 5,000.00	\$ 2,000.00	\$ 4,000.00	\$ 2,929.25	\$ 742.00	
71	Hydrant Assembly	4	EA	\$ 5,000.00	\$ 20,000.00	\$ 3,225.00	\$ 12,900.00	\$ 3,000.00	\$ 12,000.00	\$ 4,250.00	\$ 17,000.00	\$ 5,000.00	\$ 20,000.00	\$ 4,400.00	\$ 17,600.00	\$ 4,288.00	\$ 17,144.00	\$ 5,000.00	\$ 20,000.00	\$ 4,445.00	\$ 17,780.00	\$ 4,200.75	\$ 687.44	
72	Service Connection 1 In. Diam.	11	EA	\$ 1,500.00	\$ 16,500.00	\$ 880.00	\$ 9,680.00	\$ 700.00	\$ 7,700.00	\$ 1,800.00	\$ 19,800.00	\$ 2,000.00	\$ 22,000.00	\$ 2,000.00	\$ 22,000.00	\$ 2,075.00	\$ 22,825.00	\$ 2,000.00	\$ 22,000.00	\$ 1,320.00	\$ 14,520.00	\$ 1,596.88	\$ 518.69	
73	Double Check Valve Assembly	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 12,000.00	\$ 12,000.00	\$ 15,000.00	\$ 15,000.00	\$ 12,600.00	\$ 12,600.00	\$ 16,800.00	\$ 14,000.00	\$ 14,000.00	\$ 18,758.00	\$ 13,000.00	\$ 13,000.00	\$ 13,000.00	\$ 16,675.00	\$ 13,000.00	\$ 16,675.00	\$ 14,854.13	\$ 2,229.29	
Subtotal Schedule B					\$ 124,550.00		\$ 102,290.00		\$ 119,150.00		\$ 109,057.00		\$ 131,612.50		\$ 103,385.00		\$ 141,842.00		\$ 131,870.00		\$ 123,490.00			
Sales Tax Schedule B (8.7%)					\$ 10,835.85		\$ 8,899.23		\$ 10,366.05		\$ 9,487.96		\$ 11,450.29		\$ 8,994.50		\$ 12,340.25		\$ 11,472.69		\$ 10,743.63			
Total Schedule B					\$ 135,385.85		\$ 111,189.23		\$ 129,516.05		\$ 118,544.96		\$ 143,062.79		\$ 112,379.50		\$ 154,182.25		\$ 143,342.69		\$ 134,233.63			

Item No.	Item Description	Quantity	Unit	Unit Price	Amount																		
Schedule C - Parking Lot and Storm																							
74	Mobilization	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 20,500.00	\$ 20,500.00	\$ 5,000.00	\$ 5,000.00	\$ 500.00	\$ 500.00	\$ 35,000.00	\$ 35,000.00	\$ 15,000.00	\$ 15,000.00	\$ 19,810.00	\$ 19,810.00	\$ 21,000.00	\$ 21,000.00	\$ 3,000.00	\$ 3,000.00	\$ 14,976.25	\$ 10,860.66
75	Flaggers	300	HR	\$ 55.00	\$ 16,500.00	\$ 60.75	\$ 18,225.00	\$ 61.00	\$ 18,300.00	\$ 56.00	\$ 16,800.00	\$ 65.00	\$ 19,500.00	\$ 62.00	\$ 18,600.00	\$ 59.00	\$ 17,700.00	\$ 56.00	\$ 16,800.00	\$ 58.75	\$ 17,625.00	\$ 59.81	\$ 2.85
76	Other Traffic Control Labor	30	HR	\$ 55.00	\$ 1,650.00	\$ 65.00	\$ 1,950.00	\$ 65.00	\$ 1,950.00	\$ 56.00	\$ 1,680.00	\$ 65.00	\$ 1,950.00	\$ 65.00	\$ 1,950.00	\$ 143.00	\$ 4,290.00	\$ 59.00	\$ 1,770.00	\$ 70.00	\$ 2,100.00	\$ 73.50	\$ 26.57
77	Project Temporary Traffic Control	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 1,000.00	\$ 1,000.00	\$ 5,000.00	\$ 5,000.00	\$ 500.00	\$ 500.00	\$ 1,600.00	\$ 1,600.00	\$ 3,000.00	\$ 3,000.00	\$ 3,558.00	\$ 3,558.00	\$ 3,000.00	\$ 3,000.00	\$ 500.00	\$ 500.00	\$ 2,269.75	\$ 1,520.91
78	Clearing and Grubbing	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 5,000.00	\$ 5,000.00	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 588.00	\$ 588.00	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 2,161.00	\$ 1,430.68
79	Removal of Structures and Obstructions	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 15,000.00	\$ 15,000.00	\$ 3,100.00	\$ 3,100.00	\$ 8,400.00	\$ 8,400.00	\$ 20,000.00	\$ 20,000.00	\$ 7,845.00	\$ 7,845.00	\$ 10,000.00	\$ 10,000.00	\$ 13,650.00	\$ 13,650.00	\$ 10,999.38	\$ 4,810.75
80	Sawcut ACP	615	LF-IN	\$ 0.60	\$ 369.00	\$ 0.60	\$ 369.00	\$ 2.00	\$ 1,230.00	\$ 0.48	\$ 295.20	\$ 0.50	\$ 307.50	\$ 1.00	\$ 615.00	\$ 1.00	\$ 615.00	\$ 0.80	\$ 492.00	\$ 0.80	\$ 492.00	\$ 0.90	\$ 550.80
81	Roadway Excavation Incl. Haul	885	CY	\$ 15.00	\$ 13,275.00	\$ 11.50	\$ 10,177.50	\$ 23.00	\$ 20,355.00	\$ 19.00	\$ 16,815.00	\$ 17.25	\$ 15,487.50	\$ 15.00	\$ 13,275.00	\$ 20.00	\$ 17,700.00	\$ 25.00	\$ 22,125.00	\$ 32.70	\$ 28,939.50	\$ 20.46	\$ 6.10
82	Temporary Stud Wall	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 3,500.00	\$ 3,500.00	\$ 4,000.00	\$ 4,000.00	\$ 5,800.00	\$ 5,800.00	\$ 5,100.00	\$ 5,100.00	\$ 10,000.00	\$ 10,000.00	\$ 5,649.00	\$ 5,649.00	\$ 5,000.00	\$ 5,000.00	\$ 4,475.00	\$ 4,475.00	\$ 5,440.50	\$ 1,872.31
83	Water	25	M GAL	\$ 125.00	\$ 3,125.00	\$ 10.00	\$ 250.00	\$ 20.00	\$ 500.00	\$ 150.00	\$ 3,750.00	\$ 50.00	\$ 1,250.00	\$ 25.00	\$ 625.00	\$ 179.00	\$ 4,475.00	\$ 38.00	\$ 950.00	\$ 83.00	\$ 2,075.00	\$ 69.38	\$ 59.16
84	Shoring or Extra Excavation Class B, Incl. Haul	1,325	SF	\$ 1.00	\$ 1,325.00	\$ 0.25	\$ 331.25	\$ 1.00	\$ 1,325.00	\$ 0.01	\$ 13.25	\$ 0.10	\$ 132.50	\$ 0.10	\$ 132.50	\$ 1.00	\$ 1,325.00	\$ 1.00	\$ 1,325.00	\$ 0.20	\$ 265.00	\$ 0.46	\$ 0.43
85	Gravel Base	1,040	TON	\$ 16.00	\$ 16,640.00	\$ 12.00	\$ 12,480.00	\$ 12.00	\$ 12,480.00	\$ 17.00	\$ 17,680.00	\$ 17.25	\$ 17,940.00	\$ 19.00	\$ 19,760.00	\$ 18.00	\$ 18,720.00	\$ 18.30	\$ 19,032.00	\$ 25.50	\$ 26,520.00	\$ 17.38	\$ 4.00
86	Crushed Surfacing Top Course	350	TON	\$ 35.00	\$ 12,250.00	\$ 38.00	\$ 13,300.00	\$ 38.00	\$ 13,300.00	\$ 35.00	\$ 12,250.00	\$ 38.75	\$ 13,562.50	\$ 45.00	\$ 15,750.00	\$ 26.00	\$ 9,100.00	\$ 30.00	\$ 10,500.00	\$ 41.80	\$ 14,630.00	\$ 36.57	\$ 5.75
87	HMA Cl. 1/2" PG 64-22	330	TON	\$ 105.00	\$ 34,650.00	\$ 120.00	\$ 39,600.00	\$ 120.00	\$ 39,600.00	\$ 122.00	\$ 40,260.00	\$ 135.00	\$ 44,550.00	\$ 135.00	\$ 44,550.00	\$ 137.00	\$ 45,210.00	\$ 133.00	\$ 43,890.00	\$ 135.60	\$ 44,748.00	\$ 127.83	\$ 7.42
88	Solid Wall PVC Storm Sewer Pipe 8 In. Diam.	50	LF	\$ 35.00	\$ 1,750.00	\$ 66.00	\$ 3,300.00	\$ 50.00	\$ 2,500.00	\$ 52.00	\$ 2,600.00	\$ 32.50	\$ 1,625.00	\$ 30.00	\$ 1,500.00	\$ 42.00	\$ 2,100.00	\$ 62.00	\$ 3,100.00	\$ 54.00	\$ 2,700.00	\$ 48.56	\$ 12.11
89	Corrugated Polyethylene Storm Sewer Pipe 12 In. Diam.	195	LF	\$ 35.00	\$ 6,825.00	\$ 70.00	\$ 13,650.00	\$ 60.00	\$ 11,700.00	\$ 35.00	\$ 6,825.00	\$ 45.75	\$ 8,921.25	\$ 35.00	\$ 6,825.00	\$ 61.00	\$ 11,895.00	\$ 62.00	\$ 12,090.00	\$ 46.25	\$ 9,018.75	\$ 51.88	\$ 10.34
90	Catch Basin Type 1	3	EA	\$ 1,700.00	\$ 5,100.00	\$ 600.00	\$ 1,800.00	\$ 4,000.00	\$ 12,000.00	\$ 1,250.00	\$ 3,750.00	\$ 1,100.00	\$ 3,300.00	\$ 1,500.00	\$ 4,500.00	\$ 1,453.00	\$ 4,359.00	\$ 2,300.00	\$ 6,900.00	\$ 1,700.00	\$ 5,100.00	\$ 1,737.88	\$ 969.02
91	Adjustments to Finished Grade	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 750.00	\$ 750.00	\$ 5,000.00	\$ 5,000.00	\$ 750.00	\$ 750.00	\$ 1,800.00	\$ 1,800.00	\$ 1,500.00	\$ 1,500.00	\$ 1,738.00	\$ 1,738.00	\$ 1,500.00	\$ 1,500.00	\$ 500.00	\$ 500.00	\$ 1,692.25	\$ 1,333.51
92	Erosion Control and Water Pollution Prevention	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 2,000.00	\$ 1,100.00	\$ 1,100.00	\$ 2,500.00	\$ 2,500.00	\$ 300.00	\$ 300.00	\$ 11,294.00	\$ 11,294.00	\$ 2,500.00	\$ 2,500.00	\$ 800.00	\$ 800.00	\$ 2,686.75	\$ 3,340.01
93	Topsoil Type A	30	SY	\$ 15.00	\$ 450.00	\$ 15.00	\$ 450.00	\$ 45.00	\$ 1,350.00	\$ 15.00	\$ 450.00	\$ 14.25	\$ 427.50	\$ 7.00	\$ 210.00	\$ 17.00	\$ 510.00	\$ 100.00	\$ 3,000.00	\$ 59.00	\$ 1,770.00	\$ 34.03	\$ 30.07
94	PVC Irrigation Sleeve Pipe 2 In. Diam.	65	LF	\$ 10.00	\$ 650.00	\$ 2.50	\$ 162.50	\$ 5.00	\$ 325.00	\$ 6.30	\$ 409.50	\$ 10.25	\$ 666.25	\$ 7.50	\$ 487.50	\$ 20.00	\$ 1,300.00	\$ 16.00	\$ 1,040.00	\$ 11.50	\$ 747.50	\$ 9.88	\$ 5.47
95	Cement Conc. Traffic Curb	125	LF	\$ 27.00	\$ 3,375.00	\$ 35.00	\$ 4,375.00	\$ 21.00	\$ 2,625.00	\$ 42.00	\$ 5,250.00	\$ 39.50	\$ 4,937.50	\$ 38.00	\$ 4,740.00	\$ 38.00	\$ 4,740.00	\$ 42.00	\$ 5,250.00	\$ 47.00	\$ 5,875.00	\$ 37.81	\$ 7.18
96	Cement Conc. Pedestrian Curb 24 In. Tall	65	LF	\$ 45.00	\$ 2,925.00	\$ 78.00	\$ 5,070.00	\$ 18.00	\$ 1,170.00	\$ 62.00	\$ 4,030.00	\$ 58.50	\$ 3,802.50	\$ 60.00	\$ 3,900.00	\$ 57.00	\$ 3,705.00	\$ 67.00	\$ 4,350.00	\$ 65.50	\$ 4,257.50	\$ 58.25	\$ 16.42
97	Cement Conc. Sidewalk	30	SY	\$ 55.00	\$ 1,650.00	\$ 85.00	\$ 2,550.00	\$ 50.00	\$ 1,500.00	\$ 88.00	\$ 2,640.00	\$ 85.00	\$ 2,550.00	\$ 80.00	\$ 2,400.00	\$ 86.00	\$ 2,580.00	\$ 100.00	\$ 3,000.00	\$ 93.80	\$ 2,814.00	\$ 83.48	\$ 13.89
98	Electrical and Illumination System	1	LS	\$ 90,000.00	\$ 90,000.00	\$ 67,000.00	\$ 67,000.00	\$ 28,000.00	\$ 28,000.00	\$ 88,500.00	\$ 88,500.00	\$ 84,200.00	\$ 84,200.00	\$ 90,000.00	\$ 90,000.00	\$ 96,837.00	\$ 96,837.00	\$ 90,000.00	\$ 90,000.00	\$ 93,500.00	\$ 93,500.00	\$ 79,754.63	\$ 21,295.96
99	Permanent Signage	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 2,000.00	\$ 2,000.00	\$ 3,000.00	\$ 3,000.00	\$ 320.00	\$ 320.00	\$ 420.00	\$ 420.00	\$ 350.00	\$ 350.00	\$ 2,262.00	\$ 2,262.00	\$ 1,000.00	\$ 1,000.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 948.02
100	Paint Line	1,200	LF	\$ 0.60	\$ 720.00	\$ 1.0																	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Ord 1589 Shoreline Master Program Update	
Section of Agenda:	New Business	
Department:	Planning Dept	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Ordinance 1589, Final Draft SMP, Summary of Proposed Changes, Planning Commission Minutes July 25, 2019		
Summary Statement:		
<p>Lynden adopted its first Shoreline Management Program (SMP) in 1975 after the requirement by the State Shoreline Management Act was passed in 1971. The Shoreline Management Act mandates that jurisdictions, including Lynden, regularly review and update their SMP in coordination with the State. Lynden is required to do so before June 30, 2020.</p> <p>In 2014, City Council approved a draft SMP after a lengthy update process. The changes being proposed in this 2019 update are not substantive in that they do not significantly change the way that the 2014 Program regulates shoreline development. This proposed 2019 update is meant to fulfill the periodic review requirements, to finalize the comprehensive update to the Program and to continue to protect and manage appropriate use along the City’s designated shorelines (Nooksack River and Fishtrap Creek). The package you received provides details on the proposed changes.</p> <p>This update was recommended for approval by the City Planning Commission at a joint Dept of Ecology/City public hearing on July 25. It has received an Initial Determination of Consistency from the Dept of Ecology and has gone through Dept of Commerce review without comment. Public participation on the proposed update has included website updates, published notices, and an April 12, 2019 open house to which every owner within the Shoreline jurisdiction was invited to attend.</p> <p>At this time, staff is asking that City Council vote to approve Ordinance 1589, thereby updating the City’s Shoreline Management Program.</p>		
Recommended Action:		
Motion to approve Ordinance 1589 updating the City’s Shoreline Master Program and authorizing the Mayor’s signature on the Ordinance.		

Ordinance No. 1589

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING THE CITY OF LYNDEN SHORELINE MANAGEMENT PROGRAM UPDATE AND 2020 PERIODIC REVIEW AND REPEALING AND REPLACING OF LMC 16.08 SHORELINE MANAGEMENT

WHEREAS, the Washington Shoreline Management Act (RCW 90.58, referred to herein as “SMA”) recognizes that shorelines are among the most valuable and fragile resources of the state, and that state and local government must establish a coordinated planning program to address the types and effects of development occurring along shorelines of state-wide significance; and

WHEREAS, the City of Lynden (“City”) is required to update its Shoreline Master Program (“SMP”) pursuant to the SMA and WAC 173-26; and

WHEREAS, in 2014, after an extensive public review process, multiple public hearings, SEPA review, State agency review, and in consultation with Whatcom Environmental Services, the City approved, by Resolution No. 898, its proposed 2014 comprehensive update to the SMP (“2014 SMP”); and

WHEREAS, the 2014 SMP has not yet been approved by the Department of Ecology (“DOE”) and so, in 2018, the City was encouraged by DOE to combine its finalization of the comprehensive 2014 SMP update with its required 2020 Periodic Review of its SMP according to RCW 90.58.080(4); and

WHEREAS, the City drafted changes to its 2014 SMP to meet the requirements of its comprehensive update and the March 8, 2018 DOE Shoreline Master Program Periodic Review Checklist Guidance document (“2019 SMP Update”); and

WHEREAS, the 2019 SMP Update is the culmination of the City’s comprehensive SMP update started in 2014 and the City’s 2020 Periodic Review; and

WHEREAS, on June 21, 2019, the City issued a determination of non-significance under WAC 197-11 and provided for agency comment as required by law and the City received no comments on the determination; and

WHEREAS, as required by RCW 36.70A.106, the City submitted copies of the 2019 SMP Update with the Intent to Adopt notice to the Department of Commerce for state agency review on June 20, 2019, more than sixty days prior to adoption; and

WHEREAS, the City sought public input on the 2020 Periodic Review changes and other changes through a 30-day public comment period, website publication, an open house and a joint public hearing with the City of Lynden Planning Commission and DOE on July 25, 2019; and

WHEREAS, on July 25, 2019 the City of Lynden Planning Commission unanimously recommended approval of the 2019 SMP Update, on the condition of one minor clarification to address a comment raised in the hearing.

WHEREAS, per WAC 173-26-191(2)(a)(iii)(C), the City may adopt certain administrative provisions of its shoreline management program separate from the 2019 SMP Update so it may expeditiously amend such provisions in the future; and

WHEREAS, on July 30, 2019 the City transferred a final draft of the proposed 2019 SMP Update, including the Planning Commission conditioned clarification, to the DOE to make an initial determination of consistency according to WAC 173-26—104(3)(b); and

WHEREAS, on July 31, 2019 the DOE provided a letter of initial concurrence to the City for the proposed 2019 SMP Update; and

WHEREAS, on September 3, 2019, the Lynden City Council voted ___ to ___ to formally adopt the proposed 2019 SMP Update as presented; and

WHEREAS, the foregoing recitals shall be considered material findings of the City Council in support of this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Repeal and replace LMC 16.08. Chapter 16.08 Lynden Municipal Code is hereby repealed in its entirety and replaced with the following:

Chapter 16.08-Shoreline Management

16.08.010 Shoreline Master Program-Copy on file.

The City amended its shoreline master program by adoption of Ordinance 1589. A copy of this shoreline master program shall be on file in the office of the city clerk, and all parties desiring to examine said master program may examine the same at the office of the city clerk.

16.08.020 Shoreline Permit Review.

As per 17.03.040 (B) of the LMC, the Planning Commission shall hear, review, and make the final decision of the City on all shoreline permits in accordance with the City’s shoreline management program.

16.08.030 Shoreline Permit Revision.

A Planning Commission or Department of Ecology decision on revision to the permit shall be appealed within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

16.08.040 Shoreline Permit Appeal.

Any appeal of administrative interpretations and approvals, or Planning Commission decisions will be in accordance with Chapter 17.11 LMC.

Section 2. Adoption of Shoreline Master Program. The City of Lynden Shoreline Management Program 2019 Update, is attached hereto as **Exhibit A**. It is adopted by the City and is the shoreline master program for the City of Lynden.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 4. Conflict. Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 5. Effective Date. This ordinance shall be effective fourteen days from the date of the Department of Ecology's written notice to the City stating its approval of the City's Shoreline Master Program adopted by this ordinance.

PASSED by the City Council this 3rd day of September 2019. Signed by the Mayor on this _____ day of _____, 2019.

MAYOR

ATTEST:

PAM BROWN, CITY CLERK

APPROVED TO AS FORM:

ROBERT CARMICHAEL, CITY ATTORNEY



Lynden Shoreline Master Program Summary of Proposed Changes – 2020 Periodic Review

Lynden locally approved its Shoreline Master Program (SMP) in 2014. The proposed update to the 2014 SMP will include the required Dept of Ecology (DOE) Periodic Review. This Periodic Review is required to be complete on or before June 30, 2020. Furthermore, this update, with DOE approval, will finish the Comprehensive Update of the 2014 locally adopted SMP.

By and large, the proposed changes to the 2014 Plan are not substantive in that they do not significantly alter the way that the 2014 document regulates and protects shorelines in the City.

- Several changes update the code to reflect state-level revisions to the Shoreline Management Act. These are reflected in the Periodic Review Checklist. Most of these updates are explanations of the Act, including language to clarify definitions, to update filing procedures, to incorporate ADA language, and reword sections that need clarification.
- The proposed changes reflect the recent update to the City's Critical Areas Ordinance and refer to that Ordinance by reference rather than by including the CAO language directly into the SMP.
- The proposal removes reference to the "Natural" SMP shoreline designation as Lynden does not have any properties with that designation.
- Finally, the update corrects minor grammatical and spelling errors.

For Public Review Purposes:

A copy of the final draft for this proposed update is available on the City of Lynden's website. The document includes redlines and comments specific to each proposed change. Furthermore, the Periodic Review Checklist is also available on the website. The Checklist works through the statutory changes that have occurred since 2007 and references how those are being met in the SMP.

<https://www.lyndenwa.org/planning/environmental-regulations/>

Specific Proposed Changes:

The following are mention of the more significant proposed changes to the 2014 SMP.

Page 8-9, 1.04.02: Language is unchanged but just moved to this section. This section is a general discussion of the Act which seems like a more appropriate location than specific to the Nooksack River.

Page 35-36, 4.05: Remove the “Natural” designation language because Lynden has no properties with that designation.

Page 37-38, 4.06.02: Remove the “Natural” column from the table.

Page 38, 4.06.02: Shoreline Restoration does not require a Conditional Use permit.

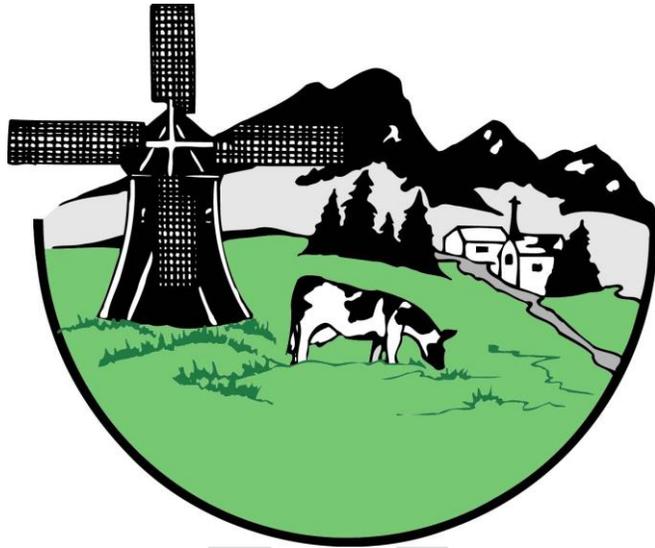
Page 45-56: 5.06: Strike out Critical Area language as the Ordinance was recently updated and rather reference Chapter 16.16 to refer to the Ordinance. This allows the CAO to be updated independently without having to also update the SMP.

Page 90 8.02 and Page 97 8.04.04 and 8.05.01: In these 3 locations in the Administration section, these changes the language less specific so that future administration changes that the City may adopt may not force the entire SMP to also be updated. The changes can be made to LMC 16.08 instead of the entire SMP.

Page 97-98: 8.05.03: This is a Periodic Review requirement to clarify the process for filing permits with DOE. Was not in the code previously.

Page 100-104, 8.07: Periodic Review requirement regarding Nonconforming uses. The change just adapted the language to the wording suggested.

Page 107-113, Section 9. Updated this section to not strike out “proposed” projects that have been completed and emphasize invasive plant species control more than the 2014 language did.



CITY OF LYNDEN

Shoreline Master Program

201914 Update

City of Lynden
300 4th Street
Lynden, Washington 98264
(360) 354-5532

Commented [DT1]: Change to appropriate update yr

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Commented [DT2]: Will update page numbers as needed with the "CLEAN" version after full adoption.

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1 INTRODUCTION

1.01 REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT

In 1971, the State of Washington legislature enacted the Shoreline Management Act ("the Act") (RCW 90.58) in order to address growing concern about the quality of the state's shoreline environments. This Act recognizes that "shorelines are among the most valuable and fragile" of the state's resources. The Act, and the City of Lynden, recognize and protect private property rights along the shoreline, while aiming to preserve the quality of this unique resource for all state residents.

The primary purpose of the Act is to provide for the management and protection of the state's shoreline resources by planning for their reasonable and appropriate use. In order to protect the public interest in the preservation of these shorelines, the Act establishes a planning program coordinated between the state and local jurisdictions to address the types and effects of development occurring along the state's shorelines. By law, the City is responsible for the following:

1. Development of an inventory of the natural characteristics and land use patterns along shorelines covered by the Act.
2. Preparation of a "Master Program" to determine the future of the shorelines.
3. Development of a permit system to further the goals and policies of both the Act and the local Master Program.

1.02 MASTER PROGRAM DEVELOPMENT

In July of 1973, an eight member Lynden Shoreline Management Citizen's Advisory Committee was appointed by the Mayor. The committee held eleven meetings in the course of nine months for the development of the City's first Master Program. The Washington State Office of Community Development aided in preparation of the program, through a Federal grant from the United States Department of Housing and Urban Development, and a state grant from the Washington State Department of Ecology.

The population of Lynden has grown since the original plan was adopted and the Urban Growth Area now includes significant portions of stream and river channels through land formerly used for agriculture. In order to proactively address the future development of land bordering waterways of the city, a new Shoreline Master Program was drafted reflecting the goals of the City's Comprehensive Plan, amended development approval process, current growth patterns and expected future development. The overall goal of this program is to achieve rational, balanced, and responsible use of our irreplaceable shorelines. This updated program was financed by the Department of Ecology.

1.03 SHORELINE JURISDICTION

1.03.01 City of Lynden Shorelands

1. There are numerous small streams and drainages within the city, however only the Nooksack River, Fishtrap Creek and associated wetlands are under the jurisdiction of this Master Program. Despite their importance to our local residents, Duffner Ditch and Kamm Creek are not included in the shoreline jurisdiction.
2. The Shoreline jurisdiction in Lynden includes the “shorelands” of the Nooksack River and Fishtrap Creek in the City of Lynden. As defined under the Shoreline Management Act, shoreland areas or shorelands are:

...those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology

1.03.02 Map Folio in the 2010 Lynden Shoreline Master Program Update

1. A map of the shoreline jurisdiction as described above for the City of Lynden can be found in the Map Folio Appendix A.
2. The map folio is to be used as a guide for the City, project applicants and/or property owners. The maps are for reference only. The City is responsible for determining the exact scope, extent and boundaries of any shoreline element such as jurisdiction boundaries, environmental designations and ordinary high water mark. The applicant is responsible for providing all necessary supporting data and information to allow the city to make such determinations.

1.04 PURPOSES OF THE SHORELINE MASTER PROGRAM

This Shoreline Master Program is created to protect and sustain the limited shoreline resources for the enjoyment of the city’s present and future residents, and visitors to Lynden. The city has shoreline resources of great value which ~~including~~ clean waters, fish, wildlife, riparian habitat and aquatic plants. The limited resources and outstanding visual and aesthetic qualities associated with our shorelines are very important to many different users. Housing, industry, recreation, commerce, agriculture and other users all desire the ability to access, develop or use our shorelines. In order to protect these resources, and the overall quality of our shoreline areas, there is a need for comprehensive planning and reasonable regulation of shoreline development.

1.04.01 The purposes of this Master Program are:

1. To carry out the responsibilities imposed on the City of Lynden by the Washington State Shoreline Management Act (RCW 90.58).

Commented [DT3]: Scrivener’s error

City of Lynden - Shoreline Master Program

2. To promote the public health, safety, and general welfare by providing a guide and regulation for the future development of the shoreline resources of the City of Lynden.
3. To further, by adoption, the policies of RCW 90.58, and the goals of this Master Program, both which hereafter follow.

1.04.02 Legislative Findings and Washington Shoreline Management Act Policies

According to the Revised Code of Washington (RCW) 90.58.020, the Washington State Legislature finds the shorelines of the state are among the most valuable and fragile of the state's natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines, necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and uplands adjacent thereto are in private ownership and that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state which, at the same time, shall be consistent with public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to ensure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in navigable water, will promote and enhance the public interest. This policy is intended to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the water of the state and its aquatic life, while generally protecting public rights of navigation and its associated activities.

In the implementation of the policy of RCW 90.58.020, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible, consistent with the overall best interest of the state and the people generally. To this end, uses shall be preferred that are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent on use of the state's shorelines. Alteration of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, and industrial and commercial developments that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

Commented [DT4]: DOE Recommended: Moved from 1.04.03 as this applies to all Shorelines so is more appropriate in this location

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline areas and interference with the public's use of the water.

1.04.03 Shorelines of Statewide Significance - the Nooksack River

The Shoreline Management Act designates certain shoreline areas as shorelines of statewide significance (RCW 90.58.030). Among the shorelines designated by the Act were "natural rivers or segments thereof as follows:

Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second (cfs) or more" and "those shorelands associated with" these waters.

The Nooksack River exceeds 1,000 cfs at the confluence with Glacier Creek and on the South Fork Nooksack River, at mouth of Hutchinson Creek. This indicates, that the Nooksack River in Lynden is designated as having statewide significance as are its shorelands and associated wetlands.

Shorelines thus designated are important to the entire state. Because the shoreline of the Nooksack River is a major resource from which all people in the state derive benefit, this master program gives preference to uses which favor public and long range goals. Accordingly, this program gives preference to uses which meet the principles outlined below, listed in descending order of preference. These principles are incorporated into the City of Lynden Shoreline Master Program:

1. Recognize and protect the statewide interest over local interest.
2. Preserve the natural character of the shoreline.
3. Result in long-term over short-term benefit.
4. Protect the resources and ecology of shorelines.
5. Increase public access to publicly owned areas of the shoreline.
6. Increase recreational opportunities for the public on the shoreline.

~~In the implementation of the policy of RCW 90.58.020, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible, consistent with the overall best interest of the state and the people generally. To this end, uses shall be preferred that are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent on use of the state's shorelines. Alteration of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, and industrial and~~

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~~commercial developments that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.~~

~~Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline areas and interference with the public's use of the water.~~

1.05 HOW THE SHORELINE MASTER PROGRAM IS USED

The City of Lynden Shoreline Master Program is a planning document that outlines the City's shoreline goals and policies and establishes regulations for development occurring in that area.

In order to preserve and enhance the shoreline of the City of Lynden, all development proposals relating to the shoreline area ~~shall~~ should be evaluated in terms of the City's Shoreline Master Program. The City's Shoreline Administrator can provide assistance in identifying what materials should be submitted, if other permit applications should be submitted, etc. Some developments may be exempt from certain permit processes, while others may be required to conform to general or specific regulations, or others may require special permits to address their particular situation; ALL proposals for development within the shoreline area must comply with the policies and regulations established by the state Shoreline Management Act and adopted by Lynden in this Shoreline Master Program.

The Shoreline Management Act (SMA) defines the content and goals that should be represented in the shoreline master program developed by each community. It is left to each community to develop, within these guidelines, the specific regulations appropriate to that community.

Under the SMA, all areas within the shoreline jurisdiction receive a shoreline environment designation. The purpose of the shoreline designation system is to ensure that all land use, development, or other activity occurring within the designated shoreline jurisdiction is appropriate for that area and provides consideration for the special requirements of that environment. Lynden has designated its shoreline in five shoreline environments: Aquatic, Natural, Urban Conservancy, Shoreline Residential, and Urban. These environments are described in Chapter 4: Shoreline Environment Designations.

1.05.01 Is A Permit Required?

The Lynden Shoreline Master Program addresses a wide variety of uses of the shoreline area. This thoroughness is intended to ensure that the Lynden shoreline area is protected from activities and uses that, if unmonitored, could be developed inappropriately and could cause damage to the ecological system of the shoreline, or cause the degradation of the aesthetic values of the shoreline that the community enjoys. The shoreline master program provides the regulatory parameters within which development may occur, or it states that the community considers a certain type of use or activity is unacceptable on the Nooksack River or Fishtrap Creek. It also states that a use or activity may be considered if a conditional review is applied for, but that the

Commented [DT6]: Required Change: All development within shoreline jurisdiction is required to comply with the SMP per WAC 173-27-140.

community should be able to ensure that the development is carried out in such a way that the public's interest in protecting the shoreline is retained.

The shoreline master program (SMP) regulates "development" (defined in Chapter 2), and further defines what is considered "substantial development" and, therefore, requires a Shoreline Substantial Development Permit (SSDP), unless exempt. Some development may require a conditional use permit or a variance from the provisions of the master program. Review under the State Environmental Policy Act (SEPA) may also be required.

1.05.02 The Shoreline Permit

In order to simplify the application process for the applicant, the City of Lynden has adopted the Joint Aquatic Resources Permit Application, or "JARPA," as a part of its shoreline permit form. The JARPA provides a single application form that can be used to apply to the following agencies and departments for the following applications:

City of Lynden

- Shoreline Substantial Development, Conditional Use, Variance Permit or Exemption (within the Lynden shoreline jurisdiction)

Washington Department of Fish and Wildlife

- Hydraulic Project Approval (if project will use, divert, obstruct or change the natural flow or bed of any fresh or salt water of the state).

Washington Department of Ecology

- Section 401 Water Quality Certification (Corps of Engineers Nationwide Permit, FERC Hydropower license, and Corps of Engineers Individual Permit)
- Approval to Allow Temporary Exceeding of Water Quality Standards (if project will create a temporary exceeding of water quality criteria established by the state for in-water work, e.g., changes in turbidity from sediment disturbances and pH changes from concrete curing)

Washington Department of Natural Resources

- Aquatic Resources Use Authorization Notification (if project is on, crosses, or impacts the shorelands of a navigable water)

U.S. Army Corps of Engineers

- Section 404 Permit (if project involves a discharge or excavation of dredged or fill materials waterward of OHWM, in waters of the United States, including wetlands)

JARPA enables the applicant to fill out a single application packet that he or she can then forward to other agencies with jurisdiction over the development proposal. Use of the JARPA will simplify the application and review process for both the applicant and the project reviewer. The applicant will have only one application form to complete, and the various agency reviewers will receive the information they need to perform the review, and will know that the information provided to other agencies was consistent with what they received.

Other activities that could occur along the shoreline (starting bonfires, disposing or spilling/releasing of regulated or hazardous waste products, use of pesticides, activities within wetlands) may require other permits, review, or approval not identified here.

At the time of an initial inquiry or when a permit application is submitted, the City Shoreline Administrator will inform an applicant, to the best of the administrator's knowledge, of any additional regulations and statutes that may apply to the proposed project. The final responsibility for complying with such other statutes and regulations, however, shall rest with the applicant. A list of agencies, departments and phone numbers is provided in the Appendix C of this SMP. Questions about permits, licenses, or review may be directed to the Permit Assistance Center of the Washington Department of Ecology.

1.06 ORGANIZATION OF THIS SHORELINE MASTER PROGRAM

This Master Program is divided into nine chapters:

Chapter 1: Introduction provides general background information on the state Shoreline Management Act; the development of the Shoreline Master Program in Lynden; the Shoreline Jurisdiction; the purpose of the Shoreline Master Program; a general discussion of when and how a shoreline master program is used and how the shoreline permitting process and the State Environmental Policy Act process are related and conducted; and a list of other permits and review for shoreline activities that may also apply for activities within the shoreline area.

Chapter 2: Definitions provides definitions for terms found in this document.

Chapter 3: Shoreline Management Goals lists the general goals which guide the policies and regulations found in the Lynden Shoreline Master Program.

Chapter 4: Shoreline Environment Designation describes each environment along the City of Lynden shoreline and identifies designation criteria, management policies and designates specific areas of the shoreline jurisdiction for each environment. This chapter also includes development standards.

Chapter 5: Shoreline General Policies & Regulations addresses the policies and regulations that apply to all uses, developments, and activities in all shoreline environments of the shoreline jurisdiction. These regulations are intended to be used in conjunction with the more specific use and activity policies and regulations in the Lynden Shoreline Master Program.

Chapter 6: Shoreline Use Policies & Regulations provides policies and regulations for only specific uses and activities in shoreline areas. These regulations set physical development and management standards for development of each type of use.

Chapter 7: Shoreline Modification Policies & Regulations addresses activities that modify the physical configuration or qualities of the shoreline area. These

activities are undertaken in support of or in preparation for a permitted shoreline use. Typically, shoreline modification activities are related to construction of a physical element such as a dike, dredged basins, or fill,

Chapter 8: Administration provides the system by which the Lynden Shoreline Master Program will be administered, and provides specific information on the application process and criteria used in evaluating requests for shoreline substantial development permits, conditional use permits, and variances.

Chapter 9: Restoration Plan

Appendix A:: Map Folio

Appendix B: Cumulative Impacts

Appendix C: Federal and State Agency Contacts useful in administering shoreline permits.

1.07 RELATIONSHIP OF THIS SHORELINE MASTER PROGRAM TO OTHER PLANS

In addition to compliance with the provisions of the Shoreline Management Act of 1971, the Lynden Shoreline Master Program must be consistent with local plans and policy documents, specifically, the Lynden Comprehensive Plan and the City's Critical Areas Ordinance. The City's Shoreline Master Program must also be consistent with the regulations developed by the City to implement its plans, such as the zoning code, as well as regulations relating to flood hazard reduction, building construction and safety.

Submitting to the permitting process for a shoreline development or use does not exempt an applicant from complying with any other local, county, state, regional or federal statutes or regulations which may also be applicable to such development or use. Examples of activities that may require permits, review, or approval from other agencies are listed in the following table. Some of the activities for which these permits are required may not likely occur within the City of Lynden. The following list of permits is provided, however, as additional information about regulatory requirements that exist for various land use activities that may occur in the Lynden area.

Agency	Authority/Jurisdiction	Types of Activity Requiring Permit	Permit
Army Corps of Engineers	Sect. 404 of Clean Waters Act. Jurisdiction extends to Ordinary High Water Mark of all waters of the US and includes all adjacent wetlands	Discharge of dredged materials, fills, grading, ditch sidcasting, groins, road fills, beach nourishment, riprap, jetties, etc.	Section 404 Permit (some limited activities are covered by nationwide general permits)

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Agency	Authority/Jurisdiction	Types of Activity Requiring Permit	Permit
Federal Emergency Management Agency (FEMA)	CFR 44, Part 60 This Ordinance applies to the areas designated as flood zones on FEMA's Federal Insurance Rate Map. The adopted FEMA ordinance enables City residents to acquire federal flood insurance and permits Lynden to be eligible to receive Federal Flood Disaster Funds.	All construction within and uses of the Floodplain must meet the standards established in the Lynden Floodplain Management regulations	Review for compliance with FEMA guidelines is conducted through enforcement of the Lynden Floodplain Management regulations
Washington Department of Agriculture	Varies	Use of pesticides by any means other than hand pumped device - varied restrictions apply depending on the ownership of the property receiving the pesticide, the type of pesticide, etc.	Varies
Washington State Department of Fish and Wildlife (DFW)	RCW 75.20.100-160. All fresh or salt water in the state	Work, construction, development or other activities that will change the natural flow or bed of any fresh or salt water in the state.	Hydraulic Project Approval (HPA)
Washington State Department of Natural Resources (DNR)	RCW 76.09. Waterbodies near forest activities	Forest activities relating to growing, harvesting or processing timber, road construction and maintenance, brush clearing, slash disposal	Forest Practice Approval
Washington State Department of Ecology (DOE)	Section 401, Clean Water Act	Any activity that might result in a discharge of dredge or fill material into water or wetlands, or excavation in water or wetlands that requires a federal permit.	Water Quality Certification
	RCW 90 (various chapters)	Withdrawal of surface or ground water.	Water Use Permit; Certificate of Water Right
	RCW 43.21C Determined by the scope of the project. See also: City of Lynden, SEPA.	SEPA is a process that provides a way to analyze and address the environmental impacts of a project and is geared to mesh with already existing permits, approvals, and/or licenses.	State Environmental Policy Act (SEPA) Review
	Water Pollution Control Act (RCW 90.48)	Act prohibits discharges of polluting matter to any waters of the state, including wetlands. A permit is required for any project potentially impacting state waters.	Various permits, including NPDES, Municipal Wastewater, and Septic permits.

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Agency	Authority/Jurisdiction	Types of Activity Requiring Permit	Permit
City of Lynden	Chapter 16.08 Shoreline Master Program, Lynden Municipal Code	Chapter 4 SMP environmental designation Chapters 5 – 7 Shoreline policies and regulations	Shoreline Substantial Development Permit Shoreline Conditional Use Permit Shoreline Variance
	Title 15 Building and Construction, Lynden Municipal Code	Construction, alteration, moving, demolition, repair, maintenance and use of building or structure	Building Permit
City of Lynden (continued)	Chapter 16.12 Floodplain Management, Lynden Municipal Code	All development activity, including buildings, mining, filling, dredging, grading, paving, excavations, drilling operations, and storage of equipment or materials.	Floodplain Development Permit - review for compliance with this ordinance is conducted as a part of the development review and building permit process.
	Title 19 Zoning, Lynden Municipal Code	See Zoning Code	Variance Conditional Use Zone Change
	Chapter 16.16 Critical Areas, Lynden Municipal Code	Any development	Varies
	Chapter 16.05 State Environmental Policy Act, Lynden Municipal Code	All activity meeting the threshold identified in RCW 43.21C and WAC Chapter 197-11.	State Environmental Policy Act (SEPA) Review

1.08 TITLE

This document shall be known and may be cited as the Lynden Shoreline Master Program and may be abbreviated as “SMP”. This document may refer to itself as “this master Program”.

2 DEFINITIONS

Accessory use or accessory structure – Any structure or portion of a structure or use incidental and subordinate to the primary use or development.

Accretion – The growth of a beach by the addition of material transported by wind and/or water.

Adjacent lands – Lands adjacent to the shorelines of the state (outside of shoreline jurisdiction). The SMA directs local governments to develop land use controls (i.e., zoning, comprehensive planning) for such lands consistent with the policies of the SMA, related rules and the local shoreline master program (see Chapter 90.58.340 RCW).

Administrator – The Planning Director or his/her designee, charged with the responsibility of administering the shoreline master program.

Agriculture – The cultivation of the soil, production of crops, and/or raising of livestock, including incidental preparation of these products for human use. Noncommercial, small-scale individual or community gardening and the keeping of livestock is not considered agriculture.

Anadromous fish – Species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to freshwater rivers and streams to procreate.

Appurtenance – A structure or development which is necessarily connected to the use and enjoyment of a single family residence and is located landward of the ordinary high water mark and also of the perimeter of any wetland. (, Normal appurtenances include a garage, deck, driveway, utilities, fences and grading which does not exceed two hundred fifty cubic yards (250) [except to construct a conventional drain field]) (see WAC 173-27-040(2g)).

Aquaculture – The commercial cultivation of fish, shellfish, and/or other aquatic animals or plants, including the incidental preparation of these products for human use.

Archaeological – Having to do with the scientific study of material remains of past human life and activities.

Architectural standards – Rules, regulations, or guidelines relating to the design, size, configuration or location of buildings and structures including setbacks, height, and bulk restrictions. It may include other structural design or configuration conditions required as part of a variance or conditional use permit intended to improve the compatibility between adjacent structures, activities, or uses.

Automobile wrecking – The dismantling or wrecking of motor vehicles or trailers, or the storage, sale or dumping of dismantled, or partially obsolete or wrecked vehicles or their parts.

Average grade level – The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or

structure; *provided* that in case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure (WAC 173-27-030(3)).

BMPs – see **Best Management Practices**.

Beach – The zone of unconsolidated material that is moved by waves, wind and currents, extending landward to the river or creek bank.

Beach enhancement/restoration – Process of restoring a beach to a state more closely resembling a natural beach.

Beach nourishment – The controlled placement on the beach of sand or gravel to augment inadequate sediment input by natural erosion processes, or to mitigate for the adverse impacts of shoreline erosion control measures.

Benthos – Benthos are living organisms associated with the bottom layer of aquatic systems, at the interface of the sediment (or substrate) and overlying water column. Benthos commonly refers to an assemblage of insects, worms, algae, plants and bacteria.

Best Management Practices (BMPs) – BMPs for stormwater are methods of improving water quality that can have a great effect when applied by numerous individuals. BMPs encompass a variety of behavioral, procedural, and structural measures that reduce the amount of contaminants in stormwater runoff and in receiving waters.

Bioengineering – See **Soil bioengineering**.

Biota – The animals and plants that live in a particular location or region.

Bog – A wet, spongy, poorly drained area which is usually rich in very specialized plants, contains a high percentage of organic remnants and residues and frequently is associated with a spring, seepage area, or other subsurface water source. A bog sometimes represents the final stage of the natural process of eutrophication by which lakes and other bodies of water are very slowly transformed into land areas.

Buffer – A parcel or strip of land that is designed and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic, riparian or wetland site from upland impacts, to provide habitat for wildlife and to afford limited public access.

Building height – The vertical distance measured from average grade level to the highest point of a structure's roof or coping.

Bulkhead – A vertical wall constructed of rock, concrete, timber, sheet steel, gabions, or patent system materials. Bulkheads are generally placed parallel to and near the ordinary high water mark to retain an upland or fill area prone to gliding or sheet erosion, and to protect an upland from erosion by wave or current action. Rock bulkheads are often

termed vertical rock walls and similar to structures termed "revetments". (See figures 2.1 and 2.2 on next page).

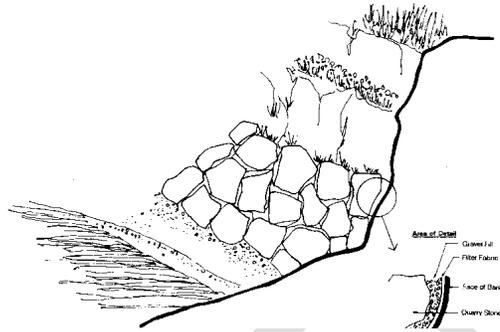


Figure 2-1: Typical Rock Revetment - Sloped

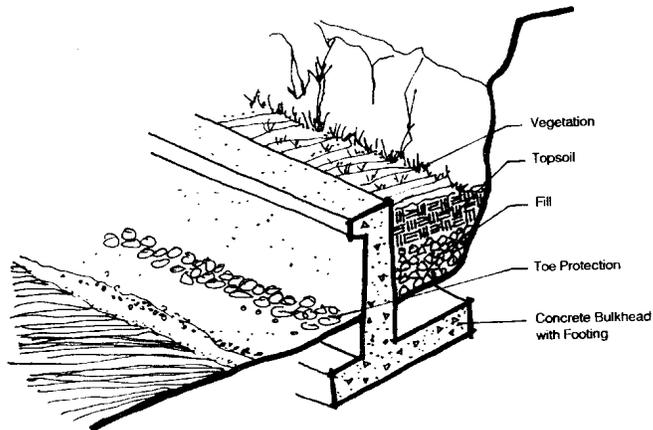


Figure 2-2: Typical Concrete Bulkhead

CFR – Code of Federal Regulations.

CITY – means the City of Lynden.

Channel migration zone (CMZ) – The area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

Clean Water Act – The primary federal law providing water pollution prevention and control; previously known as the Federal Water Pollution Control Act. See 33 USC 1251 et seq.

Clearing – The destruction or removal of vegetative ground cover, shrubs and trees which may include, but is not limited to, root material removal and/or topsoil removal.

Commercial – Uses and facilities that are involved in wholesale or retail trade or business activities.

Conditional use – A conditional use is a use, development, or substantial development which is classified as a conditional use or is not classified within this master program.

Development – A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters of the state subject to Chapter 90.58 RCW at any state of water level (RCW 90.58.030(3d)). **“Development” does not include dismantling or removing structures if there is no other associated development or re-development.**

Commented [DT7]: Periodic Review Checklist: 2017 (b). Clarification of the definition of “Development”.

Development regulations – The controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances, together with any amendments thereto.

Development standards – Specific requirements placed on development, such as building height limits, shoreline setbacks, sewer requirements, etc., that are generally included as part of development regulations.

Dredge spoil – The material removed by dredging; also referred to as “dredge material”.

Dredging – Excavation or displacement of the bottom or shoreline of a water body. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes; other dredging is for flood hazard reduction, water intake maintenance, or for cleanup of polluted sediments.

Enhancement – Alteration of an existing resource to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from resource creation or restoration projects.

Environmental impact statement (EIS) – A document which discusses proposed actions, alternatives, and impacts.

Erosion – The wearing away of land by the action of natural forces.

Excavation – Excavation is the artificial movement of earth materials.

Fair market value – The expected price at which the development can be sold to a willing buyer in an open market. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring

a contractor to perform the operation or where no such value can be calculated, the fair market value of the development shall include the fair market value of any donated, contributed, or found labor, equipment, transportation, materials or other costs incurred for the duration of the permitted project (WAC 173-27-030(8)).

Fill – The placement of soil, sand, rock, gravel existing sediment or other material (excluding solid waste) to create new land, or bottom land along the shoreline waterward of the ordinary high water mark or on wetland or upland areas in order to raise the elevation.

Float – A floating structure that is moored, anchored, or otherwise secured in the water off-shore and that is generally used for recreational purposes such as swimming and diving.

Floodplain – Synonymous with 100-year floodplain. The land area susceptible to being inundated by stream derived waters with a 1 percent chance of being equaled or exceeded in any given year. The limits of this area are based on flood regulation ordinance maps or a reasonable method that meets the objectives of the SMA (WAC 173-22-030(4)).

Floodway – Those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover conditions. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. The limits of the floodway are based on flood regulation ordinance maps or by a reasonable method which meets the objectives of the SMA (RCW 90.58.030(2g); WAC 173-22-030(5)).

Forest practices – Any activity conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include, but are not limited to: road and trail construction, final and intermediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees and brush control. See WAC 222-16-010(21).

Gabions – Structures composed of masses of rocks, rubble or masonry held tightly together usually by wire mesh so as to form blocks or walls. Sometimes used on heavy erosion areas to retard wave action or as foundations for breakwaters or jetties.

Grading – The physical manipulation of the earth's surface and/or drainage pattern in preparation for an intended use or activity.

Groin (also referred to as a **Rock weir**) – A barrier-type structure extending from, and usually perpendicular to, the backshore into a water body. Its purpose is to protect a shoreline and adjacent upland by influencing the movement of water and/or deposition of materials. This is accomplished by building or preserving an accretion beach on its updrift side by trapping littoral drift. A groin is relatively narrow in width but varies greatly in length. A groin is sometimes built in a series as a system and may be permeable or impermeable, high or low, and fixed or adjustable.

HPA - Hydraulic Project Approval – The permit issued by the Washington State Departments of Fisheries or Wildlife pursuant to the State Hydraulic Code Chapter 75.20.100-140 RCW.

Habitat – The place or type of site where a plant or animal naturally or normally lives and grows.

Height – See **Building Height**.

In-kind replacement – To replace wetlands, streams, habitat, biota or other organisms with substitute flora or fauna whose characteristics closely match those destroyed, displaced, or degraded by an activity.

Levee – A large dike or embankment, often having an access road along the top, which is designed as part of a system to protect land from floods.

Marina – A facility that provides launching, storage, supplies, moorage, and other accessory services for six or more pleasure boats and/or commercial watercraft.

Marshes – Soft, wet area periodically or continuously flooded to a shallow depth, usually characterized by a particular subclass (monocotyledons) of grasses, cattails and other hydrophytic plants.

Mitigation – The process of avoiding, reducing, or compensating for the environmental impact(s) of a proposal (see WAC 197-11-768). The following is a list of mitigation techniques, listed in order of preference, with “1” being the most preferred:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resource or environments; and
6. Monitoring the impact and the compensation project and taking appropriate corrective measures.

Mitigation sequence – See **Mitigation**

Moorage – Any device or structure used to secure a vessel for temporary anchorage, but which is not attached to the vessel (such as a pier or buoy).

Multifamily dwelling (or residence) – A building containing two or more dwelling units, including but not limited to duplexes, apartments, and condominiums.

Native plants – These are plants that occur naturally, and that distribute and reproduce without aid. Native plants in western Washington are those that existed prior to intensive settlement that began in the 1850s.

“Natural or existing topography” means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

Nonconforming development – A shoreline use or structure which was lawfully constructed or established prior to the effective date of the Act or the Master Program, or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the SMA. (See *Chapter 6: Administration.*)

Non-water-oriented uses – Those uses which have little or no relationship to the shoreline and are not considered priority uses under the SMA. Any use which does not meet the definition of water-dependent, water-related, or water-enjoyment is classified as non-water-oriented. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, department stores, and gas stations. See also **Water-enjoyment**, **Water-related**, and **Water-oriented**.

OHWM, Ordinary High Water Mark – That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: *provided*, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(b) and WAC 173-22-030(11).

Permit – Any substantial development, variance, or conditional use permit, or revision authorized under Chapter 90.58 RCW.

Pier – A fixed, pile-supported structure.

Public interest – The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected such as an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030(14)).

Public trust doctrine – That body of case law addressing the public’s rights, duties and interests in water areas including navigation, commerce, environmental quality, fish and wildlife and recreation.

RCW – Revised Code of Washington.

RCW 90.58 – The Shoreline Management Act of 1971.

Recreational vehicle – See **Travel trailer**.

Residential development – Development which is primarily devoted to or designed for use as a dwelling(s).

Restoration – To revitalize or reestablish characteristics and processes of a wetland or habitat diminished or lost by past alterations, activities, or catastrophic events.

Revetment – Erosion protection measures constructed on a slope, normally in the range of 1.5:1 to 2:1 (horizontal: vertical). Construction materials may be rock riprap, gabions, interlocking concrete parent units, or similar materials.

Riparian – Of, on, or pertaining to the banks of a river.

Riprap – A layer, facing, or protective mound of stones placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

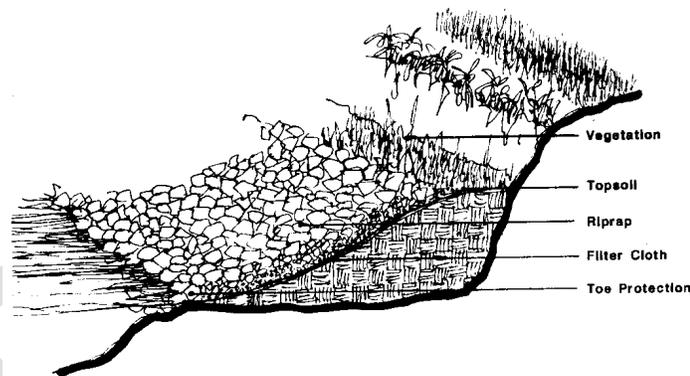


Figure 2-3: Example design criteria for riprap revetments

Rock weir – A structure made of loose rock that is designed to control sediment movement, water flow, or both. A rock weir adjacent to a shoreline is typically formed by placing rock in a line outward from the shore, with the top of the rock embankment below the water level to restrict current movements parallel to the shore without completely blocking flow.

Rotovating – An aquatic vegetation harvesting technique that uses rototilling technology to uproot and remove plants.

Runoff – Water that is not absorbed into the soil but rather flows along the ground surface following the topography.

SEPA – see **State Environmental Policy Act**.

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SEPA Checklist – A checklist is required of some projects under SEPA to identify the probable significant adverse impacts on the quality of the environment. The checklist will also help to reduce or avoid impacts from a proposal, and help the responsible governmental agency decide whether a full environmental impact statement (EIS) is required (WAC 197-11-960).

Salmon and Steelhead Habitats – Gravel bottomed streams, creeks, and rivers used for spawning; streams, creeks, rivers, side channels, ponds, lakes, and wetlands used for rearing, feeding, adult residency, cover and refuge from predators and high water; streams, creeks, , rivers, , used as migration corridors; and water bodies used for rearing, feeding, adult residency, and refuge from predators and currents.

Sediment – The fine grained material deposited by water or wind.

Setback – A required open space, specified in shoreline master programs, measured horizontally upland from and perpendicular to the ordinary high water mark.

Shall – "Shall" indicates a mandate; the particular action must be done.

Shoreline jurisdiction – The term describing all of the geographic areas covered by the SMA, related rules and the applicable master program. Also, such areas within a specified local government's authority under the SMA. See definitions of *Shorelines*, *Shorelines of the state*, *Shorelines of statewide significance*, and *Wetlands, jurisdictional*.

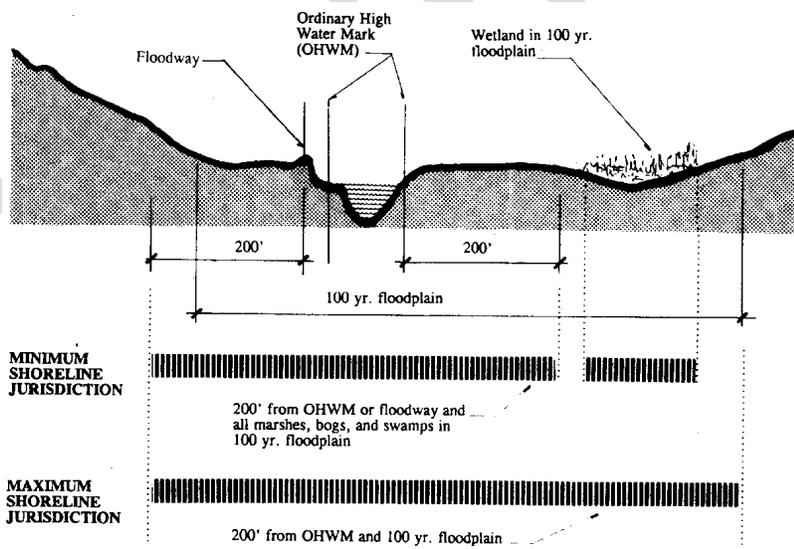


Figure 2-4: Cross Section of Shoreline Management Act Jurisdiction - River Shorelines

Shoreline Management Act – (SMA or Act) Chapter 90.58 RCW, as amended.

Shoreline Master Program (SMP) – The comprehensive use plan and related use regulations, together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. The SMP is used by the City to administer and enforce the permit system for shoreline management. Master programs (SMP's) must be developed in accordance with the policies of the SMA, be approved and adopted by the state, and be consistent with the state rules (WAC's) adopted by Ecology.

As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a city approved under chapter 90.58 RCW shall be considered an element of the city's comprehensive plan. All other portions of the shoreline master program for a city adopted under Chapter 90.58 RCW, including use regulations, shall be considered a part of the city's development regulations.

Shoreline modification – Physical construction on or alteration to a shoreline area. Examples of shoreline modifications include piers, docks, jetties, bulkheads, riprap, beach enhancement, and modifications to riparian and wetland areas.

Shoreline permit – A substantial development, conditional use, revision, or variance permit or any combination thereof (WAC 173-27-030(13)).

Shoreline Substantial Development Permit (SSDP) – The permit required under the Shoreline Management Act and this Master Program if the development proposed is a "substantial development".

Shorelines – All of the water areas of the state, including reservoirs and their associated shorelands, together with the lands underlying them, except (a) shorelines of statewide significance; (b) shorelines on segments of streams upstream of a point where the mean annual flow is twenty (20) cubic feet per second or less, and the wetlands associated with such upstream segments; and (c) shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes (see RCW 90.58.030(2)(d) and WAC 173-18, 173-19 and 173-22).

Shorelines Hearings Board – A six member, state-level quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, or enforcement penalty. See RCW 90.58.170; 90.58.180; and WAC 173-27-220; 173-27-290.

Shorelines of statewide significance – A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where special preservationist policies apply and where greater planning authority is granted by the SMA; the Nooksack River is identified as a shoreline of statewide significance. Permit review must acknowledge the use priorities for these areas established by the SMA. See Section 1.04.03 in this document.

Shorelines of the state – The total of all shorelines and shorelines of statewide significance.

Should – The particular action is required, unless there is a compelling reason against it.

Single family residence – A detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance (WAC 173-27-040(2g)).

SMA – see *Shoreline Management Act*.

SMP – see *Shoreline Master Program*.

Soil bioengineering – An applied science that combines structure, biological and ecological concepts to construct living structures that stabilizes the soil to control erosion, sedimentation and flooding using live plant materials as a main structural component.

Solid waste – Solid waste includes all putrescible and nonputrescible solid and semisolid wastes, including garbage, rubbish, ashes, industrial wastes, wood wastes and sort yard wastes associated with commercial logging activities, swill, demolition and construction wastes, abandoned vehicles and parts of vehicles, household appliances and other discarded commodities. Solid waste does not include sewage, dredge material or agricultural or other commercial logging wastes not specifically listed above.

Solid waste disposal – The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste on any land area on or in the water.

State Environmental Policy Act , (SEPA) – SEPA requires state agencies, local governments and other lead agencies to consider environmental factors when making most types of permit decisions, especially for development proposals of a significant scale. As part of the SEPA process, EISs may be required to be prepared and public comments solicited.

Stream – According to the Shoreline Management Act, a stream for which the SMA has jurisdiction (SMA-stream) is defined as a naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than twenty (20) cubic feet per second and b) the water is contained within a channel (WAC 173-22-030(15)). The term “stream” is also used generally to describe those non-SMA stream areas where periodic or continuously flowing surface waters produce a defined channel or bed that demonstrates annual passage of water such as gravel beds, usage by salmonid or other fish populations, etc. that are located within shorelands. This definition includes drainage ditches or other artificial watercourses where natural streams existed prior to human alteration.

Structural (or hard) erosion control – Measures which include revetments, bulkheads and seawalls, vertical rock walls, and similar facilities, constructed parallel to and near the ordinary high water mark for the purpose of protecting adjacent uplands from the erosive action of waves or currents.

Structure – A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels (WAC 173-27-030(15)).

Substantial Development – A substantial development is any “development” of which the total cost or fair market value exceeds ~~five thousand seven hundred eighteen dollars (\$5,718)~~ seven thousand forty seven dollars (\$7,047), or as amended by the state office of financial management or any development which materially interferes with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials, See also Section 8.05.03 Exemptions.

Commented [DT8]: Periodic Review Checklist: 2017 (a). OFM adjusted the cost threshold as they do regularly.

Travel trailer – A portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational and vacation use.

Upland – Generally described as the dry land area above and landward of the ordinary high water mark.

Variance – A means to grant relief from the specific bulk, dimensional or performance standards specified in the applicable master program, and not a means to vary the use of a shoreline. Variance permits must be specifically approved, approved with conditions, or denied by Ecology (See WAC 173-27-170).

Vegetative erosion control – Shoreline stabilization solely through the use of erosion resistant plantings, preferably of plant species native to the local area.

WAC – Washington Administrative Code.

Water-dependent – A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls. See also **Water-enjoyment, Water-related, Water-oriented** and **Non-water oriented**.

Water-enjoyment – A recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through the location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers and other improvements facilitating public access to shorelines of the state; and general water-enjoyment uses may include, but are not limited to, restaurants, museums, aquariums, scientific/ecological reserves, resorts and mixed-use commercial, *provided*, that such uses conform to the above water-enjoyment specifications and the provisions of the master program. See also **Water-dependent, Water-related, Water-oriented, and Non-water oriented**.

Water-oriented – Refers to any combination of water-dependent, water-related, and/or water enjoyment uses and serves as an all encompassing definition for priority uses under the SMA with the exception of single-family residences. See also **Water-dependent, Water-enjoyment, Water-related,** and **Non-water oriented.**

Water-related – A use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

1. of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
2. the use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive and/or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the products cost, professional services serving primarily water-dependent activities and storage of water-transported foods. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

See also **Water-dependent, Water-enjoyment, Water-oriented,** and **Non-water oriented.**

Wetlands – or **wetland areas** means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas (See RCW 90.58.030(2)(h) and WAC 173-22-030(19)).

Zoning – To designate by ordinance, including maps, areas of land reserved and regulated for specific land uses.

3 SHORELINE MANAGEMENT GOALS

3.01 SHORELINE MASTER PROGRAM GOALS

Eight preliminary shoreline management goals relating to program elements specified in RCW 90.58.100 have been identified for the City of Lynden. These goal statements address the following shoreline elements: *Shoreline Use, Economic Development, Circulation, Conservation, Public Access, Recreation, Historic/Cultural Resources, and Restoration*. These goals establish the basis from which the environmental designations, policies, regulations, and administrative procedures of the Shoreline Master Program are developed.

3.02 SHORELINE USE ELEMENT GOAL

To plan for and foster appropriate uses on shorelines and adjacent land areas, including housing, business, industry, transportation, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land, while protecting and enhancing the quality of the shorelines of the City and adjoining County properties and preserving special opportunities for water-dependent, water-related and water-enjoyment uses.

3.03 ECONOMIC DEVELOPMENT ELEMENT GOAL

Insure healthy, orderly economic growth by allowing those economic activities which will be an asset to the local economy and which result in the least possible adverse effect on the quality of the shoreline and surrounding environment.

3.04 CIRCULATION ELEMENT GOAL

Provide safe, reasonable and adequate circulation systems to shorelines where routes will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline with minimum conflict among shoreline uses and between shoreline users and abutting upland areas.

3.05 CONSERVATION ELEMENT GOAL

To conserve, restore and enhance the natural resources including scenic vistas, estuaries, beaches, shorelines, fragile ecological areas, fish, wildlife, timber and land, water and air.

3.06 PUBLIC ACCESS ELEMENT GOAL

To increase and enhance a public access system that is both physical and visual, utilizing both private and public lands while respecting the rights of private ownership.

3.07 RECREATIONAL ELEMENT GOAL

Encourage diverse, water-oriented recreational opportunities in shoreline areas that can reasonably tolerate during peak use periods active, passive, competitive or contemplative uses without destroying the integrity and character of the shoreline.

3.08 HISTORICAL/CULTURAL ELEMENT GOAL

Identify, protect, preserve and restore important archaeological, historical and cultural sites located in shorelands for educational, scientific and enjoyment of the general public.

3.09 RESTORATION ELEMENT GOAL

To encourage development in areas that have been previously blighted or degraded so such areas may be renewed or restored to a natural or useful condition.

4 SHORELINE ENVIRONMENT DESIGNATIONS

4.01 INTRODUCTION

The five environment designations that ~~are may be~~ applied to shoreline areas within the City of Lynden are the Urban, Shoreline Residential, Urban Conservancy, ~~Natural~~, and Aquatic Environments. The following provisions include a statement of purpose for each environment, and criteria for applying the appropriate environment designations to shorelines of the city. In addition, management policies are provided as the basis for determining which uses are allowed in each shoreline environment and for setting site development standards. Maps of the designations are provided in the Appendix A Map Folio with general descriptions of the areas listed below.

Commented [DT9]: DOE recommended: Minor change to clarify that the environment designations are pre-determined according to the Official Shoreline Map.

Commented [DT10]: Lynden does not have a "Natural" designation on any properties in the City.

4.02 URBAN ENVIRONMENT

The purpose of the "urban" environment is to provide for high-intensity and water-oriented commercial, industrial and transportation uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

4.02.01 Designation Criteria

An "urban" environment is for designating shoreline areas that currently support high-intensity uses related to commerce, or transportation; or are suitable and planned for high-intensity water-oriented uses.

4.02.02 Management Policies

1. Uses in the "urban" environment should be prioritized in the following order:

- Water-dependent uses.
- Water-related and water-enjoyment uses.
- Non water-oriented uses only if part of mixed use developments.

Non water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites that are physically separated from the shoreline by a public road or parcel in another ownership as of the effective date of this SMP, and where there is no direct access to the shoreline.

2. Single-family residential development may be allowed within the "urban" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.
3. Multifamily residential and recreational developments should provide public access and joint use for community recreational facilities.

4. Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed.
5. New development shall result in no net loss of shoreline ecological functions.
6. Visual and physical public access should be required where feasible.
7. Aesthetic objectives should be implemented for sign control regulations, development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

4.02.03 Urban Environment

The Lynden Urban Environment includes:

- The area west of Fishtrap Creek from the southern City Urban Growth Area limits (near Guide Meridian Road) to the Kok Road.
- The commercial zoned areas along Fishtrap Creek near the Front Street Bridge.
- The commercial zoned areas adjacent to Fishtrap Creek along 18th Street.
- The industrial zoned area on the south side of Fishtrap Creek, near Depot Road.

4.03 SHORELINE RESIDENTIAL ENVIRONMENT

The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

4.03.01 Designation Criteria

Areas to be designated Shoreline Residential Environment are predominantly single-family or multifamily residential development or are planned and platted for residential development.

4.03.02 Management Policies

1. Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.
3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
4. Commercial development should be limited to water-oriented uses.

4.03.03 Shoreline Residential Environment

The Lynden Shoreline Residential Environment includes:

- The areas north of Fishtrap Creek from the commercial properties north of Front Street to Bender Road. With the exception of one commercial property near Depot Road.
- The residential properties south of Fishtrap Creek between the commercial properties near the Front Street Bridge to the commercial properties located near 18th Street.
- The areas south of Fishtrap Creek from 17th Street to the industrial property located on the west side of Depot Road.
- The areas south and east of Fishtrap Creek starting at the residential properties at Brookfield Court to the northern City Limits along the Badger Road.
- All areas in the City of Lynden that are part of the Nooksack River shoreline jurisdiction with the exception of commercial properties located on the south end of 4th Street.
- The area west of Fishtrap Creek from the east boundary of Bender Field to Heritage Park south of the Badger Road.

4.04 URBAN CONSERVANCY ENVIRONMENT

The intent of the Urban Conservancy environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

4.04.01 Designation Criteria

Areas to be designated Urban Conservancy should meet one or more of the following criteria:

1. Areas suitable for water-related or water-enjoyment uses;
2. Open space, flood plain or other sensitive areas that should not be more intensively developed;
3. The potential for ecological restoration;

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4. The area retains important ecological functions, even though partially developed; or
5. They have the potential for development that is compatible with ecological restoration.
6. All areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned "urban conservancy" until the shoreline can be re-designated through a master program amendment.

4.04.02 Management Policies

1. Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
2. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
3. Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.
4. Water-oriented uses should be given priority over non water-oriented uses.
5. Single-family residential development may be allowed as a conditional use within the "urban conservancy" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.
6. Commercial and industrial uses should be prohibited.

4.04.03 Urban Conservancy Environment

The Lynden Urban Conservancy environment extends:

1. The Northwest Washington Fairgrounds (zoned Public) area west of Fishtrap Creek, north of Kok Road and the wetland areas west of Fishtrap Creek from Kok Road to Front Street.
2. The area south of Fishtrap Creek from the City Park, along the City Trail to the residential properties north of Lynden Christian High School (near Brookfield Court) with the exception of one residential property at the end of Cedar Drive.
3. The area north of Fishtrap Creek along Bender Fields from Bender Road to Bender Park Boulevard and one property west of Bender Road.

4. Heritage Park located on the east side of Fishtrap Creek near Badger Road.

~~4.05 NATURAL ENVIRONMENT~~

~~The Natural Environment is intended to preserve and restore those natural resource systems existing relatively free of human influence and those shoreline areas possessing natural characteristics intolerant of human use or unique historical, cultural or educational features. These systems require severe restrictions on the intensities and types of uses permitted so as to maintain the integrity of the shoreline environment.~~

~~4.05.01 Designation Criteria~~

~~Areas to be designated Natural should meet one or more of the following criteria:~~

- ~~1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;~~
- ~~2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or~~
- ~~3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.~~
- ~~4. Such shoreline areas that include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, and ecologically intact shoreline habitats.~~

~~4.05.02 Management Policies~~

- ~~1. Any use or development which would potentially degrade the natural character of the shoreline area should be severely restricted or prohibited.~~
- ~~2. Limited access should be permitted for scientific, historical, educational and low-intensity recreational purposes, provided that no significant adverse impact on the area will result.~~
- ~~3. The following new uses should not be allowed in the "natural" environment:~~
 - ~~• Commercial uses.~~
 - ~~• Industrial uses.~~
 - ~~• Non water-oriented recreation.~~
 - ~~• Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.~~
- ~~4. A Single family residential structure may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary~~

Commented [DT11]: DOE Recommended: Removed "Natural Environment" section bc Lynden has none.

~~to protect ecological functions and be consistent with the purpose of the environment.~~

~~5. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions is prohibited.~~

~~6. The subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions is prohibited.~~

~~4.05.03~~ Natural Environment

~~The Lynden Natural Environment includes:~~

- ~~• No lands as of the date of this SMP~~

4.06.05 AQUATIC ENVIRONMENT

The purpose of this designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

4.06.014.05.01 Designation Criteria

1. Aquatic areas include all lands waterward of the ordinary high-water mark in Fishtrap Creek and the Nooksack River.

4.06.024.05.02 Management Policies

1. New over-water structures are only allowed for water dependent uses, public access, or ecological restoration. Utility crossings may be authorized as a conditional use. Uses which will substantially degrade the existing character of the area should be prohibited.
2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
3. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities are encouraged.
4. Uses that adversely impact the ecological functions of fish and wildlife habitat conservation areas should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.
5. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

~~4.06.03~~ 4.05.03 Aquatic Environment

The Lynden Aquatic environment includes:

- the area of the Nooksack River and Fishtrap Creek within the City of Lynden from the ordinary high water mark (OHWM) on one side of each waterway to the OHWM on the opposite side of the waterway.
- all areas of the Nooksack River waterward of the OHWM within the City of Lynden jurisdiction.

4.074.06 DEVELOPMENT STANDARDS

~~4.07.014~~ 4.06.01 Shoreline Use Policies and Regulations

The table in section 4.07.02 lists SMP permitted uses and activities within each shoreline environment designation. In the case that inconsistencies exist between the table and the policies and regulations included within Chapters 4, 6 and 7, the policies and regulations shall apply.

~~4.07.024~~ 4.06.02 Shoreline Use and Activity table

Commented [DT12]: Note: Removed the "Natural" column bc Lynden has none

<i>Shoreline Use or Activity</i>	<i>Aquatic</i>	<i>Urban Conservancy</i>	<i>Shoreline Residential</i>	<i>Urban</i>
Agriculture	X	X	X	X
Aquaculture	C	C	C	C
Commercial				
Water dependent	C	C	P	P
Water Related	X	C	P	P
Water-Enjoyment	X	C	C	C
Non-Water Oriented	X	X	C	P
Dredging	C	C	C	C
Fill	C	C	C	C
Industry	X	X	C	P
Instream Structure	C	C	C	C
Parking				
Accessory	X	C	P	P
Primary	X	X	X	X
Recreation				
Water dependent	C	P	P	P

Commented [DT13]: DOE required change: SMP 6.04.03.2 permits non-water oriented commercial uses in the urban environment designation.

Shoreline Use or Activity	Aquatic	Urban Conservancy	Shoreline Residential	Urban
Water Related	X	P	P	P
Water-Enjoyment	X	C	C	C
Non-Water Oriented	X	C	C	C
Residential				
Single family	X	C	P	P
Multi-family	X	X	P	P
Shoreline Restoration	PC	PC	PC	PC
Shoreline Stabilization	C	C	C	C
Solid Waste Disposal	X	X	X	X
Transportation	C	C	P	P
Utilities	C	C	C	P

Commented [DT14]: DOE Required Change: Shoreline restoration should be encouraged consistent with policies and regulations in 7.05.

Key

- P = May be permitted
- C = May be permitted as a conditional use only
- X = Prohibited; the use is not eligible for a variance or conditional use permit

4.07.034.06.03 Height Limits and Setbacks

The development standards in this section are the maximum allowed in each environment under this SMP. A proposed development must also comply with all zoning and development regulations in the Lynden Municipal Code.

4.07.044.06.04 Height Limits

1. No new or expanded building or structure shall exceed the height limits shown in section 4.07.06 for the Environment Designation. Height limits do not apply to cupolas, water tanks, church spires, flagpoles, transmission lines, and radio and television towers and other similar structures. Height limits are measured from average grade.

4.07.054.06.05 Setbacks

1. Permanent structures, storage, impervious and hard surfaces shall be set back from the floodway edge or ordinary high water mark (whichever is further landward) according to the table in 4.07.06. Setbacks are measured landward, on a horizontal plane, perpendicular to the shoreline.
2. The portion of development that is water-dependent should not be required to meet the setback. However, the placement of structures, storage, and hard surfaces

within the setback shall be limited to the minimum necessary for the successful operation of the use.

- 3. In no case shall parking be allowed within the fifty (50) foot setback.
- 4. Removal of vegetation and topsoil is strictly regulated under the Clearing and Grading Provisions of this Master Program.

4.07.06.06.06 Table of development standards

<i>Environment Designation</i>	<i>Height</i>	<i>Setback</i>
Aquatic	NA	NA
Natural	15 feet	150 feet
Urban Conservancy	15 feet	100 feet
Shoreline Residential	32 feet	75 feet
Urban	60 feet	50 feet

5 GENERAL POLICIES & REGULATIONS

5.01 INTRODUCTION

General policies and regulations are applicable to all uses and activities that may occur within shorelines of the city that are subject to the jurisdiction of the State Shoreline Management Act. Policies and regulations provided in this master program specifically address uses and activities occurring on the shorelines of the Nooksack River or Fishtrap Creek and the associated wetlands. The general policies and regulations reduce redundancy within the master program by eliminating the need to repeat regulations that apply to all subject shorelands within the city, regardless of environmental designation. The general regulations are to be used in conjunction with the more specific use and activity regulations found in the following chapters.

5.02 GENERAL REGULATIONS

1. New and expanded development shall result in no net loss of shoreline ecological functions.
2. All shoreline uses, and shoreline modification activities including those that do not require a shoreline substantial development permit (SDP), must conform to the policies and regulations of this master program.
3. Shoreline modification activities must be in support of an allowable shoreline use which conforms to the provisions of this master program. Except as otherwise noted, all shoreline modification activities not associated with a legally existing or an approved shoreline use are prohibited.
4. Shoreline uses, modification activities and conditions listed as "prohibited" shall not be eligible for consideration as a shoreline variance or shoreline conditional use permit.
5. The "policies" listed in this master program will provide broad guidance and direction and will be used by the City in applying the "regulations".
6. Where provisions of this master program conflict, the most protective provisions reasonable under the given circumstances shall apply.

5.03 ARCHAEOLOGICAL AND HISTORIC RESOURCES

5.03.01 Applicability

Archaeological and historic resources, because of their finite nature, are valuable links to our past and should be considered whenever a development is proposed along the Nooksack River, Fishtrap Creek or on any associated wetlands. Where such resources are either recorded at the State Historic Preservation Office and/or with the City of

Lynden and/or Whatcom County, or have been inadvertently uncovered, the following policies and regulations apply.

5.03.02 Policies

1. Due to the limited and irreplaceable nature of the resource, public or private uses and activities should be prevented from destroying or damaging any site having historic, cultural, scientific or educational value as identified by the appropriate authorities.

5.03.03 Regulations

1. All shoreline permits shall contain provisions which require developers to immediately stop work and notify the City, the Office of Archaeology and Historic Preservation and affected Indian tribes if any phenomena of possible archaeological interest are uncovered during excavations. ~~In such cases, in areas documented to contain archaeological resources,~~ the developer shall be required to provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data are properly salvaged or protected.

Commented [DT15]: DOE Required Change: Change needed for consistency with WAC 173-26-221(1)(c)(ii).

5.04 CLEARING AND GRADING

5.04.01 Applicability

One intent of the Shoreline Management Act is to minimize as much as possible impacts to the ecology of the shoreline and its waters. This is substantiated by RCW 90.58.020:

"Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's uses of the water."

Clearing and grading is the activity associated with developing property for a particular use including commercial, industrial, recreational and residential uses. Specifically, "clearing" means the destruction or removal of vegetative ground cover and/or trees including, but not limited to, root material removal and/or topsoil removal. This includes such activities as clear-cutting or selective harvest of trees, chipping of stumps and hauling off of shrubs, slash piles, etc. "Grading" means the physical manipulation of the earth's surface and/or surface drainage pattern without significantly adding or removing on-site materials. This includes removing the duff layer, all surcharging, preloading and re-contouring the ground and may include minor excavation and filling. Landfill addresses the placement of dry fill on existing dry or existing wet areas.

Both activities, clearing and grading, may increase erosion, siltation, runoff/flooding, change drainage patterns, reduce flood storage capacity and damage habitat. Although it may not technically be considered "development" which triggers a substantial development permit, clearing as an activity that impacts shoreline resources is regulated in order to achieve the design goals and objectives of the SMA, particularly along Shorelines of Statewide Significance where preservation of natural shoreline

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characteristics takes a very high priority. All policies and standards must be adhered to and a conditional use permit shall be required in the ~~Natural and~~ Urban Conservancy shoreline designations. Grading is considered development and will be managed accordingly. For single-family residences, 250 cubic yards of fill may be allowed without a substantial development permit provided all other applicable permits are obtained and all policies and regulations are met.

Commented [DT16]: Lynden has no "Natural" designation

5.04.02 PERMIT EXEMPTION - Grading

For single family residences, a one-time exemption of two hundred and fifty (250) cubic yards of grading (in excess of the grading allowed for approved development of the house footprint and appurtenant structures) may be allowed without a substantial development permit, provided all policies and regulations of this master program are met.

5.04.03 Policies

1. All clearing and grading activities should be designed and conducted to minimize impacts to wildlife habitat, sedimentation of creeks, streams, ponds, wetlands and other water bodies and degradation of water quality.
2. Clearing and grading activities in shoreline areas should be limited to the minimum necessary to accommodate shoreline development. Such activities should not be allowed in designated (structural) setback areas and allowed in other shoreline locations only when associated with a permitted shoreline development.
3. Negative environmental and shoreline impacts of clearing and grading should be avoided wherever possible through proper site planning, construction timing and practices, bank stabilization, bioengineering and use of erosion and drainage control methods as well as adequate maintenance.
4. Cleared and disturbed sites remaining after completion of construction should be promptly replanted with native vegetation or, in limited circumstances, with other species contained in the City approved plant list.
5. All clearing and grading activities should be designed with the objective of maintaining natural diversity in vegetation species, age and cover density.
6. For extensive clearing and grading proposals, a clearing and grading plan addressing species removal, replanting, invasive and noxious weed control, irrigation, erosion and sedimentation control and other methods of riparian corridor protection should be required conforming with the standards for the maximum percentage of site clearing permitted.

5.04.04 Regulations

1. All clearing and grading activities shall be limited to the minimum necessary for the intended development, including residential development.

2. Clearing and grading within designated shoreline setback areas shall be the minimum necessary to provide access to the shoreline.
3. When applying clearing and grading requirements the following plant communities shall determine in descending order of preference where clearing and grading may be allowed. The first plant community listed indicates the most preferred location for clearing and grading:
 - a. invasive plants and noxious weeds
 - b. grass
 - c. shrub/scrub
 - d. forest
4. Clearing and grading activities may only be permitted (landward of required setbacks) when associated with a permitted shoreline development, PROVIDED that upon completion of construction, remaining cleared areas shall be replanted with native species contained in the City approved plant list. Replanted areas should be maintained such that within three-years time the vegetation is fully reestablished.
5. Normal nondestructive pruning and trimming of vegetation for maintenance purposes shall not be subject to these clearing and grading regulations. In addition, clearing by hand held equipment of invasive nonnative shoreline vegetation or plants listed on the State Noxious Weed List is permitted in shoreline locations if native vegetation is promptly reestablished in the disturbed area.
6. Any significant placement of materials from off-site, (other than surcharge or preload) or substantial creation or raising of dry upland shall be considered landfill and shall also comply with the landfill provisions in section 7.0 Shoreline Modification Activity Policies and Regulations.

5.05 ENVIRONMENTAL IMPACTS

5.05.01 Applicability

The SMA is concerned with the environmental impacts that both a use and activity may have on the fragile shorelines of the state. This Shoreline Master Program is primarily concerned with the potential damaging effects to the shorelines of the State, within the City of Lynden. Shoreline and water quality degradation caused by the introduction of pollutants such as contaminated stormwater, animal wastes, petroleum products, chemicals, pesticides/herbicides, solid waste, domestic or industrial wastewater and sediment from erosion are all issues that must be addressed.

5.05.02 Policies

1. The adverse impacts of shoreline uses and activities on the environment should be minimized during all phases of development (e.g. design, construction, management and use).

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5.05.03 Regulations

1. The location, design, construction and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water on-site and adjacent to the site and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and related regulatory agencies.
2. Solid and liquid wastes and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto land without the required permits.
3. The release of oil, chemicals or hazardous materials onto land or into the water is prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected and any contamination remediated.
4. All shoreline uses and activities shall be located, designed, constructed and managed in a manner that avoids and minimizes adverse impacts to surrounding land and water uses and is aesthetically compatible with the affected area.
5. All shoreline uses and activities shall utilize best management practice (BMP) measures to avoid and minimize any increase in surface runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures may include but are not limited to dikes, catch basins or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains, low-impact development techniques, and landscaped buffers.
6. All shoreline uses and activities shall utilize effective erosion control methods during both project construction and operation.
7. All shoreline uses and activities shall be located, designed constructed and managed to avoid disturbance of and minimize adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
8. Land clearing, grading, filling and alteration of natural drainage features and land forms shall be limited to the minimum necessary for development. Surface drainage systems or substantial earth modifications involving greater than 50 cubic yards of material shall be professionally designed to prevent maintenance problems or adverse impacts to adjacent properties or shoreline features.
9. All shoreline developments shall be located, constructed and operated so as not to be a hazard to public health and safety.
10. All shoreline developments shall be located and designed to ~~avoid minimize or prevent~~ the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, or substantial site re-grades.

Commented [DT17]: DOE Required Change: This change uses the term "avoid" consistent with WAC 173-26-231(3)(a)(iii)(A) and the language in 7.06.03.1 of this master program.

11. Herbicides and pesticides shall not be applied or allowed to directly enter water bodies or wetlands unless approved for such use by appropriate agencies (U.S. and State Departments of Agriculture, U.S. Environmental Protection Agency, Washington Department of Ecology). Such chemicals shall only be allowed to be applied in vegetative buffers upon written approval by the Administrator.

5.06 CRITICAL AREAS – GENERAL PROVISIONS

5.06.01 Applicability

Critical areas constitute the most fragile lands which support resources that are economically and culturally important to the state, and consequently the city, under the Shoreline Management Act. The shorelines of the Nooksack River and Fishtrap Creek contain valuable natural resources that provide habitat for chum, coho, and Chinook Salmon, as well as steelhead, sea-run trout, resident trout and Dolly Varden. The shorelands of the city also contain areas that could potentially threaten the health and safety of the public, such as floodways or steep slopes.-

Critical areas apply to:

- Wetlands,
- Areas with a critical recharging effect on aquifers used for potable waters;
- Fish and wildlife habitat conservation areas;
- Frequently flooded areas;
- Geologically hazardous areas

Regulation of critical areas within the shoreline jurisdiction shall be consistent with applicable provisions codified in Lynden Municipal Code Chapter 16.16, adopted by Ordinance No. 1560 in 2018; provided, that the following sections shall not apply:

- 16.16.070 – Exemptions from Critical Areas Review Requirements;
- 16.16.080 – Critical Area Permits;
- 16.16.090 – Waiver for Subsequent Approvals;
- 16.16.100 – Existing Non-Conforming Uses;
- 16.16.130 - Enforcement; and
- 16.16.140 – Offense and Penalty

In addition to Section 16.16.260 of the Lynden Critical Areas Ordinance, the following additional provision applies to Shoreline associated wetlands:

1. Wetlands shall be designated in accordance with the approved federal wetland delineation manual and applicable regional supplements.

5.06.02 Policies

- ~~1. Unique, rare and fragile natural and man made features as well as scenic vistas and wildlife habitats should be preserved and protected from unnecessary degradation or interference.~~

Commented [DT18]: Removed the Critical Areas specific language and included the Critical Area section as reference to 16.16 Critical Areas Ordinance. Including by reference allows the CAO to be updated independently without causing the SMP to be out of date. This reference is to ensure SMP review process is met for Critical Areas within the Shoreline district.

Commented [DT19R18]: Included a change to reflect a Planning Commission question (7/25) to clarify this section.

Commented [DT20]: Refer to Critical Areas ordinance by reference only.

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- ~~2.—Some areas, because of unique and/or fragile geological or biological characteristics, should be protected from public access.~~
- ~~3.—Shorelines that are identified as hazardous for or sensitive to development should not be developed.~~
- ~~4.—Environmentally sensitive areas should be preserved as open space wherever possible. Greater flexibility and diversification in the use of land may be permitted for a unified grouping of structures and open space when clustering is outside environmentally sensitive areas.~~

~~5.06.03 — Regulations~~

- ~~1.—Critical areas standards and regulations shall be based on best up-to-date science.~~
- ~~2.—All shoreline uses and activities shall be located, designed, constructed and managed to result in no net loss of ecological functions and to facilitate the appropriate human intensity of use of such features.~~
- ~~3.—The critical areas policies and regulations in this Master Program (sections 5.06, 5.07, 5.08, 5.09 and 5.10) apply to the shoreline jurisdiction (16.16 LMC).~~

~~5.07 — CRITICAL AREAS — GEOLOGICAL HAZARD AREAS~~

~~5.07.01 — Applicability~~

~~Geological hazard areas are areas susceptible to severe erosion or slide activity, and include areas with high potential for earthquake activity. All of Whatcom County has considerable potential for earthquake activity, and therefore all structures and developments must be built to the standards provided for earthquake resistance. Within the City of Lynden shoreline jurisdiction there are segments of the shoreline that contain steeply sloping banks that are not suitable for the placing of structures or locating of intense activities or uses due to the inherent threat to public health and safety.~~

~~5.07.02 — Policies~~

- ~~1.—Development should be prohibited on unstable slopes or minimized on moderately unstable slopes.~~
- ~~2.—Development should be permitted only in locations where no slope protection is necessary or where nonstructural protection is sufficient for the life of the project.~~
- ~~3.—Clearing vegetation on and within edges of stream banks should be avoided. Retention of a natural vegetation should be required.~~
- ~~4.—Construction should be discouraged within a 2:1 slope (a slope that rises 1 foot for every 2 feet horizontal) from the base of the bank.~~

5. Structures should be designed and constructed in a manner that provides safety for the useful life of the structure and does not require construction of a retaining wall or bulkhead during that same time span.
6. Subdivision of lots near stream banks should allow sufficient lot depth for development to occur without need for bulkheading or other structural stabilization for the life of the project.

5.07.03 Regulations

1. Construction activity shall not increase or result in slope instability or sloughing.
2. No development shall be permitted where slope protection is necessary or where nonstructural protection is not sufficient for the life of the project.
3. New stabilization structures for existing primary residential structures are allowed only where no alternatives (including relocation or reconstruction of existing structures), are feasible, and less expensive than the proposed stabilization measure, and then only if no net loss of ecological functions will result.
4. Tree clearing and vegetation removal shall be avoided if at all possible, or if unavoidable it shall be limited to the minimum extent necessary to allow construction of the proposed development.
5. Foundations shall be placed out of the 2:1 slope area, unless a geotechnical report guarantees that slope stability will not be affected.
6. Surface drainage down a slope in the direction of the stream bank shall be contained in a tight line (closed, non-leaking pipe) for discharge at the toe of the slope within the shoreline buffer in such a way that erosion will not occur.
7. Surface drainage away from the stream bank shall also use a tight line or some other approved method for discharge into a natural drainage course.
8. A geotechnical report shall be required when:
 - a. Activity is within 200 feet of a bank classified as unstable or having intermediate stability; or
 - b. Activity is within 200 feet of the shoreline when the vertical height of the bank exceeds 20 feet; or
 - c. Activity is within the 2:1 slope of the toe of the bank.
9. The geotechnical report shall contain:
 - a. Soil and erosion rates;
 - b. Drainage;

- c.—Vegetation management options;
- d.—Recommended setback to avoid need for building bulkhead during life of project;
- e.—Evaluation and statement on stability and safety of structure; and
- f.—Evaluation and statement on stability of bank.

5.08 — CRITICAL AREAS — WETLANDS

5.08.01 — Applicability

"Wetlands" are areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

5.08.02 — Policies

- 1.—Wetlands serve many important ecological and environmental functions, and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, sediment control, fish production, fish and wildlife habitat, recreation, water quality protection, water supply, education and scientific research. Wetland uses in the shoreline shall achieve, at a minimum, no net loss of wetland area and functions.
- 2.—Wetland areas should be identified according to established identification and delineation procedures and afforded appropriate protection consistent with the policies and regulations of this program.
- 3.—All wetlands should be protected from alterations which adversely impact them so that there is no net loss of wetland acreage and functions. The greatest protection should be provided to wetlands of exceptional resource value, defined as those wetlands that include rare, sensitive or irreplaceable systems.
- 4.—A wetland buffer zone of adequate width should be maintained and controlled between a wetland and any adjacent development to protect the functions and integrity of the wetland. The width of the established buffer zone should be based upon the functions and sensitivity of the wetland, the characteristics of the existing buffer and the potential impacts associated with adjacent land use.

- 5. No wetland alteration should be authorized unless it can be shown that the impact can be mitigated.
- 6. When wetlands are impacted they should be replaced with the same or higher category of wetland.
- 7. Compensatory mitigation should be conducted on property which is protected and managed to avoid further loss or degradation. Provisions for long term preservation of the compensation area should be required.
- 8. Compensatory mitigation should follow an approved Mitigation Plan.
- 9. Enhancement of existing wetlands, other than Category I and Category II wetlands, may be considered for compensation.
- 10. Compensation should be completed prior to, wetland loss.

5.08.03 Regulations

- 1. For identifying and delineating wetlands, applicants shall use the *Corps of Engineers Wetlands Delineation Manual (1987) and the Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Western Mountains, Valleys and Coast Region (2010 or as revised)*.
- 2. No development or activity including removing or disturbing soil, filling, ditching or draining, changing the water level, placing obstructions, constructing a structure, destroying or altering vegetation or introducing pollutants may be permitted within a wetland or its buffer unless authorized by a conditional use permit.
- 3. Wetlands shall be rated according to the *Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, or as revised).
- 4. The following wetland buffer widths, based on wetland category and land use intensity, shall apply to all wetlands in the shoreline jurisdiction:

Wetland Category	Buffer width
I	200 feet
II	100 feet
III	50 feet
IV	25 feet

Measures shall be implemented to the extent reasonably possible to minimize impacts from high intensity land uses. Examples of those measures are shown below (see *Wetlands in Washington State*, Volume 2, Appendix 8-C for more examples):

- Direct lights away from wetlands
- Locate activity that generates noise away from wetland
- Route new runoff away from wetland
- Use BMPs to control dust

5. ~~Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:~~

- ~~a. Avoid the impact altogether by not taking a certain action or parts of an action.~~
- ~~b. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.~~
- ~~c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.~~
- ~~d. Reduce or eliminate the impact over time by preservation and maintenance operations.~~
- ~~e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.~~
- ~~f. Monitor the required compensation and take remedial or corrective measures when necessary.~~

6. ~~Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State*, March 2006 or as revised.~~

7. ~~Mitigation Ratios.~~

- ~~a. Any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland in order to compensate for wetland losses. The wetlands to be created or restored shall be in-kind and accomplished prior to loss. The ratio of lost wetlands to newly created or restored shall be determined in accordance with *Wetland Mitigation in Washington State*, 2006 or as revised.~~
- ~~b. Mitigation ratios shall be consistent with *Wetlands in Washington State, Volume 2, Appendix 8 C*. The mitigation ratio table is shown below:~~

Category of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement	Preservation
Category I	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

~~Preservation shall be on a case-by-case basis and generally consistent with the above table.~~

~~8.— Mitigation plan.~~

~~When mitigation is required, the applicant shall submit for approval by City a mitigation plan, prepared by a qualified professional, as part of the critical areas report. The mitigation plan shall include:~~

- ~~a.— Environmental goals and objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:~~
- ~~i.— A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;~~
 - ~~ii.— A review of the best up-to-date science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and~~
 - ~~iii.— An analysis of the likelihood of success of the compensation project.~~
- ~~b.— Performance standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this SMP have been met.~~
- ~~c.— Detailed construction plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:~~
- ~~i.— The proposed construction sequence, timing, and duration;~~
 - ~~ii.— Grading and excavation details;~~
 - ~~iii.— Erosion and sediment control features;~~
 - ~~iv.— A planting plan specifying plant species, quantities, locations, size, spacing, and density; and~~
- ~~d.— Written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.~~
- ~~e.— Monitoring program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring~~

(for example, monitoring shall occur in years 1, 3, 5 and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than ten (10) years.

f. Contingency plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

9. On site compensation is greatly preferred over off site compensation. Off site compensation allows replacement of Category III or IV wetlands only, and away from the site on which the wetland has been impacted by a regulated activity. The following conditions apply to off site compensation:

a. Off site compensation shall occur within the same drainage basin of the same watershed where the wetland loss occurs, provided that Category IV wetlands may be replaced outside of the watershed if there is no reasonable alternative. In such instances, the stormwater water quality treatment and storage function (quantity and quality) provided by Category IV Wetlands must be provided for within the design of the development project.

b. Off site compensation can be allowed only under one or more of the following circumstances:

i. On site compensation is not feasible due to hydrology, soils, or other factors;

ii. On site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State or local public safety directive;

iii. Potential functions and value at the site of the proposed restoration are greater than the lost wetland functions and value;

iv. When the wetland to be altered is of a limited function and value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functional value possible.

v. When the use of Ecology's site selection guidance (*Selecting Wetland Mitigation Sites Using a Watershed Approach 2009*) indicates that off site mitigation is preferable to on site mitigation.

5.09 — CRITICAL AREAS — FISH AND WILDLIFE HABITAT CONSERVATION AREAS**5.09.01 — Applicability**

The Nooksack River and Fishtrap Creek have long been known to provide migration paths, spawning grounds and permanent habitats for several varieties of Salmon, Steelhead and Trout, as well as the resident Nooksack Dace and Salish Sucker. Fishtrap Creek derives its name from a large fish trap observed by early settlers at a Native American settlement near the mouth of the Stream. Tribal members caught and dried the salmon running upstream. Today the river and creek are habitat for Chum, Coho and Chinook Salmon, as well as steelhead, sea-run trout, resident trout and Dolly Varden.

5.09.02 — Policies

1. Fish and wildlife habitat conservation areas support valuable recreational and commercial fisheries. These habitats should be protected because of their importance to the aquatic ecosystem and the state and local economy.
2. Non-water dependent or non-water related uses, activities, structures and landfills should not be located in fish and wildlife habitat conservation areas.
3. Where uses, activities structures and landfills must locate in fish and wildlife habitat conservation areas, impacts on these areas should result in no net loss of ecological functions and values.
4. Developments which are outside fish and wildlife habitat conservation areas but which have the potential to significantly affect these habitats should be located and designed so they avoid significant negative impacts.
5. Impervious surfaces should be minimized in upland developments to avoid and minimize stormwater runoff peaks. Structures and uses creating significant impervious surfaces shall include stormwater detention and treatment systems to reduce stormwater runoff peaks and prevent pollution.
6. Adopt A-Stream programs and similar efforts to rehabilitate salmon and steelhead spawning streams are encouraged.
7. Fishery enhancement projects are encouraged where they will not significantly interfere with or cause significant impacts to other beneficial uses that cannot be mitigated.

5.09.03 — Regulations

1. New and expanded development within the stream channel, channel migration zone, wetlands, floodplain, hyporheic zone, shall not cause a net loss of ecological functions.

2. ~~Dredging and the removal of bed materials below the water line is prohibited within salmon and steelhead or other native fish species spawning areas unless it is part of an approved restoration project.~~
3. ~~Projects which propose water withdrawals or diversions shall maintain adequate flows within the water body to maintain salmon and steelhead habitat, taking into account existing and likely future withdrawals and diversions.~~
4. ~~Landfilling, dredging, channelization and other activities which negatively impact habitat values are prohibited in wetlands, ponds and side channels which provide refuge or other habitat for salmon or steelhead.~~
5. ~~Within salmon and steelhead habitats, permanent channel changes and realignments are prohibited.~~
6. ~~The removal of native aquatic and riparian vegetation within or adjacent to salmon and steelhead habitats shall be avoided, or if unavoidable, then minimized. Trees which shade the Nooksack River or Fishtrap Creek and any associated ponds and wetlands used by salmon and steelhead shall be maintained. Areas of disturbed earth shall be revegetated, as soon as viable, with native plants.~~
7. ~~Unless removal is needed to prevent hazards to life and properties or to enhance fish habitat, large woody debris below the ordinary high water mark shall be left in the waterway to provide salmon and steelhead habitat.~~
8. ~~Outfalls within or upstream of salmon or steelhead spawning areas shall be designed and constructed to minimize disturbance of salmon and steelhead spawning beds.~~
9. ~~The following specific activities may be permitted within a fish and wildlife habitat conservation area or associated buffer when the activity complies with the following standards; Provided all such structures shall not contain toxic materials that may come into contact with water and leach into the water body or buffer.~~
 - a. ~~Roads, trails, bridges, and rights of way. Construction of trails, roadways, and minor road bridging, may be permitted in accordance with an approved critical areas report subject to the following standards:~~
 - i. ~~There is no other feasible alternative route with less impact on the environment;~~
 - ii. ~~The crossing minimizes interruption of downstream movement of wood and gravel;~~
 - iii. ~~Roads in riparian habitat areas or their buffers shall not run parallel to the water body;~~
 - iv. ~~Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and water crossings;~~

- v. ~~Water crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;~~
 - vi. ~~Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical areas report;~~
 - vii. ~~Road bridges are designed according to the currently adopted versions of the Department of Fish and Wildlife Fish Passage Design at Road Culverts, March 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000 or as revised; and~~
 - viii. ~~Trails and associated viewing platforms shall not be made of continuous impervious materials.~~
- b. ~~Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical areas report if they comply with the following standards:~~
- i. ~~Fish and wildlife habitat areas shall be avoided to the maximum extent possible;~~
 - ii. ~~Installation shall be accomplished by boring below the maximum depth of scour for the base flood predicted by a qualified professional and hyporheic zone of the water body and channel migration zone, where feasible;~~
 - iii. ~~The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;~~
 - iv. ~~Crossings shall be contained within the footprint of an existing road or utility crossing where possible;~~
 - v. ~~The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and~~
 - vi. ~~The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.~~
- c. ~~Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the City's review and approval of a critical areas report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.~~
- d. ~~Stream bank stabilization. Stream bank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.~~

- ~~e.— Instream structures. Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the City and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.~~
- ~~f.— Stormwater conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical areas report subject to the following standards:~~
- ~~i.— No other feasible alternatives with less impact exist;~~
 - ~~ii.— Mitigation for impacts is provided;~~
 - ~~iii.— Stormwater conveyance facilities shall incorporate fish habitat features; and~~
 - ~~iv.— Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.~~

5.105.07 FLOOD HAZARD MANAGEMENT

5.10.015.07.01 Applicability

Flood hazard management projects are those actions taken with the primary purpose of preventing or mitigating damage due to flooding. Flood hazard management projects or programs may employ any or several physical or regulatory controls including dikes, dams, ponds engineered floodways, bioengineering, setbacks, relocation, planning and zoning (land use management). These provisions also apply to repair and maintenance of flood hazard management systems, generally along the Nooksack River, if the systems are enlarged or otherwise modified.

5.10.025.07.02 Policies

1. Flood hazard management planning should be undertaken in a coordinated manner among affected property owners and public agencies and should consider entire drainage systems. Thus, planning should consider the off-site erosion and accretion or flood damage that might occur as a result of current or future stabilization or protection structures or activities.
2. Nonstructural solutions are preferred over structural flood control devices, and should be used wherever possible, including prohibiting or limiting development in historically flood prone areas, setbacks, regulating structural design and limiting increases in peak stormwater runoff from new upland development, public education and land acquisition for additional flood storage.

3. Structural solutions to reduce shoreline damage should be allowed only after it is demonstrated that nonstructural solutions would, by themselves or in combination with other methods, not be able to reduce the damage and that structural solutions can be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.
4. Development and shoreline modifications should not result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams.
5. Flood hazard protection measures should not result in a net loss of ecological functions associated with the rivers and streams.
6. Encourage the removal, elevation or relocation of structures in flood-prone areas when evaluating alternate flood control measures.
7. In design of publicly-financed or subsidized works, public pedestrian access should be provided to the shoreline for low intensity outdoor recreation.

5.10.035.07.03 Regulations

1. The following uses and activities may be permitted within the channel migration zone or floodway:
 - a. Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
 - b. Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
 - c. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost; provided, flood hazards to other uses are not increased.
 - d. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
 - e. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
 - f. Development where existing legally-established conforming structures prevent active channel movement and flooding.
 - g. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition.

2. New structural flood hazard reduction measures may be allowed in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible by themselves or in combination with other methods, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC [173-26-221\(5\)](#).
3. New structural flood hazard reduction measures shall be placed landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration.
4. New structural public flood hazard reduction measures, such as dikes and levees, shall include public access unless it would cause unavoidable health or safety hazards to the public, security problems, significant ecological impacts, conflicts with the proposed use, or a cost that is disproportionate to the total long-term cost of the development.
5. The removal of gravel for flood management purposes shall require a conditional use and it shall be consistent with an adopted flood hazard reduction plan and allowed only after a biological and geomorphologic study shows that there is a long-term benefit to flood hazard reduction and does not result in a net loss of ecological functions.

5.115.08 PUBLIC ACCESS

5.11.015.08.01 Applicability

Shoreline public access is the physical ability of the general public to reach and touch the water's edge and/or the ability to have a view of the water and the shoreline from upland locations. There are a variety of types of public access to shorelines within the city, including: picnic areas, pathways and trails, promenades, bridges, street ends, ingress and egress, parking and others. The stream is particularly accessible to the public at Lynden City Park, Bender Fields, Heritage Park and along the public trail system connecting the city's parks and recreational facilities.

5.11.025.08.02 Policies

1. Public access should be considered in the review of all private and public developments (including land division) with the exception of the following:
 - a. One- and two-family dwelling units; or
 - b. Agricultural/ranching activities; or
 - c. Where deemed inappropriate due to health, safety and environmental concerns.

2. Developments, uses and activities on or near the shoreline should not impair or detract from the public's access to the water.
3. Public access should be provided as close as possible to the water's edge without adversely affecting a sensitive environment and should be designed with provisions for disabled persons.
4. Publicly owned shorelines should be limited to water-dependent or public recreational uses, otherwise such shorelines should remain protected open space.
5. Public access afforded by shoreline street ends, public utilities and rights-of-way should be preserved, maintained and enhanced.
6. Public access should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.
7. The public access area should be a comfortable and safe place to visit.
8. There should be a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict.
9. Public views from the shoreline upland areas should be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of vegetation that partially impairs views.

~~5.11.03~~ 5.08.03 Regulations

1. Shoreline development by public entities, including the City of Lynden, state agencies, and public utility districts shall include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.
2. When it is demonstrated that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, the City may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.
3. For the subdivision of land into more than four parcels, public access shall be provided except:
 - a. Where the City provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c); or
 - b. Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable. In these cases, the City may consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

- c. For individual single-family residences not part of a development planned for more than four parcels.
- 4. Non-water dependent uses shall provide public access to the shoreline, either physical or visual.
- 5. Assure that public access improvements do not result in a net loss of shoreline ecological functions.

5.125.09 VEGETATION MANAGEMENT

5.12-015.09.01 Applicability

Vegetation management involves both a passive and active management system. The intent of both systems is to minimize habitat loss and the impact of invasive plants, erosion, sedimentation and flooding. "Passive" vegetation management deals with protection and enhancement of existing diverse native plant communities along all shorelines including rivers, wetlands and steep bluffs. "Active" vegetation management involves aquatic weed control as well as the restoration of altered or threatened shorelines using a technology called soil bioengineering. Soil bioengineering reestablishes native plant communities as a dynamic system that stabilizes the land from the effects of erosion. Vegetation management provisions apply even to those shorelines and uses which are exempt from a permit requirement.

5.12-025.09.02 Policies

- 1. Native plant communities within and bordering state shorelines including but not limited to, wetlands, streams, ponds and steep slopes should be protected and maintained to minimize damage to the ecology and environment of the shoreline area.
- 2. Restoration of degraded shorelines due to natural or manmade causes should, wherever feasible, use soil bioengineering techniques to arrest the processes of erosion, sedimentation and flooding.

5.12-035.09.03 Regulations

- 1. All unique and fragile shorelines shall be protected from degradation caused by the modification of the land surface within the shoreline area and/or the adjacent uplands.
- 2. Restoration of any shoreline that has been disturbed or degraded shall use native plant materials with a diversity and type similar to that which originally occurred on-site.
- 3. Stabilization of exposed erosion prone surfaces along city shorelines shall, wherever feasible utilize soil bioengineering techniques.

4. Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.
5. The control of aquatic weeds by derooting, rotovating or other method which disturbs the bottom sediment or benthos shall be considered development for which a substantial development permit is required.
6. Use of herbicides to control aquatic weeds shall be prohibited except where no reasonable alternative exists and weed control is demonstrated to be in the public's interest. A conditional use permit shall be required in such case.

5.135.10 VIEW PROTECTION

5.13.015.10.01 Applicability

The protection of "scenic vistas" within the shorelines and water bodies is an important shoreline management objective. Protection of significant views is a form of public access; the access being visual rather than physical. Consideration must be given to protection of the visual quality of the shoreline resource and to maintenance of view corridors to and from waterways and their adjacent shoreland features.

The protection of views as a shoreline management objective is as set forth in RCW 90.58.320 where it states:

"in the implementation of this policy and the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

RCW 90.58.320 also addresses view protection on adjacent lands stating:

"No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served."

View protection can include preventing view blockage through height limitations or requiring aesthetic enhancement with landscaping. However, view protection does not allow for excessive vegetation removal to create views or enhance partial existing views. Please refer to sections 2.10 Vegetation Management and 2.3 Clearing and Grading for additional applicable provisions.

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5-13-025.10.02 Policies

1. Development uses and activities on or near the shoreline should not impair or detract from the public's visual access to the water.
2. Public views from the shoreline and upland areas should be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of vegetation that partially impairs views.
3. Visual access should be maintained, enhanced and preserved on shoreline street ends, public utilities and rights-of-way and within designated "view corridors".

5-13-035.10.03 Regulations

1. Shoreline uses and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's visual access to the water and shorelines.
2. Water-dependent uses and physical public access shall have priority over maintaining views from adjacent properties, unless there is a compelling reason to the contrary.
3. Public lands such as street ends, rights-of-way and utilities shall provide visual access to the water and shoreline in accordance with RCW 35.79.035 and RCW 36.87.130.
4. In providing visual access to the shoreline, the natural vegetation shall not be excessively removed either by clearing or by topping (see section 4.04 Clearing and Grading).
5. Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.
6. Development on the water shall be constructed of nonreflective materials that are compatible in terms of color and texture with the surrounding area.
7. Visual access shall be maintained, enhanced and preserved on shoreline street ends, public utilities and rights of way.

5-145.11 **WATER QUALITY**

5-14-015.11.01 Applicability

Water quality is affected in numerous ways by human occupation and development of shoreline areas. Typically the increase in impermeable surfaces as a result of development increases runoff causing higher peak stormwater discharge at a higher velocity which causes scouring and erosion of stream banks. Erosion increases suspended solids and carries heavy metals, household and pet wastes, fecal coliform

bacteria, and excess nutrients into the water. Increased nitrogen and phosphorous enrichment increases undesirable algae blooms which when they die back depresses levels of dissolved oxygen. The degradation of water quality adversely impacts fish and wildlife habitat, and beneficial water uses directly related to public health.

Maintaining high water quality standards and restoring degraded systems has been mandated in RCW 90.58.020:

"This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life."

Water quality is impacted by a variety of uses and modifications and clearly needs broad policies and regulations to protect the shorelines and the associated waters of the state.

5.14.025.11.02 Policies

1. All shoreline uses and activities should be located, designed, constructed and maintained to minimize adverse impacts to water quality and fish and wildlife resources including spawning, nesting, rearing, feeding areas and migratory routes.
2. The City should require reasonable and adequate setbacks, buffers and stormwater facilities to achieve the objective of avoiding or, if unavoidable, lessening negative impacts on water quality.
3. All measures for controlling erosion, stream flow rates or floodwaters should be based on non-structural sustainable methods such as bio-engineered measures, etc. If non-structural methods are demonstrated to be infeasible, control efforts through the use of stream control works should be located, designed, constructed and maintained so that net off-site impacts related to water do not degrade the existing water quality.
4. All measures for the treatment of runoff for the purpose of maintaining and/or enhancing water quality should be conducted on-site before shoreline development impacts waters off-site.
5. Dredging and filling activities should be conducted to minimize the effect on water quality from the addition of suspended solids, leaching of contaminants or disturbance of habitats and should be consistent with applicable regulatory agency requirements (e.g. Fish and Wildlife, Corps. of Engineers).
6. Agricultural activities such as animal feeding operations feed lot wastes, retention and storage ponds, manure storage, use of fertilizers and pesticides and other activities that can impact water quality should be minimized by implementing best management practices, buffers and setbacks.
7. The City should ensure that there is mutual consistency between shoreline management provisions and permit implementation, and other regulations that

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address water quality and storm water quantity, including public health, storm water, and water discharge standards.

5-14.035.11.03 Regulations

1. All shoreline development, both during and after construction, shall avoid, or if unavoidable, minimize any increase in surface runoff so that the receiving water quality and shore properties and features are not adversely effected. Control measures include but are not limited to dikes, catch basins or settling ponds, low impact development techniques, oil interceptor drains, grassy swales, planted buffers and fugitive dust controls.
2. The proposed shoreline uses and activities shall mitigate any potential reduction in water quality. Impacts from increased runoff quantity, including erosion of river and stream systems, may be addressed by increasing storage of runoff peaks utilizing the natural hydraulic storage capacity of floodways and wetlands; provided, there is no resultant adverse impact of the ecological functions of such floodways and wetlands.
3. All industrial, commercial, residential, recreational, and agricultural uses shall adhere to all required setbacks, buffers and standards for storage basins (refer to shoreline use and environmental designation regulations for specific limits).
4. All shoreline development shall comply with the applicable requirements of the Stormwater Management Manual for Western Washington (revised 2005) (Ecology publication # 05-10-029), or as amended, and the stormwater regulations used by the City, whichever are the most protective of shoreline natural resources and water quality.

Commented [DT21]: DOE Recommended Change – Adds some flexibility to incorporate updates to the Stormwater Manual without the need to amend the SMP.

6 SHORELINE USE POLICIES & REGULATIONS

6.01 INTRODUCTION

The following detailed shoreline use provisions supplement the general shoreline policies and regulations. Use policies and regulations apply to specific shoreline use categories, addressing impacts associated with each type of use. The *use policies* establish the shoreline management principles applicable within each use category, and the *use regulations* set physical and management standards for development of that type of use. The term "Uses" refers to the ongoing functional result of development, and also any *shoreline modification activities* undertaken in preparation for, or continuance of the use.

6.02 AGRICULTURE

6.02.01 Applicability

Agriculture refers to all methods of livestock, crop, vegetation and soil management. Related activities include tilling, fertilizer application, soil preparation and maintenance, harvesting and the control of weeds, plant diseases and insect pests. The following are also considered agriculture related activities: animal husbandry practices associated with the feeding, housing, maintenance and marketing of animals such as beef cattle, milk cows, breeding stock, horses and poultry and the handling of their by-products. Associated facilities include storage areas, feed lots, fences and ditches.

Noncommercial, small-scale individual or community gardening and the keeping of livestock for non-commercial purposes is **not** considered agriculture.

6.02.02 Prohibited

Agriculture is prohibited in the Shoreline Jurisdiction.

6.03 AQUACULTURE

6.03.01 Applicability

Aquaculture is the farming or culturing of food fish, shellfish or other aquatic plants and animals in lakes, streams, inlets, estuaries and other natural or artificial water bodies. Activities associated with aquaculture may include hatching, feeding, raising and releasing of fish, and the maintenance and construction of necessary equipment, buildings and growing areas. When consistent with control of pollution and result in no net loss of ecological functions, aquaculture activities are a preferred shoreline use (see WAC 173-16-060(2)). Non-commercial aquaculture projects such as native fish enhancement facilities are considered Shoreline Habitat & Natural System Enhancement Projects governed by Ch 7.05.

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6.03.02 Policies

1. Areas with high potential for aquacultural use should be identified and encouraged for aquaculture use and protected from degradation by other types of land and water uses.
2. Aquaculture activities should be given flexibility to experiment with new aquaculture techniques.
3. Consideration should be given to both the possible positive impacts and the possible detrimental impacts aquaculture development might have on the physical environment, on other existing and approved land and water uses, including public access and on the aesthetic qualities of the project area.
4. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions or conflict with other water-dependent uses.
5. Aquaculture facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

6.03.03 Regulations

1. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.
2. No aquatic organism shall be introduced into city waters without prior written approval of the Washington Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism proposed for introduction. The required approval shall be submitted in writing to the Planning Director prior to the introduction or the granting of the permit, whichever comes first.
3. Unless otherwise provided in a shoreline permit, the repeated introduction of an approved organism in the same location shall require approval by the City only at the time the permit is issued. Introduction for purposes of this section shall mean the placing of any aquatic organism in any area within the waters of the city regardless of whether it is a native or resident organism and regardless of whether it is being transferred from within or without the waters of the city.
4. Aquacultural structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall, be located inland of the ordinary high water mark, upland of water dependent portions of the project and shall minimize detrimental impacts to the shoreline.
5. Legally established aquacultural enterprises, including authorized experimental projects, shall be protected from incompatible uses which seek to locate nearby. Demonstration of a high probability that such an adjacent use would result in damage to, or destruction of, such an aquaculture enterprise shall be grounds for denial of that use.

- 6. New hatchery and other aquaculture operations shall be required to maintain a minimum 50-foot wide vegetated buffer zone along the affected streamway, PROVIDED that clearing of vegetation shall be permitted for essential water access points.
- 7. Onshore support structures shall meet the height and setback standards established except that reduced setbacks may be permitted where necessary for the operation of hatcheries and rearing ponds.
- 8. Predator control shall not involve the killing or abusive harassment of birds or mammals. Approved controls include but are not limited to overhead netting for birds and 3-foot high fencing or netting for otters. The use of other nonlethal, nonabusive predator control measures shall be contingent upon receipt of written approval from the U.S. Fish and Wildlife Service, as required.
- 9. Fish net-pens shall meet, as a minimum, state-approved administrative guidelines for the management of net-pen cultures; where any conflict in requirements arises, the more stringent requirement shall prevail.

6.04 COMMERCIAL DEVELOPMENT

6.04.01 Applicability

Commercial development means those uses which are involved in wholesale, retail, service and business trade. Excluded from this category are residential or recreational subdivisions, and industry. Examples of existing Commercial development within City shoreline jurisdiction include a shopping center, a motel, an automotive repair business, a lumber yard, and several other small businesses.

Commented [DT22]: DOE Recommended Change: The examples listed are not supported by the SMP Commercial policies and regulations below. It appears that the intent here was to recognize some existing uses within shoreline jurisdiction.

6.04.02 Policies

1. New commercial development located in shoreline areas should include those uses and activities which are water-oriented and should be encouraged in descending order of preference as follows:

- a. Water-dependent uses;
- b. Water-related uses; and
- c. Water-enjoyment uses; and
- d. Non-water oriented uses.-

~~Non-water oriented development should not be allowed; however, when permitted as a conditional use, it should not displace water-oriented development in shoreline areas.~~

Commented [DT23]: DOE Recommended Change: This policy language is inconsistent with the corresponding regulations in 6.04.03 in regards to non-water oriented uses.

2. No commercial development should be allowed in wetlands and streams, or their buffers.

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3. New commercial development on shorelines should be required to locate in those areas with existing consistent commercial uses and in a manner that will minimize sprawl and the inefficient use of shoreline areas.
4. Commercial development should be required to utilize existing transportation corridors and minimize the number of ingress/egress points. Ingress/egress should be designed to minimize potential conflicts with and impact on regular corridor traffic.
5. Commercial development should provide physical or visual access to the shoreline, and multiple use concepts should be encouraged, as a means of providing open space and recreation opportunities for the public to enjoy the shorelines of the state.
6. Commercial development should be aesthetically compatible with the surrounding area. Structures should not significantly impact views from upland properties, public roadways or other public area, and from the water.

Commented [DT24]: Scrivener's error

6.04.03 Regulations

1. The applicant shall provide the following information for the City's review of commercial development proposals:
 - a. Nature of the commercial activity, (e.g. water-dependent, water related, water-enjoyment, non-water-oriented, mixed-use) including a breakdown of specific components;
 - b. Reason for shoreline location;
 - c. Special considerations for enhancing the relationship of the activity to the shoreline environment;
 - d. Provisions for public visual and physical access to the shoreline;
 - e. Provisions to ensure that the development will not cause adverse environmental impacts and will result in no net loss of shoreline functions; and
 - f. For mixed-use proposals, present alternative uses and activities, structural locations, site designs and bulk considerations, alternative enhancements for physical and visual public access to the shoreline (both public and private space) and other considerations which address the goals and policies of the SMP.
2. Non-water-oriented commercial developments may be permitted in the Urban Shoreline Environment and by conditional use permit in the Shoreline Residential Environment where it can be demonstrated that:
 - a. The use is part of a mixed-use project that is permitted and includes water-dependent uses and provides a significant public benefit with respect to the

Shoreline Management Act's objectives such as providing public access and ecological restoration

- b. A water-oriented use is not reasonably expected to locate on the proposed site due to topography, surrounding land uses, physical features or due to the site's separation from the water by a public road or property owned by another entity.
- c. The proposed use does not usurp or displace land currently occupied by a water-oriented use and will not interfere with adjacent water-oriented uses;
- d. The proposed use will be of appreciable public benefit by increasing public use, enjoyment or access to the shoreline.
- e. The proposed use will result in no net loss of shoreline functions.

~~3. Commercial development is PROHIBITED in Natural Environments.~~

34. Non-water dependent commercial uses are not allowed over water except in the limited instances where they are auxiliary to and necessary in support of water-dependent uses and no other feasible location exists.

45. Commercial loading and service areas shall be located on the upland side of the commercial activity whenever possible, or provisions must be made to setback and screen the loading and service area from the shoreline, adjacent properties and water body.

Commented [DT25]: There are no Natural designation in Lynden

6.05 INDUSTRY

6.05.01 Applicability

Industrial developments are facilities for processing, manufacturing and storage of finished or semifinished goods. Industry is frequently located along the waterfront for access to transportation or water supply. Because the City of Lynden contains only recreationally navigable waterways, the location of appropriate industrial development within shoreline jurisdiction is for the most part less critical to the proximity of waterways. However stream waters may be used for cooling or other legally-established purposes during plant operations.

6.05.02 Policies

1. First preference should be given to those portions of a development that are water-dependent industrial uses; and second, give preference to those portions of a development that are water-related industrial uses. Nonwater oriented industrial uses should be prohibited.
2. Expansion or redevelopment of existing legally established industrial areas, facilities and services with the possibility of incorporating mixed-use development should be

encouraged over the addition and/or location of new or single-purpose industrial facilities except water-dependent or water-related uses.

3. Industrial development should not be located on sensitive and ecologically valuable shorelines such as natural accretion shoreforms, wetlands, wildlife habitat areas, nor on shores inherently hazardous for such development, such as flood-prone and erosion-prone areas and steep or unstable slopes.
4. New industrial development should be required to provide physical and/or visual access to shorelines and visual access to facilities whenever possible and when such access does not cause significant interference with operations or hazards to life and property.

6.05.03 Regulations

1. **Preference** shall be given first to water-dependent uses, then to water-oriented industrial uses.
2. New non-water-oriented industrial uses are prohibited unless they are part of a mixed-use project and the use provides a significant public benefit with respect to public access and restoration.
3. Location, design, construction or redevelopment of industrial uses shall result in no net loss of ecological functions.
4. The developer must demonstrate that adequate consideration has been given to and plans made to mitigate negative environmental impacts including but not limited to air, water, aesthetics, noise and light pollution and the loss of fish and wildlife habitat.
5. Sewage treatment, and water reclamation may only be permitted by conditional use and shall be located where they do not interfere with and are compatible with recreational, residential or other public uses of the water and shorelands.
6. Storage and/or disposal of industrial wastes is prohibited within shoreline jurisdiction, PROVIDED that waste water treatment systems may be allowed in shoreline jurisdiction only if alternate, inland areas have been adequately proven infeasible. A performance bond of at least 150 percent of the fair market value of the estimated cost of a cleanup or rehabilitation effort may be required.
7. Display and other exterior lighting shall be designed, shielded and operated to minimize glare, avoid illuminating nearby properties and prevent hazards for public traffic.

6.06 INSTREAM STRUCTURES**6.06.01 Applicability**

Instream structures function for the impoundment, diversion or use of water for hydroelectric generation and transmission (including both public and private facilities), flood control, irrigation, water supply (both domestic and industrial), recreational or fisheries enhancement. Both the structures themselves and their support facilities are covered by this section. This applies to their construction, operation and maintenance, as well as the expansion of existing structures and facilities.

6.06.02 Policies

1. Instream structures should provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.
2. The location and planning of instream structures should give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

6.06.03 Regulations

1. Instream structures may be permitted as a shoreline conditional use except that fish or habitat restoration projects consistent with the Ch 9 – Restoration Plan may be otherwise authorized.
2. Instream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.
3. The location and planning of instream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

6.07 PARKING**6.07.01 Applicability**

Parking is the temporary storage of automobiles or other motorized vehicles. Except as noted the following provisions apply only to parking that is "accessory" to a permitted shoreline use. Parking as a "primary" use and parking which serves a use not permitted in the shoreline jurisdiction is prohibited.

6.07.02 Policies

1. Parking in shoreline areas should directly serve a permitted shoreline use.
2. Parking facilities should be located and designed to minimize adverse impacts including those related to stormwater runoff, water quality, visual qualities, public access and vegetation and habitat maintenance.
3. Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use (e.g. serving recreational use on weekends, commercial uses on weekdays).

6.07.03 Regulations

1. Parking as a primary use shall be prohibited within the shoreline jurisdiction.
2. Parking in shoreline jurisdiction shall directly serve a permitted shoreline use.
3. Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties. Landscaping shall consist of native vegetation and be planted before completion of the parking area in such a manner that plantings provide effective screening within three years of project completion.
4. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases where an alternate location would have less environmental impact on the shoreline.
5. Parking facilities for shoreline activities shall provide safe and convenient pedestrian and bicycle circulation within the parking area and to the shorelines.
6. Parking facilities shall provide adequate facilities to prevent surface water runoff from contaminating water bodies, using best available technologies such as low-impact development techniques, and include a maintenance program that will assure proper functioning of such facilities over time.

6.08 RECREATIONAL DEVELOPMENT

6.08.01 Applicability

Recreational development provides opportunities for the refreshment of body and mind through forms of play, sports, relaxation, amusement or contemplation. Lynden residents are fortunate to have access to numerous areas suitable for passive recreational activities such as hiking, photography, viewing and fishing, as well as several facilities for active or intensive uses. Facilities to serve more intensive users are provided at the City Parks (tennis courts, fitness trail, playground equipment), Bender Fields (baseball/softball diamonds, lawn bowling, playground equipment), the local YMCA (swimming pool, racquetball courts, a gymnasium, etc.), and a locally owned golf course and fitness facility. Completion of the city-wide trail system, and development of

additional parks and recreation facilities would complement the existing opportunities and increase public access potential.

This section applies to both publicly and privately owned shoreline facilities intended for use by the public or a private club, group, association or individual.

6.08.02 Policies

1. The coordination of local, state and federal recreation planning should be encouraged so as to mutually satisfy recreational needs. Shoreline recreational developments should be consistent with all adopted park recreation and open space plans with priority given to development for access to and use of the water.
2. The location and design of shoreline recreational developments should relate to local population characteristics, density and special activity demands. Acquisition priorities should consider these needs demands and special opportunities as well as public transit access and access for the physically impaired, where planned or available.
3. Recreational developments should be located, designed and operated to be consistent with the environment designation. Favorable consideration should be given to proposals which ~~compliment~~ complement their environment and surrounding land and water uses, and which leave natural areas undisturbed and protected.
5. A variety of compatible recreational experiences and activities should be encouraged to satisfy diverse recreational needs.
6. The linkage of shoreline parks, recreation areas and public access points with linear systems, such as hiking paths, bicycle paths, easements and/or scenic drives, should be encouraged.
7. The use of shoreline street ends and publicly owned lands for public access and development of recreational opportunities should be encouraged.
8. The use of off-road vehicles should be prohibited in all shoreline areas.

6.08.03 Regulations

1. All recreational development in the shoreline jurisdiction shall result in no net loss of ecological processes and functions.
2. Valuable shoreline resources and fragile or unique areas such as wetlands shall be used only for non-intensive and nonstructural recreation activities. Access may be limited to day-light hours or to avoid seasonal spawning, nesting or similar sensitive periods.
3. All permanent substantial recreational structures and facilities shall be located outside officially mapped floodways provided the City may grant administrative

exceptions for non-intensive minor accessory uses (e.g., picnic tables, tennis courts, etc.).

4. Substantial accessory use facilities, such as rest rooms, recreation halls and gymnasiums, commercial services, access roads and parking areas shall be setback a minimum of 100 feet from the OHWM.
5. Recreation developments that require the use of fertilizers, pesticides, or other toxic chemicals are prohibited in the shoreline jurisdiction

6.09 RESIDENTIAL DEVELOPMENT

6.09.01 Applicability

Residential development means one or more buildings, structures, lots, parcels or portions thereof which are designed for and used or intended to be used to provide a place of abode for human beings. Within the city, residential development includes single-family residences and their appurtenances, duplexes, other detached dwellings, multi-family residences, apartments, townhouses, mobile home parks, other similar group housing, condominiums, subdivisions and short subdivisions. Accessory uses and structures normally applicable to residential uses include but are not limited to garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas and guest cottages. Residential development does not include hotels, motels, or any other type of overnight or transient housing or camping facilities.

6.09.02 Single Family Residence Substantial Development Permit Exemption

A substantial development permit is not required for construction within shoreline jurisdiction by an owner, lessee or contract purchaser of a single-family residence for his own use or the use of his family, provided such construction and all normal appurtenant structures shall otherwise conform to this master program. The subject residence shall not exceed 32 feet above average grade level without the approval of a shoreline variance. A single-family residence means a detached dwelling designed for an occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" means a structure that is necessarily connected to the use and enjoyment of a single-family residence and includes a garage, deck, driveway, utilities, fences and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark (see WAC 173-27-040 (2g)).

6.09.03 Prohibited

1. Residential development shall be prohibited within floodways, wetlands and within other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions as defined in LMC 16.16 and 5.07 of the Master Program.
2. New residential structures, appurtenances and accessory structures are prohibited over water.

Commented [DT26]: DOE Required Change: Geologic hazard areas provisions are included in Section 5.07 of the SMP in addition to the provisions of LMC 16.16 which are incorporated by reference into the SMP.

Commented [DT27R26]: This should actually not be changed as 5.07 was removed.

6.09.04 Policies

1. Residential development should be permitted only where it will result in no net loss of ecological functions.
2. Residential development should be prohibited in critical areas including but not limited to wetlands, streams, steep slopes and floodways.
3. Recognizing the single purpose, irreversible and space consumptive nature of shoreline residential development, residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls, riprap and other stabilization structures, are not required to protect such structures and uses for the life of the project.
4. New residential development and accessory uses should be **prohibited** over water, in wetlands and streams, in floodways and in geologic hazard areas.
5. New residential development should be required to cluster dwelling units in order to preserve natural features, minimize physical impacts and reduce utility and road costs.

6.09.05 Regulations

1. New subdivided lots, including the roads, utilities and other infrastructure servicing them are required to be designed, configured and developed to:
 - a. Prevent the loss of ecological functions at full build-out;
 - b. Prevent the need for new shoreline stabilization or flood hazard reduction measures; and
 - c. Be consistent with applicable SMP environment designations and standards.
2. Residential development is prohibited where flood control, shoreline protection measures or bulkheading will be required to create residential lots or site area. Residential development shall be located and designed to avoid the need for structural shore defense and flood control protection works for the life of the project.
3. If wetlands or other unique and fragile features are located on a development site, clustering (or similar design) of residential units shall be required in order to avoid any development in such areas and their buffers.
4. Storm drainage and treatment facilities shall be required by the City for proposals involving five or more dwellings. All residential development including single-family residences shall control and treat stormwater so that no untreated water or unattended discharges enter surface water or wetlands. Drainage facilities shall be separated from sewage disposal and transport facilities and shall include provisions

to prevent uncontrolled and untreated entry of surface water runoff into adjacent waters and wetlands. Storm drainage facilities may include, but not be limited to retention ponds, vegetative swales, infiltration and dispersion trenches, and artificial wetlands consistent with the current version of the Ecology Storm Manual as adopted by the city PROVIDED no adverse impacts to the receiving existing wetlands and streams, or their buffers would occur.

5. Prior to issuance of a building permit, plat or short plat or other shoreline development approval, the applicant shall submit adequate plans for preservation, enhancement and/or restoration of shore vegetation and for control of erosion during and after construction, resulting in permanent shoreline vegetative stabilization. Such plans shall be part of the shoreline permit, if one is required.
6. For the purpose of accomplishing shoreline views in developed residential areas, setbacks for residential structures established in the Use-related Development Standards may be reduced in the Urban and Shoreline Residential environments (only), consistent with the following:
 - a. Where there are existing (legally nonconforming) ~~single-family~~ residences that encroach on the established setback within 50 feet of either side of the proposed building site, the required setback of the proposed structure may be reduced by review and approval of the administrator. In such cases, proposed residential structures may be set back (from OHWM) common to the average of the setbacks of the existing adjacent residences as measured from the nearest foundation corners.
 - b. In those instances where only one existing (~~legally nonconforming~~) ~~single-family~~ residence is within 50 feet of either side of the proposed building site, the required setback of the proposed structure may be reduced by review and approval of the Administrator. In such cases, proposed residential structures may be set back (from OHWM) common to the average of the setbacks of the existing adjacent residential foundation corners and the prescriptive setback on the adjacent vacant lot residences.
 - c. In no case shall the reduced setbacks applied above be less than 30 feet landward of the OHWM.
 - d. Any further setback reduction beyond that allowed in this section shall require approval of a shoreline variance permit.
 - e. The setback reduction shall not apply to applicable buffers otherwise required by the Master Program.
7. Subdivisions and planned unit developments of five or more waterfront lots/units shall dedicate, improve and provide maintenance provisions for a pedestrian easement which provides area sufficient to ensure usable access to and along the shoreline for all residents of the development and the general public. When feasible, public access easements shall be a minimum of 25 feet in width and shall

Commented [DT28]: DOE Recommended: This clarifies some of the setback language.

Commented [DT29]: DOE Recommended Change: This change reminds the reader that buffers may still apply that exceed the reduced setbacks (i.e. geologic hazards, streams, wetlands etc.)

be in compliance with public access standards contained herein (see section 5.11 Public Access)

6.10 TRANSPORTATION FACILITIES

6.10.01 Applicability

Transportation facilities are those structures and developments that aid in land and water surface movement of people, goods and services. Transportation facilities within the shoreline jurisdiction of the City are exclusively land surface movement facilities which include roads, bridges, sidewalks, bikeways and trails.

6.10.02 Policies

1. Proposed transportation facilities should result in no net loss of shoreline ecological functions.
2. Existing or planned water dependent uses should be considered when planning new transportation facilities.
3. New roads and bridges in shoreline jurisdiction should be minimized, and allowed only when related to and necessary for the support of permitted shoreline activities.
4. Trail and bicycle paths should be required along shorelines where they are compatible with the natural character, resources and ecology of the shoreline.
5. Abandoned or unused road or railroad rights-of-way which offer opportunities for public access to the water should be acquired and/or retained for such use.

6.10.03 Regulations

1. New transportation facilities shall be located where routes will have the least possible adverse effect on shoreline features and will result in no net loss of shoreline ecological functions.
2. New transportation facilities should be designed so existing or planned water dependent uses are not adversely impacted.
3. Transportation facilities and services shall utilize existing transportation corridors whenever possible, provided that facility additions and modifications will not adversely impact shoreline resources and are otherwise consistent with this program.
4. Landfills for transportation facility development are **prohibited** in water bodies, and wetlands, EXCEPT when all structural and upland alternatives have been proven infeasible and the transportation facilities provide a substantial public benefit and are necessary to support uses consistent with this program, such landfill may be permitted as a conditional use.

5. The City shall not vacate any city road which abuts a body of water unless road is not suitable for a park, viewpoint, recreation education or other public purposes.
6. New transportation facilities shall be located and designed to prevent or minimize the need for shoreline protective measures such as riprap or other bank stabilization, landfill, bulkheads, or substantial site grading. Transportation facilities allowed to cross over water bodies, and wetlands shall utilize elevated, open pile or pier structures whenever feasible. All bridges must be built high enough to allow the passage of debris and provide a minimum of 1.5 feet of freeboard above the 100-year flood level.
7. Bridge abutments and necessary approach fills shall be located landward of wetlands or the OHWM for water bodies without wetlands, PROVIDED public-owned bridge piers may be permitted in a water body as a conditional use.

6.11 UTILITIES

6.11.01 Applicability

The provisions in this section apply to all types of utility developments. These include power, telephone, cable, water and sewer lines, and stormwater systems; as well as solid waste handling and disposal, sewage treatment plants and outfalls, public high-tension utility lines on public property or easements, power generating or transfer facilities, gas distribution lines and storage facilities. Solid waste disposal means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste on any land area on or in the water. Utilities servicing a single-family residence are regulated as an appurtenance under Ch 6.09 – Residential Development and other provisions of this SMP.

6.11.02 Policies

1. Utilities should utilize existing transportation and utility sites, rights-of-way and corridors whenever possible, rather than creating new corridors. Joint use of rights-of-way and corridors should be required.
2. Utility facilities and right-of-ways should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed under ground.
3. Utilities should be **prohibited** in wetlands, streams and their buffers, or other unique and fragile areas unless no feasible alternatives exist.
4. New utility facilities should be located so as not to require extensive shoreline protection works.
5. Utility facilities and corridors should be located so as to protect scenic views. Whenever possible, such facilities should be placed underground or alongside or under bridges.

6. Solid waste disposal activities and facilities should be **prohibited** in shoreline areas.

6.11.03 Regulations

1. All utility facilities shall be designed and located to assure no net loss of shoreline ecological functions.
2. Utility lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible and shall avoid duplication and construction of new or parallel corridors in all shoreline areas. Proposals for new corridors or water crossings must fully substantiate the infeasibility of existing routes.
3. Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.
4. New and expanded solid waste disposal sites and facilities are prohibited.
5. New utility lines including electricity, communications, water and fuel lines shall be located underground, except where the presence of bedrock or other obstructions make such placement infeasible. Existing above ground lines shall be moved underground during normal replacement processes.
6. Transmission and distribution facilities shall cross areas of shoreline jurisdiction by the shortest, most direct route feasible, unless such route would cause significant environmental damage. The mounting of transmission and distribution facilities on bridge structures may also be allowed for stream crossings in most instances.
7. Utility developments shall be located and designated so as to avoid or minimize the use of any structural or artificial shore defense or flood protection works for the life of the project.
8. Where major facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy, substantially impair or obstruct scenic views.
9. Utility development shall utilize required setback areas to provide screening of facilities from water bodies, wetlands and adjacent properties. Type of screening required shall be determined by the City on a case-by-case basis.

7 SHORELINE MODIFICATION POLICIES & REGULATIONS

7.01 INTRODUCTION

Shoreline modification activities, are those actions that modify the physical configuration or qualities of the shoreline area. Typically, activities are related to the construction of a physical element such as a dike, bulkhead, dredged basins or landfill, but may include other actions such as clearing, grading and the application of chemicals. Shoreline modification activities usually are undertaken in support of or in preparation for a shoreline use. A single use may require several different shoreline modification activities.

7.02 GENERAL SHORELINE MODIFICATION PROVISIONS

7.02.01 Applicability

Shoreline stabilization and flood protection are actions taken primarily to address erosion impacts to upland property and improvements caused or associated with current or flood action. These actions include structural and nonstructural methods including but not limited to: riprap, bulkheads, and bioengineering/vegetative management methods. These provisions should be used for all shoreline modification activities whether such proposals address a single property or multiple properties.

7.02.02 Regulations

1. Structural shoreline modifications are only allowed as a conditional use where they are demonstrated to be necessary to protect a primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
2. Shoreline modifications should be limited as much as possible, in number and extent, to help reduce the adverse effects of shoreline modifications.
3. Shoreline modifications must be appropriate for the specific type of shoreline and environmental conditions for which they are proposed.
4. To assure that shoreline modifications individually and cumulatively result in no net loss of ecological functions, the types of shoreline modifications that have the least impact on ecological functions, requiring fewer mitigation measures shall be given preference. The cumulative impacts report for Lynden is provided in Appendix B.
5. All shoreline modifications shall be based on scientific and technical information for reach conditions.

6. Impaired ecological functions shall be enhanced where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, all feasible measures to protect ecological shoreline functions and ecosystem-wide processes shall be incorporated. Avoidance of altering existing shoreline processes that are functioning properly is paramount
7. Avoid and reduce significant ecological impacts according to the mitigation sequence in Chapter 2.

7.03 DREDGING

7.03.01 Applicability

Dredging is the removal or displacement of earth or sediments such as gravel, sand, mud or silt and/or other materials or debris from any stream, or lake and associated shorelines, side channels, and wetlands. Dredging is normally done for specific purposes or uses such as constructing and maintaining a navigational channel, dike or drainage system repair and maintenance, or obtaining bottom material.

Dredge material is disposed of on land or into water bodies and may be intended for the purpose of creating new or additional lands for other uses. Dredge spoil varies from clean river sand to organic sludge. While some of this material is deposited on land, a significant portion is dumped, intentionally or unintentionally, back into the water or immediately adjacent to the water.

7.03.02 Policies

1. Dredging in the Lynden shoreline jurisdiction should be prohibited, except as part of an approved restoration project.
2. Dredging for the primary purpose of obtaining fill or construction material should be prohibited.
3. In all cases, dredging operations should be planned and conducted to minimize adverse effects on aquatic habitat and other shoreline uses, properties, and values.
4. Dredging operations should be scheduled so as to not materially interfere with the movements of fish.
5. Dredging and dredge material disposal should be located and conducted in a manner that minimizes damage to existing ecological values and natural resources of the area to be dredged, downstream, and of the disposal site.
6. Dredge material disposal in water bodies should be discouraged, except for habitat improvement purposes or where depositing dredge material on land or off-site would be more detrimental to shoreline resources than deposition in water areas.

7.03.03 Regulations

1. Dredging may be permitted as a conditional use activity; provided, as a primary fish or wildlife restoration project consistent with Ch 9 – Restoration Plan, dredging may be separately authorized.
2. Dredging waterward of the ordinary high water mark may be permitted only:
 - a. As part of an approved habitat improvement or restoration project
 - b. In conjunction with a bridge, navigational structure or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist.
 - c. To improve water flow and/or manage flooding only when consistent with an approved flood/stormwater comprehensive management plan and only if biological and geomorphologic studies demonstrates a long-term benefit to flood hazard reduction and habitat restoration.
3. When dredging is permitted, the extent of dredging shall be the minimum necessary to accommodate the proposed use and impacts which cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.
4. New development should be sited and designed to avoid or to minimize the need for new and maintenance dredging.
5. Dredging and dredge disposal shall be permitted only where it is demonstrated that the proposed actions will not:
 - a. Result in significant and/or ongoing damage to water quality, fish, and other essential biological elements; and
 - b. Adversely alter natural drainage and circulation patterns, currents, river and tidal flows or significantly reduce flood water storage capacities or characteristics.
6. Dredging for the primary purpose of obtaining fill or construction material is prohibited except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark except as otherwise provided for in this SMP. The project must be either associated with a MTCA or CERCLA habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.
7. Dredging to construct swimming holes and similar features is prohibited.
8. Individual disposal operations shall comply with Department of Natural Resources leasing practices, the Department of Ecology Water Quality Certification process, and the permit requirements of the State Department of Fish and Wildlife and the U.S. Army Corps of Engineers.

9. Except as separately authorized consistent with Ch 9 – Restoration Plan, depositing dredge materials in water areas shall be prohibited.
10. Disposal of dredge material shall be done only in approved sites.

7.04 FILL

7.04.01 Applicability

Fill is the placement of soil, sand, rock, gravel, existing sediment or other material (excluding solid waste) to create new land, or bottom land area, along the shoreline below the OHWM, or on wetland or upland areas in order to raise the elevation. Any fill activity conducted within shoreline jurisdiction must comply with the following provisions.

7.04.02 Policies

1. Fills waterward of the OHWM should be prohibited and allowed only when necessary to support the design and construction of a shoreline restoration or environmental enhancement project or to facilitate water-dependent and/or public access uses which are consistent with this master program.
2. Fills waterward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit.
3. Shoreline fills should be designed and located so that there will be no significant damage to existing ecological systems or natural resources, and no alteration of local currents, surface water drainage or flood waters which would result in a hazard to adjacent life, property and natural resource systems.
4. Where permitted, fills should be the minimum necessary to provide for the proposed use and should be permitted only when tied to a specific development proposal that is permitted by this master program. Speculative fill activity should be prohibited.
5. Sanitary landfills should not be located in shoreline jurisdiction.

7.04.03 Regulations

1. Fills waterward of OHWM as part of an approved shoreline habitat restoration project shall be permitted.
2. Fills waterward of OHWM for the following uses may be permitted as a conditional use:
 - a. Water-dependent or public uses permitted by this master program;
 - b. Bridges for which there is a demonstrated public need and where no feasible upland sites, design solutions, or routes exist;

- c. For habitat enhancement projects.
- 3. Fills are **prohibited** in floodplains except where it can be clearly demonstrated that the geohydraulic characteristics and floodplain storage capacity will not be altered to increase flood hazard or other damage to life or property. Fills in the floodway may be permitted as a conditional use.
- 4. Speculative fills are **prohibited**.
- 5. Where fills are permitted, the fill shall be the minimum necessary to accommodate the proposed use.
- 6. Where existing public access is reduced, greater public access as part of the development project shall be provided.
- 7. Fills shall be located, designed, constructed and maintained to prevent, minimize and control all material movement, erosion and sedimentation from the affected area. All fills shall result in no net loss of environmental functions.
- 8. Sanitary landfills and other fills containing refuse are prohibited in shoreline jurisdiction.

7.05 SHORELINE HABITAT AND NATURAL SYSTEMS ENHANCEMENT PROJECTS

7.05.01 Applicability

Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines, including non-commercial native species hatchery and rearing facilities.

7.05.02 Policies

1. The City of Lynden should foster habitat and natural system enhancement projects. Such projects may include shoreline modification actions such as modification of vegetation, removal of nonnative or invasive plants, native species enhancement activities e.g. fish egg boxes, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.
2. Projects that address legitimate restoration needs and priorities and facilitate implementation of the restoration plan developed pursuant to WAC 173-26-201 (2)(f) should be encouraged and supported.

7.05.03 Regulations

1. Projects that address legitimate restoration needs and priorities and facilitate implementation of the City's Shoreline Restoration Plan and Public Access Section shall be allowed.

2. Other proposed habitat enhancement or restoration projects not identified in or consistent with Ch 9 – Restoration Plan may be allowed as a conditional use.

7.06 SHORELINE STABILIZATION

7.06.01 Applicability

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. These actions include structural and nonstructural methods and the enlargement of existing structures.

Nonstructural methods include building setbacks, relocation of the structure to be protected, ground and surface water management, planning and regulatory measures to avoid a susceptible location and the need for structural stabilization.

Specific structural and nonstructural means included in this use activity are beach restoration and enhancement; soil bioengineering; riprap; bulkheads; and jetties, rock weirs, and groins. Several of these techniques could be used to address local shoreline issues.

Hard structures, especially vertical walls or near vertical riprap, often create conditions that lead to failure of the structure or pass the adverse, erosional impacts to downstream properties. In time, the substrate of the beach or bank coarsens and scours down to bedrock or a hard clay eliminating habitat for fish and other aquatic species. The footings of bulkheads are exposed or the riprap settles, leading to undermining and failure. This process is exacerbated when the original cause of the erosion and "need" for the bulkhead was from upland water drainage problems and the cumulative increased runoff from impervious surfaces and flood flows. Failed bulkheads and walls adversely impact beach and stream aesthetics, may be a safety, recreational or navigational hazard, and may adversely impact shoreline ecological functions.

"Hard" structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads and riprap, while "soft" structural measures rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement. There is a range of measures varying from soft to hard that include:

- Vegetation preservation
- Vegetation enhancement and restoration;
- Upland drainage control;
- Biotechnical measures;
- Beach enhancement;
- Anchor trees and large woody material structures;
- Stream placement;
- Rock revetments;
- Gabions;
- Concrete groins;
- Retaining walls and bluff walls;

- Bulkheads

Generally, the harder and larger the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.

7.06.02 Policies

1. Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
2. Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
3. Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
4. Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions, the provide or enhance ecological functions, and requiring full mitigation of identified impacts resulting from shoreline modifications.
5. Where applicable, base provisions on scientific and technical information and a comprehensive analysis of reach conditions and overall stream restoration objectives.
6. Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.
7. Avoid and reduce significant ecological impacts according to the mitigation sequence defined in Chapter 2.

7.06.03 Regulations

1. New and expanded development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
2. New subdivisions shall be configured so that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics.
3. New and expanded development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.

4. New and expanded development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is PROHIBITED.
5. New structural stabilization measures shall not be allowed except when necessary to protect existing primary structures.
6. Erosion control structures shall not result in a net loss of shoreline ecological functions.
7. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, must be supported by a geotechnical analysis that the primary structure is in danger from shoreline erosion. Normal shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
8. New structural stabilization measures may be allowed as a conditional use for new water-dependent development and nonwater-dependent development, including single-family residences, when all of the following conditions apply:
 - a. The erosion is not being caused by upland conditions, such as the loss of vegetation or drainage problems.
 - b. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient either together or independently.
 - c. The need to protect primary structures from damage due to erosion is demonstrated conclusively through a geotechnical report. The damage must be caused by natural processes.
9. Structural stabilization measures may be allowed to protect restoration projects or hazardous substance remediation projects pursuant to chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
10. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion with the following conditions:
 - a. The replacement structure should be designed, located, sized, and constructed to be the minimum necessary to achieve protection and to assure no net loss of ecological functions.
 - b. Replacement walls, riprap or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

- c. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.
 - d. "Replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
11. Geotechnical reports that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion, and report on the urgency associated with the specific situation related to the life of the project.
 12. Hard armoring solutions shall not be authorized except when a geotechnical report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions.
 13. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
 14. Any structural shoreline stabilization measures demonstrated to be necessary shall:
 - a. Be the minimum necessary;
 - b. Use measures designed to assure no net loss of shoreline ecological functions;
 - c. Use soft approaches unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
 - d. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline. Access should not be provided when there are incompatible uses, safety or security issues, or potential harm to ecological functions.
 15. New structural public flood hazard reduction measures, such as dikes and levees, shall dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

16. All flood protection measures should be placed landward of the natural shoreline floodway boundary, including wetlands which are associated with the water body proper.

DRAFT

8 ADMINISTRATION

8.01 INTRODUCTION

8.01.01 Shoreline Permit

1. Any person wishing to undertake a development within the Lynden shoreline jurisdiction shall apply to the City for a shoreline permit. Based on the provisions of this Master Program, the Administrator shall determine if a substantial development permit, a shoreline conditional use permit, and/or a shoreline variance is required
2. All proposed uses and development occurring within the City's shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this master program whether or not a permit is required.

8.01.02 General Development Review Regulations:

1. No authorization to undertake use or development on shorelines shall be granted by the City unless the use or development is determined to be consistent with the review criteria of WAC 173-27-140, as amended.
2. A substantial development permit shall be granted only when the development proposed is consistent with review criteria of WAC 173-27-150, as amended.
3. All exempt projects must obtain a letter of exemption for consistency with WAC 173-27-050, as amended.
4. Conditional use and variance permits, in addition to City approval, require review and approval by Ecology consistent with WAC 173-27-200, as amended.

8.02 LOCAL REVIEW ~~PLANNING COMMISSION~~

~~The City's review of and final decision on all shoreline permits shall be in accordance with the Lynden Municipal Code and the City's shoreline management program. As per 17.03.040 (B) of the LMC, the Planning Commission shall hear, review, and make the final decision of the City on all shoreline permits in accordance with the City's shoreline management program.~~

Commented [DT30]: Legal review recommended to clarify the administration portion of the SMP into the updated LMC 16.08. This allows those portions to be amended at a later date without having to also update the entire SMP.

8.03 SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT AND EXEMPTIONS

8.03.01 Permits Required.

1. A development, use, or activity shall not be undertaken within the jurisdiction of the Shoreline Management Act, Chapter 90.58 RCW, and this Shoreline Master Program unless it is consistent with the policy and procedures of the Shoreline Management Act, applicable state regulations and this master program.

2. A substantial development shall not be undertaken within the jurisdiction of the Shoreline Management Act, Chapter 90.58 RCW and this Shoreline Master Program unless a shoreline substantial development permit has been obtained, the appeal period has been completed, any appeals have been resolved and/or the applicant given permission to proceed by the proper authority.

8.03.02 Developments not required to obtain shoreline permit or local reviews

Commented [DT31]: Periodic Review 2017 ©:

1. Remedial actions. (RCW 90.58.355)
2. Boatyard improvements to meet NPDES requirements. (RCW 90.58.355)
3. WSDOT facility maintenance and safety improvements. (RCW 90.58.356)

8.03.028.03.03 Application and interpretation of exemptions:

1. Exemptions shall be narrowly construed: only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.
2. An exemption from the substantial development permit process is not an exemption from compliance with the act or this master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the provisions of the master program, or is an unlisted (unclassified) use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.
3. The burden of proof that a development or use is exempt from the substantial development permit process is on the applicant.
4. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.
5. Local governments may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

8.03.038.03.04 Exemptions

The following developments shall not require a substantial development permit per WAC 173-27-040, as amended:

Note: EXEMPTION FROM SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS DOES NOT CONSTITUTE EXEMPTION FROM THE POLICIES AND USE REGULATIONS OF THE SHORELINE MANAGEMENT ACT; THE PROVISIONS OF THIS MASTER PROGRAM; AND OTHER APPLICABLE CITY, STATE, OR FEDERAL PERMITS REQUIREMENTS.

1. Any development where the total cost or fair market value, whichever is greater, is less than ~~\$7,047,571.8~~ or as amended by the state office of financial management, and does not materially interfere with the normal public use of the waters or shorelines of the State. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or the total replacement would cause substantial adverse effects to the shoreline resource or environment.
3. Construction of the normal protective bulkhead common to single family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.
4. Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with this Program. Emergency construction does not

Commented [DT32]: Change to most recent current dollar threshold by OFM

include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to RCW 90.58, WAC 173-27 or this Program, shall be obtained. All emergency construction shall be consistent with the policies of RCW 90.58 and this Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

5. Construction and practices normal or necessary for farming, irrigation and ranching activities, including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003, and further provided that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.
6. Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his or her own use or for the use of his/her family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the State agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage; carport; deck; patio; driveway; utilities; fences; and grading which does not exceed 250 cubic yards. Construction authorized by this exemption shall be located landward of the ordinary high water mark.
7. Operation, maintenance, or construction canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of system water, including return flow and artificially stored ground water from the irrigation of lands.
8. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface of the water.
9. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975 which were created developed, or utilized primarily as a part of an agricultural drainage or diking system.

10. Any project with a certification from the Governor pursuant to Chapter 80.50 RCW.
11. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorized under this chapter, if:
 - a. The activity does not interfere with the normal public use of the surface waters;
 - b. The activity will have no significant adverse impact on the environment, including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - c. The activity does not involve the installation of any structure, and upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - e. The activity is not subject to the permit requirements of RCW 90.58.550.
12. The process of removing or controlling invasive or noxious weeds, as defined in RCW 17.26.020(33) through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C.RCW.
13. Watershed restoration projects as defined herein. The Administrator shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving a complete application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section.
 - a. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
 - i. A project that involves less than ten (10) miles of streamreach, in which less than twenty-five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
 - ii. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

- iii. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred (200) square feet in floor area and is located above the ordinary high water mark of the stream.
 - b. "Watershed restoration plan" mean a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;
- 14. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
 - a. The project has been approved in writing by the department of fish and wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
 - b. The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and
 - c. The Administrator has determined that the project is consistent with the local shoreline master program. The Administrator shall make such determination in a timely manner and provide it by letter to the project proponent.

15. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

Commented [DT33]: Periodic Review Checklist 2016 (a)

8-03-048.03.05 Site Inspection

Before determining that a proposal is exempt, the Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the Master Program and the Shoreline Management Act.

8-03-058.03.06 Hazardous substance remedial actions.

The procedural requirements of chapter 90.58 RCW shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to 70.105D RCW or to the Department of Ecology when a remedial action under chapter 70.105D RCW. The Department of Ecology shall, in consultation with the City, assure that such projects comply with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program.

~~8.03-06~~ 8.03.07 U.S. Army Corps of Engineers Section 10 or Section 404 Permit

Whenever a development falls within the exemption criteria and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Statement of Exemption, and transmit a copy to the applicant and the Washington State Department of Ecology. Exempt development as defined herein shall not require a substantial development permit, but may require a conditional use permit, variance and/or a Statement of Exemption.

8.04 REVISION OF PERMITS

8.04.01 Revision Submittal

When an applicant wishes to revise a permit, the applicant must submit detailed plans and text describing the proposed substantive changes in terms of design, terms or conditions from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. If the Administrator determines that the revisions proposed are consistent with the applicable master program and the act and, are within the scope and intent of the original permit, consistent with WAC 173-27-100, as amended, the Administrator may approve the revision. "Within the scope and intent of the original permit" means all of the following:

1. No additional overwater construction is involved;
2. Ground area coverage and height is not increased more than ten (10) percent from the provisions of the original permit;
3. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the Master Program, except as authorized under a variance granted as the original permit or a part thereof;
4. Additional or revised landscaping is consistent with conditions (if any) attached to the original permit and this SMP;
5. The use authorized pursuant to the original permit is not changed; and
6. No substantial adverse environmental impact will be caused by the project revision.

8.04.02 Scope of Revision

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new shoreline permit must be submitted. If the revision involves a conditional use or variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved, approved with conditions, or denied by the Department of Ecology.

8.04.03 Final Ruling

The revision approval, including the revised site plans and text (consistent with the provisions of WAC 173-27-180, as amended, as necessary to clearly indicate the authorized changes), and the final ruling on consistency with this section shall be filed with the Department of Ecology. In addition, the City shall notify parties of record of its action.

8.04.04 Revision of a Conditional Use Permit or Variance

If the revision to the original permit involves a conditional use or variance, the City shall submit the revision to the Department of Ecology for their approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of the WAC 173-27-100, as amended. The Department of Ecology shall render and transmit to the City and the applicant its final decision within fifteen (15) days of its receipt of the submittal from the City. The City shall notify parties of record of the Department of Ecology's final decision.

8.04.05 When the Revised Permit is Effective

The revised permit is effective immediately upon final action by local government or, when appropriate under subsection 8.07.04 above, upon final action of the Department of Ecology.

8.04.06 Appeals of Revisions

A ~~City Lynden Planning Commission~~, or Department of Ecology decision on revision to the permit shall be appealed within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

Commented [DT34]: Legal review recommended

8.05 SHORELINE PERMIT APPEALS

8.05.01 Local Appeals

Any appeal of administrative interpretations and approvals, ~~or Planning Commission decisions~~ will be in accordance with ~~the Lynden Municipal Code, Chapter 17.11 LMC.~~

Commented [DT35]: Legal review recommended

8.05.02 Appeal to the State Shoreline Hearings Board

Any person aggrieved by the granting or denying of a substantial development permit, variance, or conditional use permit, or by the rescinding of a permit pursuant to the provisions of this Master Program, may seek review from the State of Washington Shorelines Hearing Board by filing a request for the same within twenty-one (21) days of receipt of the final order and by concurrently filing copies of such request with the Department of Ecology and the Attorney General's office. State Hearings Board regulations are provided in RCW 90.58.180 and Chapter 461-08 WAC. A copy of such appeal notice shall also be filed with the Lynden City Shoreline Administrator.

8.05.03 Permit Filing

Commented [DT36]: Periodic Review Checklist: 2017 (d). Clarifying filing procedures

After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the City will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of Attorney General. Projects that require both Conditional Use Permits and/or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.

1. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.

2. Consistent with RCW 90.58.140(6), the state's Shoreline Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:

a) For projects that only require a Substantial Development Permit: the date that Ecology receives the City's decision.

b) For a Conditional Use Permit or Variance: the date that Ecology's decision on the Conditional Use Permit or Variance is transmitted to the applicant and the City.

c) For Substantial Development Permits simultaneously mailed with a Conditional Use Permit or Variance to Ecology: the date that Ecology's decision on the CUP or VAR is transmitted to the applicant and the City.

8.06 VARIANCES AND CONDITIONAL USE PERMITS

These provisions should be applied in a manner which, while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner.

8.06.01 Variances – Criteria for Granting Variances:

These provisions should be applied in a manner which, while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner. The purpose of a variance permit is strictly limited to granting relief to specific bulk dimensional, or performance standards set forth in the Master Program, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the SMA policies as stated in RCW 90.58.020.

Construction pursuant to this permit shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

1. Variance permits for development and /or uses that will be located landward of the OHWM, and/or wetland, , may be authorized *provided* the applicant can demonstrate all of the following:

- a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with reasonable use of the property not otherwise prohibited by the Master Program.
 - b. That the hardship described above (in 1.a) is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program and not, for example, from deed restrictions or the applicant's own actions.
 - c. That the design of the project will be compatible with other authorized uses in the area and with uses planned for the area under the comprehensive plan and this Master Program and will not cause adverse impacts to the shoreline environment.
 - d. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area.
 - e. The variance is the minimum necessary to afford relief.
 - f. That the public interest will suffer no substantial detrimental effect.
2. Variance permits for development that will be located either waterward of the OHWM or within wetlands may be authorized *provided* the applicant can demonstrate all the criteria stated above in 1 are met, except 1a, as well as the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes *all reasonable use* of the property
 - b. That the public rights of navigation and use of the shorelines will not be adversely affected by granting the variance.
 3. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other development in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
 4. Requests for varying the *use* to which a shoreline area is to be put are not requests for variances but rather requests for conditional uses permits, and shall be evaluated based on the criteria established in Ch 8.09.02 – Conditional Uses. Variances from the SMP use regulations are prohibited.

Commented [DT37]: DOE Required Change: For consistency with WAC 173-27-170(4)

City of Lynden - Shoreline Master Program

8.06.02 Conditional Uses:

The purpose of a conditional use permit is to allow greater flexibility in ~~varying~~ the application of the use regulations of the Master Program in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City of Lynden or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMA or this SMP.

Commented [DT38]: DOE Required Change: For consistency with WAC 173-27-160.

1. Uses which are classified or set forth as conditional uses may be authorized, *provided* the applicant can demonstrate all of the following:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and ~~the policies of~~ the Master Program;
- b. That the proposed use will not interfere with the normal public use of public shorelines;
- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP;
- d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- e. That the public interest suffers no substantial detrimental effect.

Commented [DT39]: DOE Required Change: For consistency with WAC 173-27-160(1)(a).

2. Other uses which are not classified or set forth in the applicable Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with, in addition to the criteria set forth above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the Master Program.

Commented [DT40]: DOE Required Change: For consistency with WAC 173-27-160(3).

3. Uses which are specifically prohibited by the Master Program may not be authorized.

4. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional request for like actions in the area. For example, if conditional use permits were granted to other development in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and this SMP and shall not produce substantial adverse effects to the shoreline environment.

8.07 NONCONFORMING USE AND DEVELOPMENT STANDARDS.

8.07.01 ~~Definitions Nonconforming Use or Development~~

Commented [DT41]: Periodic Review Checklist: 2017 (g). Clarifying nonconforming use language.

1. "Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program, but which does not conform to the present use regulations due to subsequent changes to the master program.

~~or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or this master program, or amendments thereto, but which does not conform to present regulations or standards of the program.~~

~~2. "Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.~~

~~3. "Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.~~

8.07.02 Nonconforming structures

~~1. Structures that were legally established and are used for a conforming use but are nonconforming with regard to setbacks, buffers, or yards; area; bulk; height or density may continue as legal nonconforming structures and may be maintained and repaired.~~

~~2. Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures, unless a shoreline variance permit is obtained.~~

~~3. Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.~~

~~4. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.~~

~~5. In the absence of other more specific regulations, a structure which is being or has been used for a nonconforming use may be used for different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:~~

~~a) No reasonable alternative conforming use is practical; and~~

~~b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.~~

~~In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.~~

~~6. A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.~~

7. ~~If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within two years of the date the damage occurred.~~

8.07.03 Nonconforming Uses

1. ~~Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.~~
2. ~~In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.~~
3. ~~If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use included phased or rotational operations as part of typical operations. A use authorized pursuant to subsection 8.07.02(5) of this section shall be considered a conforming use for purposes of this section.~~

8.07.04 Nonconforming Lot

1. ~~A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.~~
2. ~~A use which is listed as a conditional use but which legally existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use.~~
3. ~~A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.~~

Commented [DT42]: Replaced with the above Periodic Review suggested language.

8.07.02 Expanding or Enlarging Nonconforming Uses and Structures

1. ~~Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided the enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.~~

2. ~~Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded;~~
3. ~~Nonconforming single family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.~~

8.07.03 ~~Changing Uses of Nonconforming Structures~~

1. ~~A structure which is being or has been used for a nonconforming use and has not been abandoned may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

 - a. ~~No reasonable alternative conforming use is practical; and~~
 - b. ~~The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.~~~~
2. ~~In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.~~

8.07.04 ~~Moving a Nonconforming Structure~~

~~A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act, provided if the new location is significantly more consistent with the provisions of the SMA and SMP, the relocation may be authorized as a conditional use.~~

8.07.05 ~~Repairing Damaged Nonconforming Uses~~

~~If a nonconforming development is damaged to an extent not exceeding seventy five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged with the following conditions:~~

1. ~~Application is made for the permits necessary to restore the development within (1) one year of the date the damage occurred;~~
2. ~~All permits are obtained and the restoration is completed within (3) three years of permit issuance.~~

~~8.07.06 — Abandoned uses~~

~~If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection 8.10.03 of this section shall be considered a conforming use for purposes of this section.~~

~~8.07.07 — Substandard lots~~

~~An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or this master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of this master program and the act.~~

8.08 RESCINDING A PERMIT

8.08.01 By the City

Permits may be rescinded by the City upon a finding that the permittee has not complied with permit conditions. Notice must be provided to the permittee and the public and a public hearing will be held.

8.08.02 By Ecology

Ecology may petition the City to rescind a permit the agency believes is in noncompliance. Ecology must first provide written notice to the City that the noncompliance exists and wait thirty days for the local government to have the opportunity to rescind the permit. Within fifteen days after the end of the thirty day period and upon written notice to the permittee and the City, Ecology may petition the Shoreline Hearings Board to rescind the permit.

8.08.03 Civil Penalties and Other Compliance Remedies

Unpermitted development and/or use in violation of the SMA or this SMP may be the subject of any or all of the following compliance measures: cease and desist order, order to take corrective action, civil and/or criminal penalties, and permit recession. Violation of the terms of a permit is also subject to civil penalties and enforcement orders from the local government and/or Ecology.

Aiding or Abetting.

Any person, such as a contractor who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

8.09 ENFORCEMENT AND PENALTIES

The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, benefits that accrue to the violator and the cost of obtaining compliance may also be considered.

All provisions of the Master Program shall be enforced by the Shoreline Program Administrator and/or his/her designated representatives in accordance with LMC 17.13 and Chapter 173-27 WAC, as amended.

8.10 MASTER PROGRAM REVIEW

This master program should be periodically reviewed and necessary amendments made to reflect changing local circumstances, new information or improved data and changes in State statutes and regulations. This review process shall be consistent with [RCW 90.58.080](#) and [WAC 173-26-090](#) requirements and shall include a local citizen involvement effort and public hearing(s) to obtain the views and comments of the public.

During the master Program review, the cumulative effects of all project review actions in shoreline areas will be evaluated.

Commented [DT43]: Periodic Review Checklist: 2017 (h)

8.11 AMENDMENTS TO THE SHORELINE MASTER PROGRAM

8.11.01 Application for Amendments to the Shoreline Master Program

The provisions of this Shoreline Master Program may be amended as provided in RCW 90.58.120, 90.58.200 and Chapter 173-26 WAC. Any person, including the City, may submit an application for an amendment to the Administrator together with any required fee. Any amendment to local SMPs must satisfy the requirements of the State Environmental Policy Act (Chapter 43.21C RCW) and Chapter 197-11 WAC. The City Council shall approve, modify, or deny applications for amendments. As provided by state law, amendments or revisions to shoreline master programs are not effective unless approved by the Washington State Department of Ecology.

8.11.02 Amendments to Shoreline maps or Designations

Proposals for shoreline environment re-designation (i.e., amendments to the shoreline maps and descriptions), must demonstrate consistency with the criteria set forth in WAC 173-26 and follow the process outlined above.

8.12 SEVERABILITY

If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstances is held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

8.13 CONFLICT OF PROVISIONS

Should a conflict occur between the provisions of this SMP or between this SMP and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the city, the requirement that is most protective of the shoreline resources shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this SMP.

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9 RESTORATION PLAN

9.01 INTRODUCTION

This restoration plan is a framework for restoration and is based on the Inventory and Characterization Report which was prepared for the City of Lynden. The restoration plan is designed to assist the City of Lynden in meeting the “no net loss” standard of the SMP guidelines. A map of the shorelines in the City of Lynden and the shore line reach designations is provided in Appendix A - Map Folio.

9.02 DEGRADED AREAS, IMPAIRED FUNCTIONS AND SITES WITH POTENTIAL FOR RESTORATION

As part of the SMP process, an Inventory and Characterization Report was prepared which summarized the watershed process, shoreline function, and alterations.

9.02.01 DEGRADED AREAS AND IMPAIRED FUNCTIONS

Typical of urban streams, Fishtrap Creek is nearly completely developed in the City of Lynden. Most portions of the creek have been permanently impaired by development (pavement and buildings). Impaired functions include alteration to the hydrology (low in-stream flows and increased flooding during rain events), sediment cycle (high turbidity during rain events, erosion of stream banks, and channelization of portion of the stream), nutrient loading, and lack of large woody debris in the stream and in the riparian areas.

A summary of the processes and alterations for each reach of the Fishtrap Creek and the Nooksack River reach is provided in Table 9-1. The rankings in Table 9-1 are based on the Inventory and Characterization Report conducted for the Lynden SMP update. The rankings reflect the urban nature of the Fishtrap Creek and may not be directly comparable to rankings performed by other jurisdictions.

9.02.02 SITES WITH RESTORATION POTENTIAL

The permanently impaired portions of Fishtrap Creek have low restoration potential due to development along the shoreline but efforts should be taken to educate landowners on steps which can be taken to restore some function of the shoreline including proper landscaping (including increasing the shade and removal of undesirable vegetation), nutrient loading, “soft” armoring methods, and other practices which can provide some benefit to Fishtrap Creek.

One side effect of the urbanization in Lynden is the increase in peak flow in Fishtrap Creek. In portion of the creek with a confined channel, the increased flows can lead to extensive erosion along the stream bank. Technical experts identified ~~a~~ particular location along North Bridgeview Drive that is undergoing extensive erosion. This location is shown in Map Folio A. Additional creek capacity during higher flow events

Commented [DT44]: Scrivener's error

Table 9-1. Lynden SMP Reach Restoration Potential

	Hydrology				Sediment				Water Quality				Large Woody Debris		Riparian Vegetation		Comments
	Groundwater Infiltration and Recharge		Water Storage		Erosion		Sediment Storage		Inputs		Storage & Nutrient Degradation		Process	Alteration	Process	Alteration	
	Process	Alteration	Process	Alteration	Process	Alteration	Process	Alteration	Process	Alteration	Process	Alteration					
Reach 1	M	L	H	M	M	M	H	M	L	L	H	L	H	M	H	M	Reach 1 is the most natural part of Fishtrap. Efforts should include restoring vegetation to increase LWD and reduce surface erosion potential along step slopes.
Reach 2	H	H	L	H	H	H	L	H	M	M	L	H	H	M	H	H	Reach 2, 3, and 4 are all highly altered. Efforts should be undertaken to restore wetlands where land is available and increase riparian function.
Reach 3	H	H	L	H	M	H	L	H	M	M	L	H	H	H	H	H	
Reach 4	M	H	M	H	M	M	M	M	M	M	M	M	H	H	H	M	
Nooksack River	M	M	H	H	L	H	H	H	M	L	M	M	L	H	L	H	Armoring and levee construction have separated the river from the floodplain. Creation and protection of wetlands and increasing riparian function be possible in this reach.

Orange indicates moderate or high process intensity with high degree of alteration
 Yellow indicates high process intensity with moderate degree of alteration or low intensity with high degree of alteration
 White indicates moderate or low intensity with moderate alteration and areas with low alteration

Based on Inventory and Characterization Report for Lynden

such as overflow channel construction coupled with soft armoring measures along the stream could reduce the erosion in this area.

Undeveloped areas along Fishtrap Creek should be preserved if possible. Creek buffers can be established to retain some degree of riparian function. In addition, overflow and side channels should be considered to **retain** adequate hydraulic capacity during high flow events. A map of sites with restoration potential is provided in Map Folio A.

Commented [DT45]: Scrivener's error

Undeveloped areas in the Fishtrap Creek Shoreline Jurisdiction with potential for restoration include the following properties (shown in Map Folio A):

1. The undeveloped property south of Kok Road (restoration efforts have been undertaken in this area including the placement of large woody debris and revegetation).
2. The Northwest Washington Fairgrounds property which borders Fishtrap Creek is undeveloped and has the potential to support restoration projects.
3. The City Park and City Trail system offer opportunities for restoration including revegetation and riparian enhancement. The City Park property offers excellent public access and could be used to provide education about the creek and the function of the shorelands.
4. The Lynden Middle School property also offers restoration opportunities as this portion of Fishtrap Creek (on the south side) is undeveloped.
5. The area north of Main Street, though privately owned, has the potential for restoration if the property could be purchased or an easement obtained.

9.02.03 Other Restoration opportunities

The Fishtrap Creek channel in Heritage Park is restricted due to vegetation on the channel configuration. Additional overflow channels in this area could improve stream capacity in this area.

Another opportunity to restore shoreline function along Fishtrap Creek would be moving the dike in the southern portion of Reach 1 to allow the creek to retain a more natural character in this area. This project would be difficult as the dike also serves as a flood protection measure for the Nooksack River.

The 17th Street Bridge is a **known** fish passage barrier due to outfall drop and sheet flow in low flow conditions. The Bridge is constructed as a triple culvert. Replacement or modification of the bridge to allow improved salmon passage would also be a benefit to the creek.

Commented [DT46]: Scrivener's error

The Pepin Creek Reroute is an important project currently being developed which involves rerouting drainage ditches (principally the Double ditches and Benson Road ditch) in the north part of the City of Lynden. Flooding has been a common problem in this area. Channel capacity is limited and habitat has been highly altered along these

ditches due to straight-line hydrology and loss of riparian area. In addition, Double Ditch has seen returns of Steelhead and other salmonids which could be enhanced by better habitat.

This is not directly part of the Lynden Shoreline Jurisdiction but these water bodies are major tributaries to Fishtrap Creek and play an important role in the delivery of water, sediment, and toxins to Fishtrap Creek.

In addition to the Pepin Creek Reroute, restoration of the Fishtrap Creek water-shed north of the City of Lynden would provide a benefit to the Lynden Shoreline Jurisdiction especially related to mitigating flow events and improving water quality. Some options include improved water treatment of the Benson Road and Depot Road ditches prior to entering the culverts south of Badger Road and improving the Fishtrap Creek channel itself north of Lynden.

A map of these restoration opportunities is provided in Map Folio A.

9.03 GOALS AND PRIORITIES FOR RESTORATION OF DEGRADED AREAS AND IMPAIRED FUNCTION

The ultimate goal of the restoration is to restore shoreline functions and to achieve no-net-loss in shoreline function when the SMP is adopted. The restoration of shoreline function will take time and therefore some overarching goals and priorities are important to the process.

Loss of wetlands along both Fishtrap Creek and the Nooksack River has negatively affected the water quality and function of the shorelines. One of their principle functions is to provide water storage and retention which can improve low flow conditions during the dry season and attenuate flooding during the wet season. As these two issues have been identified as critical issues in Fishtrap Creek, the preservation of wetlands to perform this vital function should be considered.

Native plant rRevegetation along Fishtrap Creek is important for restoring shoreline function. Proper vegetation reduces erosion potential by stabilizing banks and steep slopes and provides shade for the creek which reduces water temperature and increases dissolved oxygen. Vegetation along the stream also improves riparian function by providing water filtering and habitat.

Fishtrap Creek in Lynden is also lacking in large woody debris and recruitment potential is low in most reaches in Lynden. Large woody debris provides habitat for aquatic organism and can play an important role in the sediment cycle in a watershed. Due to low recruitment potential in Lynden, large woody debris placement is important to restoring Fishtrap Creek function. In order to provide future large woody debris for the creek, revegetation efforts should also be given a priority. The efforts should also focus on providing shade for the creek and removing unwanted vegetation.

Development along Fishtrap Creek upstream of the City of Lynden continues and flooding along Fishtrap Creek is anticipated to be more common. This increased flow should be accounted for in future projects. This would also be true for future projects

Commented [DT47]: Added to clarify revegetation priority is native riparian species.

which add stormwater flows to the creek, stormwater detention and treatment should be designed to minimize the effect on Fishtrap Creek.

Public access to Fishtrap Creek is important to residents of Lynden. Restoration projects along Fishtrap Creek should implement a public access element as well.

9.04 EXISTING AND ONGOING RESTORATION PROJECTS

While a complete listing of all restoration projects completed in Lynden is not available, a listing of the known existing and current projects for both Fishtrap Creek and the Nooksack River was developed with the help of the technical advisory team and City Planning officials.

9.04.01 Fishtrap Creek Ongoing and Existing Projects

Existing restoration projects for the Fishtrap Creek in Lynden include ongoing invasive species control, revegetation and side-channel construction along Bender Fields, riparian area re-vegetation in Heritage Park (south of Badger Road) and riparian enhancement in the area north of Kok Road. Restoration efforts at the City Park have also been performed including large woody debris placement and channel modifications.

Commented [DT48]: Invasive plants are an ongoing issue for restoration work across the state.

Numerous small planting projects have been undertaken throughout the City along Fishtrap Creek and its tributaries. These projects include: planting projects along Bender Park Boulevard in Reach 4, along the City Trail system and in the City Park in Reach 3, in portions of Reach 2 from Main Street to 14th Street, in Reach 2 downstream of 17th Street, and in of Reach 1.

~~There are three ongoing Fishtrap Creek restoration projects in the City including:~~

Commented [DT49]: Completed

- ~~1. Large woody debris placement, revegetation, and riparian planting in the area south of Kok Road in Reach 1.~~
- ~~2. Vegetation planting in the area downstream of Depot Road in Reach 3.~~
- ~~3. Large woody debris placement, vegetation, and riparian planting near the confluence of Double Ditch and Fishtrap Creek in Reaches 1 and 2.~~

9.04.02 Planned Restoration Projects in Fishtrap Creek Watershed

~~Planned restoration projects include the replacement of the culvert on Fishtrap Creek at the Main Street crossing in 2012. This bridge has been noted as a potential fish passage barrier in the Whatcom County Public Works 2006 Fish Passage Survey due to outfall drop. The culvert replacement will improve fish passage. RiparianR restoration efforts are planned are also planned on the former Lynden Middle School property along with a trail extension and pedestrian bridge construction. This project will improve public access and viewing opportunities for Fishtrap Creek which is a critical element of the SMP process.~~

Commented [DT50]: Completed.

Students at Lynden Christian High School have been involved in a number of significant restoration projects along Fishtrap Creek. The students, directed by Biology Teacher Harlan Kredit, operate a small hatchery along the City Trail in Reach 3 of the Fishtrap Creek. The students have undertaken planting projects along Fishtrap Creek north of the city limits and in all reaches in the City. ~~Current projects which are being performed include planting on the bank near Fairside Drive (two year project) and planting along Fishtrap Creek near the Ford Dealership south of Kok Road.~~

Commented [DT51]: Completed.

The reroute of Pepin Creek is also in the planning stage. The scope of the project is not known at this time and the likelihood of the project being implemented depends on a variety of factors including the high project cost and acquiring the needed property to construct the new channel but the benefits to Fishtrap Creek, the landowners along Double Ditch and Benson Road, and the Nooksack River would be significant.

9.04.03 Nooksack River

Restoration efforts along the Nooksack River have been coordinated by regional groups. As part of WRIA 1, a salmonid habitat restoration strategy has been prepared that identifies specific projects related to restoring habitats and shoreline function along the Nooksack River and throughout WRIA 1. Another WRIA 1 project is the development of the WRIA 1 Watershed Management Plan which addressed issues related to water quality, flows, and habitat within WRIA 1. Whatcom County, during their SMP update, cited the Watershed Management Plan as an important element in meeting the no-net-loss goals of the County SMP. The Conservation Reserve Enhancement Program (CREP) is another project being undertaken in Whatcom County and in the Nooksack River watershed to improve stream buffers on agricultural lands.

9.05 PROJECTS AND STRATEGIES TO MEET RESTORATION GOALS

The restoration plan for Lynden includes the following elements:

1. Individual actions by landowners to improve riparian function (~~invasive species removal~~, revegetation, soft armoring methods, etc.)
2. Restoration of riparian function, wetland function, and preservation of riparian areas in the undeveloped shoreline areas along Fishtrap Creek and the Nooksack River.
3. Community-wide revegetation efforts lead by Lynden Christian students and Nooksack Salmon Enhancement Association.
4. Mitigation of stream bank erosion along North Bridgeview Drive.
5. Implementation of restoration projects in other opportunity areas as identified in Section 9.02.03. Completion of these projects is contingent on finding funding sources.

Commented [DT52]: This is something that most landowners are able to undertake.

9.06 PARTNERSHIPS, TIMELINES, AND BENCHMARKS FOR IMPLEMENTING RESTORATION PROJECTS AND ACHIEVING RESTORATION GOALS

The best way for Lynden to meet its restoration goals is to work with partners and coordinate with agencies and other groups who have expertise in restoration along Fishtrap Creek and the Nooksack River. One group important to Whatcom County is the Nooksack Salmon Enhancement Association (NSEA). Lynden has and should continue to partner with NSEA to search out funding and plan restoration projects. Public agencies which are important include the Washington Department of Fish and Wildlife and the Department of Ecology.

In addition, Lynden should work with neighboring jurisdictions including Lummi Nation, the Nooksack Tribe, and Whatcom County in planning restoration projects. Lynden should continue to be a part of the WRIA 1 process as well.

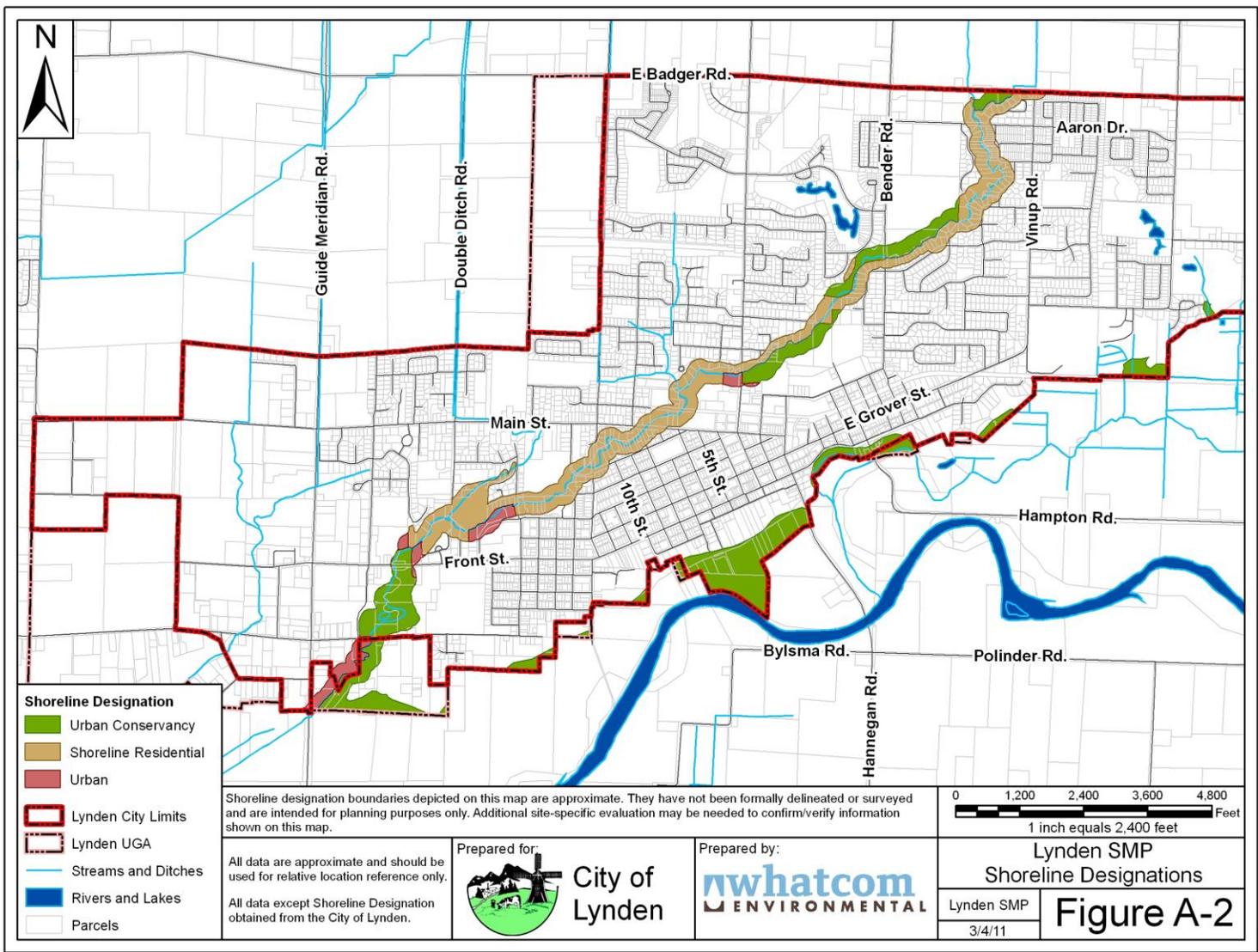
The timelines and benchmarks for implementing individual projects depend on the feasibility and cost of the projects. In general, those projects which provide high restoration potential should be given priority. In particular, vegetation surveys and revegetation projects should be emphasized.

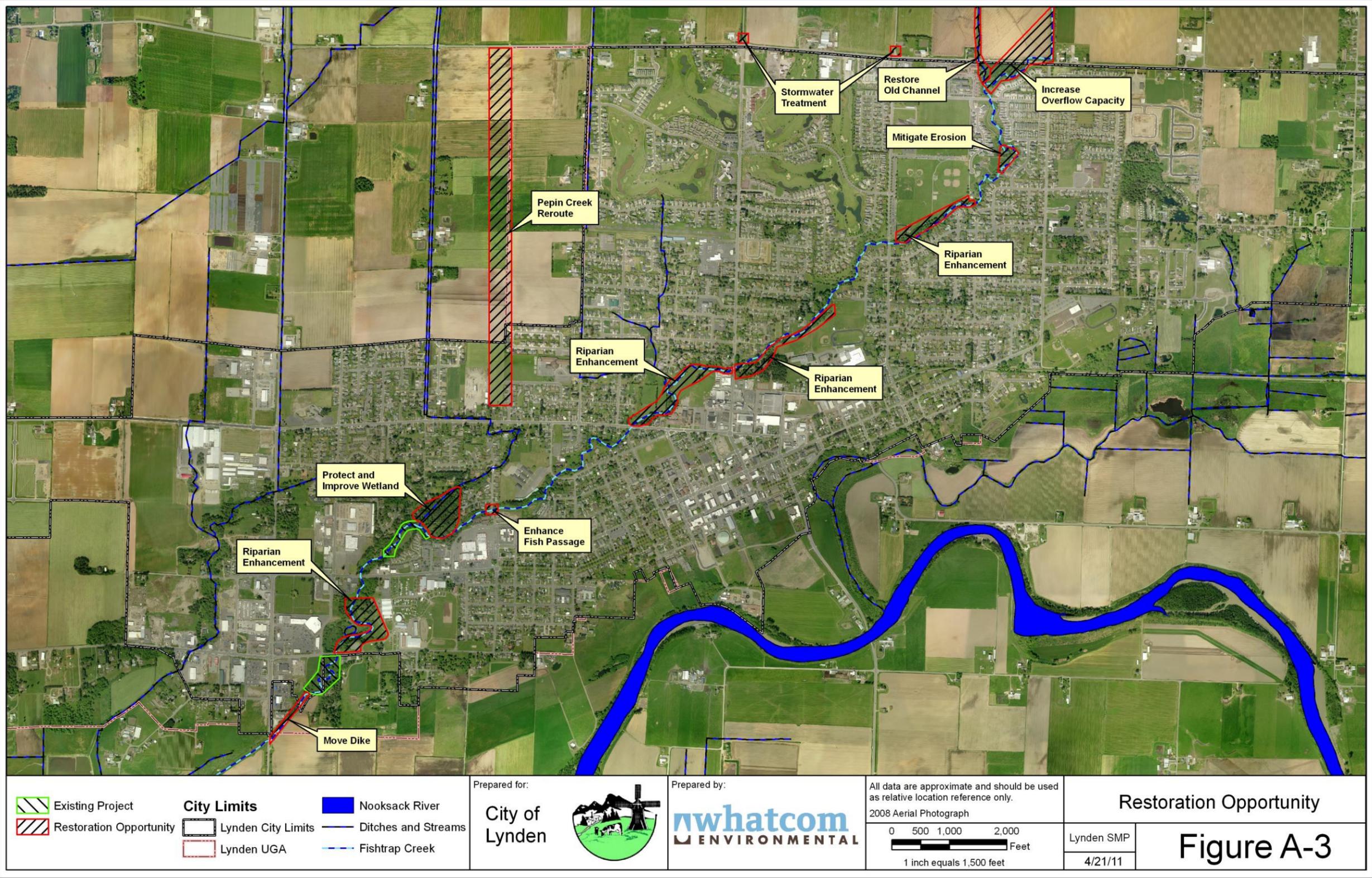
Major restoration efforts (including rerouting Pepin Creek and other opportunities) will depend on the funding available. Funding sources should be identified before projects are planned. NSEA in particular can be both a source of funding and may provide assistance in obtaining grants to perform restoration.

The City should periodically evaluate the restoration efforts with the stated goals, objectives, and priorities of the restoration plan and the SMP in general. Of primary importance is evaluating if the no-net-loss standard is being achieved.

Appendix A MAP FOLIO

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Appendix B CUMULATIVE IMPACTS

B.01 Introduction

The Shoreline Management Act guidelines require local shoreline master programs to regulate new development to maintain no net loss of shoreline ecological functions. While some impacts are immediate and can be directly addressed through avoidance and mitigation, other impacts are cumulative in nature. Individually, the action may not result in a significant impact, but the composite of many similar actions over time may lead to a significant cumulative impact to the ecosystem. For example, the creation of a small area of impervious surface may have only a negligible impact on the environment. The creation of numerous impervious surfaces that in total result in a significant change in the amount of such surface throughout a watershed over time could lead to significant impacts, such as: water quality degradation, increased peak storm flows, channel erosion, decreased vegetation and habitat areas, increased local temperatures, and other potential impacts.

The guidelines state that, "To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts.

Evaluation of such cumulative impacts should consider:

- (i) current circumstances affecting the shorelines and relevant natural processes;
- (ii) reasonably foreseeable future development and use of the shoreline; and
- (iii) beneficial effects of any established regulatory programs under other local, state, and federal laws."

In addition to the Shoreline Master Program under Shoreline Management Act (SMA), developments in the City of Lynden are also regulated under the City's Comprehensive Plan and the City's Critical Areas Regulations, both required under the Growth Management Act (GMA).

Other state and federal regulations also apply to the City's shoreline jurisdiction when local developments will affect critical areas or large areas adjacent to shorelines. Some of these state and federal regulations include, but are not limited to: the Endangered Species Act (ESA) to protect and recover federally listed species; the Clean Water Act (CWA) to protect water quality and regulate excavation and dredging; Hydraulic Project Approval (HPA) regulates projects that change waters of the state and affect fish habitat; and the National Pollution Discharge and Elimination System (NPDES) which regulates discharges into surface waters.

B.02 Reasonably Foreseeable Future Development

This analysis is looking at foreseeable impacts over time. These impacts are being looked at reach by reach, as done in the Shoreline Characterization. Site specific impacts are also expected to be addressed on a case-by-case basis during individual project reviews. The reaches used in this analysis are pre-determined areas based on water body and land uses that have previously been analyzed for alterations to key processes.

Cumulative impacts to the shoreline environment may result from a wide range of possible actions. Consistent with the guidelines, an appropriate evaluation of cumulative impacts on ecological functions will consider reasonably foreseeable future development and use of the shoreline that is regulated by the Shoreline Master Program, as well as actions that are caused by unregulated activities and development exempt from permitting. The guidelines, "recognize that methods of determining reasonably foreseeable future development may vary according to local circumstances, including demographic and economic characteristics and the nature and extent of local shorelines." The focus of foreseeable development is on those actions that have been identified as potential impacts to the shoreline environment and that are or would be foreseeable based on past development patterns, dependent on shoreline regulations.

The Lynden shoreline is unlikely to experience much more development, as much of the property is currently built out. The few vacant parcels that do remain are limited by environmental features such as wetlands, floodways or habitat. The most likely development or re-development in the Lynden shoreline jurisdiction will be infill on the few remaining buildable lots in the shoreline jurisdiction. Infill is unlikely to cause a need for additional utilities and streets in the shoreline. Therefore, a different pattern of development is unlikely to be created that will result in additional cumulative impacts.

B.03 Reaches of the Shoreline Inventory

The City of Lynden is located just upstream of the confluence of the Fishtrap Creek and the Nooksack River. The majority of the land within the shoreline jurisdiction around Fishtrap Creek is zoned residential although Reach 1 is dominated by commercial development and zoning. Several public properties also abuts the jurisdiction including schools and the Northwest Washington Fairgrounds. The Nooksack River and Fishtrap Creek are both designated as "shorelines of the state" and the Nooksack River is designated as a "shoreline of statewide significance."

The Shoreline Characterization provides a comprehensive description of shoreline conditions by reach. The shoreline is divided into five reaches, 1 through 4 along Fishtrap Creek and the short Nooksack River reach. The reaches were determined primarily by water body and current land use. Reaches are described below by location, land use, shoreline environment, at risk areas, and potential for future development. More detailed analysis of the reaches is located in the Detailed Reach Analysis Tables at the end of this section.

Reach 1 extends from the southern Lynden UGA boundary to the confluence of Double Ditch with Fishtrap Creek. Although the reach runs through or near major commercial

properties, the jurisdiction is almost wholly contained within the creek bed. The creek bed is dominated by category I and II wetlands in this reach. Environmental designations in the reach include Urban, Shoreline Residential and Conservancy. At risk areas include shoreline vegetation and habitat protection as this reach is, in general, functioning well.

Reach 1 is unlikely to experience much development within the jurisdiction. Much of the reach is zoned commercial but since most of the jurisdiction is wetland, infill will probably be developed adjacent to the shoreline jurisdiction. In the southern part of the reach, just outside the city limits but within the UGA, there are several large parcels that are currently in agricultural use. This reach has also experienced restoration efforts including placement of LWD. Much of this reach should be targeted for preserving it in its current state.

Reach 2 extends from the confluence of Fishtrap and Double Ditch to the confluence of Fishtrap and Benson Road Ditch. The predominant land uses along Reach 2 include single family residential, multi-family residential, and public schools. The stream channel in the lower portion of Reach 2 is broad and surrounded by steep high banks. The stream channel in the upper portion of Reach 2 is surrounded by more gently sloping uplands. In general, the meander belt of the stream in Reach 2 is broad at the southern end, narrows in the middle of the reach, and broadens again in the upper part of the reach.

Any development in this reach is likely to be residential infill. The creek bed narrows where it crosses N 17th Street and combined with the lack of wetlands in this area, additional multi-family development is likely. Except for the north end of this reach, most of the rest of the reach contains wetlands. The north end of the reach includes several large parcels that are currently used as pasture land and unencumbered by wetlands. Those parcels could be subdivided into a small single family development.

Reach 3 extends from the confluence of Fishtrap and Benson Road Ditch to the Bender Road Bridge. Land use along Reach 3 consists of single family residences, a park area, schools (Lynden Middle School and Lynden Christian School) and a small area of industrial land use near Depot Road. Other than the schools, where the playground and ball fields are in the jurisdiction, there is little vacant land in Reach 3. The shorelands along Reach 3 are nearly completely built-out. Because of that, Reach 3 is not likely to see any additional development.

Reach 4 extends from the Bender Road Bridge to the Badger Road Bridge at the north city limits. In general, Reach 4 is residential. Land use in this reach is either residential or parkland. Only minimal development is likely as there are only a few infill lots available in the shoreline jurisdiction. The surrounding areas are also built out.

Nooksack River Reach includes a small number of properties in southern Lynden that are located in the shoreline jurisdiction because they are in the floodway or within 200 feet of the floodway even though Whatcom County land lies between the subject properties and the Nooksack River. Land uses in this area is mostly residential with some commercial and agriculture. The reach also includes the Lynden sewage treatment plant.

Some development in this reach is likely but may be limited by proximity to the floodway and/or the floodplain.

B.04 Detailed Reach Analysis Tables

The following tables discuss existing conditions, foreseeable development, functions at risk, parts of the SMP that affect development, non-regulatory measures and the net effects of development in smaller sections of the reaches.

DRAFT

REACH 1					
Existing Conditions	Foreseeable Development	Function or Processes At Risk	SMP Environmental Designations, Policies & Regulations	Non-Regulatory Measures	Net Effect
<p>The area east of the channelized Fishtrap Creek at the city's southern boundary includes the northern tip of a 40 acre agricultural parcel. Just north of the agricultural land is a small residential development. North of there, the creek meanders through wetlands to Kok Road. The west bank is entirely commercial with two vacant parcels of approximately 6.5 acres, adjacent to the creek, just south of Kok Road.</p>	<p>The agricultural area is outside the city boundary, in the UGA and it is not likely to be developed in the foreseeable future, while the rest of the residential area is built out and the part of the creek north of the residential area is encumbered with wetlands and is unlikely to be developed.</p> <p>Approximately half of the vacant commercial parcel may be buildable and is likely to be developed.</p>	<p>If the commercial property is developed, habitat, water quality and water quantity could all be impacted since the only way to develop this area would be to fill the wetlands causing flooding and loss of water storage, loss of habitat from clearing and increased run off from more impervious surface adjacent to the jurisdiction.</p>	<p>Urban Environment Designation: Designation Criteria - The purpose of the "urban" environment is to provide for high-intensity and water-oriented commercial, industrial and transportation uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.</p> <p>Management Policies - 4.02.02.1. Uses should be water-oriented 4.02.02.4. Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. 4.02.02.5. New development shall result in no net loss of shoreline ecological functions.</p> <p>General Policies & Regulations 5.06.03.2 All shoreline uses and activities shall be located, designed, constructed and managed to result in no net loss of ecological functions and to facilitate the appropriate human intensity of use of such features.</p> <p>Wetlands 5.08.02.3 All wetlands should be protected from alterations which adversely impact them so that there is no net loss of wetland acreage and functions. 5.08.02.5 No wetland alteration should be authorized unless it can be shown that the impact can be mitigated. 5.08.03.5 Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that "mitigation sequencing steps" have been taken (5.07.03.5 a-f). 5.08.03.6 Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions.</p> <p>Commercial Development 6.04.03.3 Commercial development is PROHIBITED in wetlands.</p> <p>Shoreline Modification Policies & Regulations, Fill 7.04.02.1 Fill waterward of OHWM should be prohibited and only allowed when necessary to support the design and construction of a shoreline restoration or environmental enhancement project or to facilitate water-dependent and/or public access uses which are consistent with this master program</p>		<p>The proposed regulatory measures in combination with the environment designation will ensure "no net loss" of shoreline function from future development impacts.</p>

REACH 1					
Existing Conditions	Foreseeable Development	Function or Processes At Risk	SMP Environmental Designations, Policies & Regulations	Non-Regulatory Measures	Net Effect
<p>The area between Kok Road and Front Street is bounded by the Whatcom County Fairgrounds on the east and commercial properties on the west. Two parcels near Kok Road and totaling 5 acres, are owned by the city. Most of this part of the reach is dominated by wetlands.</p>	<p>With most of this part of the reach listed as wetlands, additional development is unlikely. The fairgrounds and city property is designated Urban Conservancy, the rest is designated Urban. There is little potential for infill as most of the properties outside of wetlands are built out.</p>	<p>Water quantity would be impacted if this area is intensely developed due to loss of wetlands. Habitats would also be impacted due to loss of vegetative cover.</p>	<p>Urban Environment Designation (see above) Conservancy Environment Designation Designation Criteria - Areas to be designated Urban Conservancy should meet one or more of the following criteria:</p> <ol style="list-style-type: none"> 1. Areas suitable for water-related or water-enjoyment uses; 2. Open space, flood plain or other sensitive areas that should not be more intensively developed; 3. The potential for ecological restoration; 4. The area retains important ecological functions, even though partially developed; or 5. They have the potential for development that is compatible with ecological restoration. <p>Management Policies - 4.04.02.1 Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.</p> <p>4.04.02.6 Commercial and industrial uses should be prohibited.</p> <p>General Policies & Regulations, Wetlands - 5.08.03 (see above) Commercial Development 6.04.03.3 Commercial development is PROHIBITED in wetlands.</p>	<p>Encourage public access or other low intensity activities such as trails, especially on the fairgrounds.</p>	<p>The proposed regulatory measures in combination with the environment designation will ensure “no net loss” of shoreline function from future development impacts.</p>
<p>The area from Front street to the confluence with Double Ditch Creek. The commercial development along Front street is “built out” as is the property adjacent to the jurisdiction on the southwest part of this area. The rest of this area is residential with no more apparent buildable lots.</p>	<p>Development is unlikely in the area as it appears built out.</p>	<p>As with most of Reach 1, this area is also dominated by wetlands. Water quantity would be impacted if this area is intensely developed due to loss of wetlands. Habitats would also be impacted due to loss of vegetative cover.</p>	<p>Urban Environment Designation (see above) Shoreline Residential Environment Designation Designation Criteria – 4.03.01 Areas to be designated Shoreline Residential Environment are predominantly single-family or multifamily residential development or are planned and platted for residential development.</p> <p>Shoreline Use Policies & Regulations, Commercial Development 6.04.02.2 No commercial development should be allowed in wetlands.</p> <p>6.09.03.1 Residential development shall be prohibited within floodways, wetlands and within other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions.</p>		<p>The proposed regulatory measures in combination with the environment designation will ensure “no net loss” of shoreline function from future development impacts.</p>

REACH 2					
Existing Conditions	Foreseeable Development	Function or Processes At Risk	SMP Environmental Designations, Policies & Regulations	Non-Regulatory Measures	Net Effect
<p>Reach 2 of Fishtrap Creek extends from the confluence of Fishtrap Creek and Double Ditch to the confluence of Fishtrap Creek and Benson Road Ditch. The dominant land uses along Reach 2 includes single family residential, multi-family residential, and schools. Reach 2 is almost fully developed consisting primarily of residential. There is a small commercial development, a park, two schools, a church and a large vacant parcel at the confluence with Double Ditch Creek. That vacant parcel is almost entirely wetland. Also approximately 5.6 acres of vacant pasture land is located just below the confluence with Benson Road Ditch. These properties are zoned for 5 units/acre and in a single ownership. Many of the residential properties include banks with less canopy due to the presence of lawns and other areas maintained by property owners. These areas also frequently use rockery type bulkheads or other armoring methods for bank stabilization.</p>	<p>This reach should see only limited infill in the foreseeable future although the vacant pasture land has the potential for additional residential development. The rest of the reach is fully platted and only a few lots remain for infill.</p>	<p>All shore ecological functions are degraded to some extent throughout this part of the reach due to extensive development, clearing of vegetation and shoreline armoring.</p> <ul style="list-style-type: none"> - Removal of shoreline vegetation has reduced the shading of the creek and the LWD recruitment potential. - Lawns and other owner maintained areas near the creek may be contributing excess nitrogen and phosphorus to the creek. - Stormwater flows to the creek may increase the peak flows and lead to undesired stream bank erosion. - Construction of armored bulkheads along the creek reduces riparian function, sediment movement, and channel migration. 	<p>Shoreline Residential Environment</p> <p>General Regulations 5.02.1 New development shall result in no net loss of shoreline ecological functions.</p> <p>Residential development</p> <p>Regulation 6.09.03.1 Residential development shall be prohibited within floodways, wetlands and within other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions.</p> <p>Regulation 6.09.03.2 New residential structures and accessory structures are prohibited over water.</p> <p>6.09.05.1 New subdivided lots are required to be designed, configured and developed to:</p> <ol style="list-style-type: none"> a. Prevent the loss of ecological functions at full build-out; b. Prevent the need for new shoreline stabilization or flood hazard reduction measures; and c. Be consistent with applicable SMP environment designations and standards. 		<p>The proposed regulatory measures will ensure “no net loss” of shoreline function from future development impacts.</p>

REACH 3					
Existing Conditions	Foreseeable Development	Function or Processes At Risk	SMP Environmental Designations, Policies & Regulations	Non-Regulatory Measures	Net Effect
<p>Reach 3 of Fishtrap Creek extends from the confluence of Fishtrap and Benson Road Ditch to the Bender Road Bridge. Reach 3 is fully built out with two schools, a city park and a 7 acre green belt comprising large open spaces in the reach. There is public access to Fishtrap Creek in the Lynden City Park. In addition, a trail system follows Fishtrap Creek beginning in the City Park and extending upstream along the Fishtrap Creek past the Bender Fields Park. The trail is set outside a narrow vegetated area adjacent to the Creek but does allow access to Fishtrap Creek at various locations. Development within 200 feet of Fishtrap is common in Reach 3. The presence of houses, driveways, and roads affects the hydrologic and sediment processes along Fishtrap Creek. Hard armoring of stream banks is common along Reach 3. In addition, property owners maintain lawns and other landscaping to the stream edge. Portions of Reach 3 have little riparian vegetation and the vegetation that is present is immediately adjacent to the creek.</p>	<p>Development in this reach is unlikely.</p>	<p>The ecological function in Reach 3 is affected by the development along Fishtrap Creek. Homes or other structures are located in the shoreline jurisdiction throughout Reach 3. Additional development would affect the following functions:</p> <ul style="list-style-type: none"> - Removal of shoreline vegetation would reduce the shading of the creek and the LWD recruitment potential. - Lawns and other owner maintained areas near the creek may contribute excess nitrogen and phosphorus to the creek. - Stormwater flows to the creek may increase the peak flows and lead to undesired stream bank erosion. - Construction of armored bulkheads along the creek would reduce riparian function, sediment movement, and channel migration. 	<p>Shoreline Residential Environment</p> <p>General Regulations 5.02.1 New development shall result in no net loss of shoreline ecological functions.</p> <p>Residential development</p> <p>Regulation 6.09.03.1 Residential development shall be prohibited within floodways, wetlands and within other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions.</p> <p>Regulation 6.09.03.2 New residential structures and accessory structures are prohibited over water.</p>	<p>Development is limited due to lack of buildable lots.</p>	<p>The proposed regulatory measures and the environment designation will ensure "no net loss" of shoreline function from future development impacts.</p>

REACH 4					
Existing Conditions	Foreseeable Development	Function or Processes At Risk	SMP Environmental Designations, Policies & Regulations	Non-Regulatory Measures	Net Effect
<p>Reach 4 of Fishtrap Creek extends from the Bender Road Bridge to the Badger Road Bridge at the north city limits. There are 5 city owned park properties along this reach while the rest of the reach is almost fully built out residential including only a few buildable lots for infill. Houses, driveways, and roads affect the hydrologic and sediment processes along Fishtrap Creek. Hard armoring of stream banks is also common along the downstream segments of Reach 4. Newer development in the northern segment of the reach is set back from the creek to a greater extent than the older development. In the older developed areas, properties are more likely to have lawns and other landscaping to the stream edge which may be sources of nitrogen and phosphorus. Portions of Reach 4 have little riparian vegetation. There is little LWD present in the northern segment of the reach though restoration efforts have been undertaken. Stormwater detention facilities are common in the area draining to Reach 4 but toxins remaining in the treated stormwater may still be impacting the reach.</p>	<p>Foreseeable development will be limited to infill on a few vacant lots.</p>	<p>Newer developments along Reach 4 have been set back from the creek and restoration efforts have been undertaken in the upstream segment. Some of the results of the development along Reach 4 include:</p> <ul style="list-style-type: none"> - Restoration efforts have been undertaken to replace mature riparian vegetation along the creek. Shading conditions have improved due to those efforts. - Filtering of nitrogen and phosphorus due to lawns and other owner maintained areas near the creek. - Stream bank erosion may be increased due to unmitigated stormwater flows to the creek during peak flows. - Bulkheads along the creek could reduce riparian function, sediment movement, and channel migration. 	<p>Shoreline Residential Environment</p> <p>General Regulations 5.02.1 New development shall result in no net loss of shoreline ecological functions.</p> <p>Residential development</p> <p>Regulation 6.09.03.1 Residential development shall be prohibited within floodways, wetlands and within other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions.</p> <p>Regulation 6.09.03.2 New residential structures and accessory structures are prohibited over water.</p> <p>Recreational Development Regulations</p> <p>Regulation 6.08.03.1 All recreational development in the shoreline jurisdiction shall result in no net loss of ecological processes and functions.</p> <p>Regulation 6.08.03.2 Valuable shoreline resources and fragile or unique areas such as wetlands shall be used only for non-intensive and nonstructural recreation activities.</p> <p>Regulation 6.08.03.3 All permanent substantial recreational structures and facilities shall be located outside officially mapped floodways provided the City may grant administrative exceptions for non-intensive minor accessory uses (e.g., picnic tables, tennis courts, etc.).</p> <p>Regulation 6.08.03.4 Substantial accessory use facilities, such as rest rooms, recreation halls and gymnasiums, commercial services, access roads and parking areas shall be setback 100 feet from the OHWM.</p> <p>Regulation 6.08.03.5 For recreation developments that require the use of fertilizers, pesticides, or other toxic chemicals are prohibited in the shoreline jurisdiction</p>	<p>Preservation and enhancement efforts could include:</p> <ul style="list-style-type: none"> - Areas along the city trail could be enhanced with more vegetation and additional public access sites. - Vacant land east of Bender Park Boulevard could be acquired to provide additional area for wetland/riparian enhancement. 	<p>The proposed regulatory measures in combination with the non-regulatory measures will ensure “no net loss” of shoreline function from future development impacts.</p>

Nooksack River Reach					
Existing Conditions	Foreseeable Development	Function or Processes At Risk	SMP Environmental Designations, Policies & Regulations	Non-Regulatory Measures	Net Effect
<p>Only 0.04 miles of the Nooksack River fall in the City of Lynden Shoreline Jurisdiction. The City of Lynden shoreline Jurisdiction is located within Reach 12 of the Whatcom County shoreline jurisdiction. A few properties in southern Lynden are located in the Nooksack River reach, primarily because they are located in the floodway or in the floodplain within 200 feet of the floodway. Whatcom County land, outside of the Lynden UGA, lies between the Lynden shoreline jurisdiction and the Nooksack River. The City of Lynden sewage treatment plant is the only property in the city with direct access to the Nooksack River. This portion of the Nooksack River is heavily diked and armored. Other properties in the Lynden Shoreline Jurisdiction are zoned residential and commercial. There is a significant amount of undeveloped land located in the southern portion of the City's commercial zone.</p>	<p>Development of properties at the western edge of the reach is unlikely due to their inclusion in the Nooksack River floodway and/or floodplain. Except for a condominium, the Lynden Waste Treatment Plant and a County Housing Authority development, the rest of the central portion of the reach is either vacant or pasture land. These low lying areas are unlikely to be further developed since they all lie within the floodway. The Front Street part of this reach is unlikely to be developed because it is all wetlands in the floodway. The very eastern portion of the reach is associated wetlands and unlikely to be developed.</p>	<p>The loss of wetlands in the Nooksack floodplain would negatively affect the hydrologic cycle, the movement of sediment, the movement and destruction of nitrogen and phosphorus, and the movement of toxins.</p>	<p>Urban Conservancy designation. 4.04 The intent of the Urban Conservancy environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.</p> <p>Residential development Regulation 6.09.03.1 Residential development shall be prohibited within floodways, wetlands and within other hazardous areas such as steep slopes and areas with unstable soils or geologic conditions. Regulation 6.09.03.2 New residential structures and accessory structures are prohibited over water.</p>		<p>The proposed regulatory measures and the environment designations will ensure "no net loss" of shoreline function from future development impacts.</p>

B.05 Ecological Functions at Risk from Future Developments

Habitat

Two threatened or endangered species of fish are present in Fishtrap Creek, Puget Sound Chinook salmon and steelhead. Coho salmon, listed as a federal candidate species, is also present. Juvenile Chinook rear in the area. Other fish found in the Creek are chum and cutthroat trout.

Wetlands

Wetland areas have been identified throughout Fishtrap Creek and in the Nooksack River Floodway and floodplain. Most of these wetlands directly connected to the Creek are important for flood storage and distribution of nutrients.

Floodplains

Fishtrap Creek is largely incised through the City of Lynden and has limited migration potential with the exception of a few flat broad areas. The Nooksack River was known to migrate throughout the floodplain before the lower portion of the river was extensively diked. Due to the construction of the dikes, the river is largely confined to the current channel. Floodplain management is important for maintaining habitats and wetlands. Ecological functions need to be considered in flood control projects and in pursuing non-structural alternatives. Developing floodplain management policies which help minimize more vulnerable development and encourage more compatible uses will also help maintain habitats and wetlands.

B.06 Anticipated Beneficial Effects

As part of the SMP process, restoration opportunities have been identified for each Reach. The restoration projects help to offset some of the cumulative effects of development along the Shoreline as identified in Section B.04. Some projects which are being implemented in Lynden include:

1. Large woody debris placement, revegetation, and riparian planting in the area south of Kok Road in Reach 1.
2. Large woody debris placement, vegetation, and riparian planting near the confluence of Double Ditch and Fishtrap Creek in Reaches 1 and 2.
3. Restoration of riparian function, wetland function, and preservation of riparian areas in the undeveloped shoreline areas along Fishtrap Creek and the Nooksack River.
4. Community-wide revegetation efforts lead by Lynden Christian students and Nooksack Salmon Enhancement Association.
5. Implementation of restoration projects in other opportunity areas as identified in Chapter 9 Restoration Plan. Completion of these projects is contingent on finding funding sources.

B.07 No Net Loss Summary

How the City of Lynden achieves “no net loss” in its Shoreline Master Program is demonstrated in the Detailed Reach Analysis Tables in Section B.04 above. The tables bring together information gathered for the inventory and characterization, shoreline use analysis, environmental designations and the policies and regulations of the updated SMP. The “net effect” column shows the conclusions that were drawn based on the information. Restoration opportunities and current restoration projects are detailed in the Chapter 9 Restoration Plan.

Because the vast majority of the Lynden shoreline jurisdiction is already built out, including roads and utilities, limited infill opportunities should not result in a net loss of ecological functions. A different pattern of development is unlikely to be created that will result in additional cumulative impacts.

Appendix C FEDERAL & STATE AGENCY CONTACTS

C.01 FEDERAL

- Federal Emergency Management Agency (FEMA)**
Mitigation Division..... 425-487-4679
- U.S. Army Corps of Engineers** 206-764-3742

C.02 STATE

- Washington Department of Archaeology and Historic Preservation**
<http://www.dahp.wa.gov/>
Main Office..... 360-586-3065

- Washington State Department of Commerce**
<http://www.cted.wa.gov>
Growth Management 360-725-3000

- Washington State Department of Ecology**
<http://www.ecy.wa.gov>
Headquarters Office 360-407-6000
Northwest Region..... 425-649-7000
Shorelands & Environmental Assistance 425-649-7096
Shoreline Planning, Permitting and Compliance, Patricia Lambert..... 425-649-7199

- Washington State Department of Fish and Wildlife**
<http://wdfw.wa.gov/>
Main Office..... 360-902-2200
North Puget Sound (Region 4)..... 425-775-1311

- Washington State Department of Natural Resources (DNR)**
<http://dnr.wa.gov/>
General Information 360-902-1000
South Puget Sound Region.....360 825-1631
Aquatic Resources Division 360-902-1100
Shoreline Aquatic District 360-825-1631
Forest Practices Division 360-902-1400



PLANNING COMMISSION MEETING MINUTES

7:30 PM July 25, 2019
City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Gerald Veltkamp, Blair Scott, Lynn Templeton, Tim Faber and Bryan Korthuis

Absent with notice: Diane Veltkamp, Gerald Veltkamp and Brett Kok

Staff Present: Gudde, Planning Director and Samec, City Planner and Chad Yunge with the Department of Ecology.

3. APPROVAL OF MINUTES

A. July 11, 2019

The approval of the July 11, 2019, Planning Commission Minutes were postponed.

4. JOINT PUBLIC HEARING WITH THE DEPARTMENT OF ECOLOGY

A. Lynden Shoreline Master Program – Comprehensive Update and 2020 Periodic Review

Chairperson Faber opened the public hearing.

Gudde addressed her memo dated July 19, 2019 and stated, the Planning Commission plays an important role in shoreline management within the City of Lynden as it is the deciding body on Shoreline Substantial Development permits and provides recommendations on Shoreline Conditional Uses and Variances.

The shoreline jurisdiction in Lynden includes the shorelands of the Nooksack River and Fishtrap Creek. Shoreland areas are those within 200 feet of the ordinary high-water mark, floodway and contiguous floodplain areas within 200 feet of those floodways, as well as wetlands and river deltas associated with these streams or rivers.

Most recently the City locally adopted an updated Shoreline Master Program (SMP) in 2014. However, this Program update is still pending Department Ecology (DOE) approval. Meanwhile the City is due to complete a periodic review of the Program by June 30, 2020. Because of the proximity of these approvals, DOE and City staff have agreed to combine the Program Update and the Periodic Review into one action.

The Planning Commission held a public hearing on October 24, 2014 and recommended approval of the Shoreline Master Plan Update. The changes reflected in the attached documents are those changes proposed to the 2014 document. The proposed changes are not substantive in that they do not significantly alter the way that the 2014 document regulates and protects shorelines in the City. No changes are currently being proposed to the shoreline map and its corresponding designations.

Public participation on the proposed update has included website updates, published notices, and a July 11, 2019 open house. The open house was an opportunity for interested residents to review documents and maps and speak with City staff about the proposed changes. Notice of this open house was mailed directly to all of the property owners within the City's shoreline areas. Only one letter of public comment has been received and is attached in the PC package.

If the Planning Commission recommends approval of the updated SMP document it will then move on to final DOE review and City Council approval.

Gudde addressed the summary of changes. Lynden locally adopted its Shoreline Master Program (SMP) in 2014. The proposed update to the 2014 SMP will also include the required Dept of Ecology (DOE) Periodic Review. This Periodic Review is required to be complete on or before June 30, 2020. Furthermore, this update, with DOE approval, will finish the Comprehensive Update of the 2014 locally adopted SMP.

The proposed changes to the 2014 Plan are not substantive in that they do not significantly alter the way that the 2014 document regulates and protects shorelines in the City.

- Several changes update the code to reflect state-level revisions to the Shoreline Management Act. These are reflected in the Periodic Review Checklist. Most of these updates are explanations of the Act, including language to clarify definitions, to update filing procedures, to incorporate ADA language, and reword sections that need clarification.
- The proposed changes reflect the recent update to the City's Critical Areas Ordinance and refer to that Ordinance by reference rather than by including the CAO language directly into the SMP.
- The proposal removes reference to the "Natural" SMP shoreline designation as Lynden does not have any properties with that designation.
- Finally, the update corrects minor grammatical and spelling errors.

Specific Proposed Changes:

The following are mention of the more significant proposed changes to the 2014 SMP.

Page 8-9, 1.04.02: Language is unchanged but just moved to this section. This section is a general discussion of the Act which seems like a more appropriate location than specific to the Nooksack River.

Page 35-36, 4.05: Remove the “Natural” designation language because Lynden has no properties with that designation.

Page 37-38, 4.06.02: Remove the “Natural” column from the table.

Page 38, 4.06.02: Shoreline Restoration does not require a Conditional Use permit.

Page 45-56: 5.06: Strike out Critical Area language as the Ordinance was recently updated and rather reference Chapter 16.16 to refer to the Ordinance. This allows the CAO to be updated independently without having to also update the SMP.

Page 97-98: 8.05.03: This is a Periodic Review requirement to clarify the process for filing permits with DOE. Was not in the code previously.

Page 100-104, 8.07: Periodic Review requirement regarding Nonconforming uses. The change just adapted the language to the wording suggested.

Page 107-113, Section 9. Updated this section to not strike out “proposed” projects that have been completed and emphasize invasive plant species control more than the 2014 language did.

Yunge concurred with Gudde and stated that the changes are minor in nature. For efficiency reasons, the DOE and the City took advantage of the opportunity to finalize the 2014 update and to combine the periodic review in one. The City will be a year ahead.

Templeton questioned the 5-year delay in the SMP approval? Gudde and Yunge replied, yes, it was a long delay caused by various reasons such as staff turnover in Planning, there was also a request by the City to delay as they researched a potential change in a surplus property designation and also time for the City to catch up with its CAO review which was done last year. With all of the delays, the document is ready to move forward now.

Faber asked about the next steps and time from for the approval. Yunge replied, after approval tonight it goes back to DOE for formal approval. Yunge expects that the approval letter will be sent to the City in a couple of weeks which will come with a 14 day time frame before it becomes effective.

Shirley Prezzler, 123 E Cedar Drive, Lynden

No comment on the structure of the rules, regulations and ordinances. However, wanted to state that the SMP and CAO is very confusing for citizens to understand and that it is hard to understand the path that the City is taking and how they are interpreting the rules they have set forth.

Fishtrap Creek is a critical area and the city is trying to follow federal mandates for infill. How to interpret the setback? Is it 150-feet from high water for development or 75-feet? The city appears to be taking a stand that only 75-feet is important and that you can still develop in that area. The city seems to think that a PRD can be established that supersedes the regulations? Where is the riparian zone, it is being eliminated? How with the existing codes can this be allowed? It seems that the City does not want to stand in front of development. Codes should protect the lands. Prezzler feels that the City is looking at the code with a limited view and is not protecting the RS-100 neighborhoods that purchased property knowing that the stream would be protected.

Gudde stated that nothing tonight changes the shoreline buffers or the CAO.

Gudde does not want to make comments regarding a specific application that is under review. The PC may see something in the future regarding property that Prezzler is talking about, and the Commission's decision should be based on the record.

Gudde agrees that codes are confusing, there are multiple layers and codes that apply and there are several departments and agencies that provide oversight.

Gudde stated that some of the numbers that the Commission is hearing relates to the 200-foot shoreline jurisdiction, 75-feet is a shoreline setback (no structures w/out a CUP or variance) and 150-feet is a buffer which comes from the CAO. All comes with the opportunity to do buffer averaging and mitigation to reduce the buffer.

Gudde addressed the following clarification to Section 5.06.01 of the Shoreline Master Program which has to do with applicability. As drafted, it may have given the impression that critical areas which were specifically addressed within the SMP are not subject to the Critical Areas Ordinance (LMC 16.16). This is not the intent. Both the SMP and LMC 16.16 apply.

Section 5.02(6) on p. 40 states that, *"Where provisions of this master program conflict, the most protective provisions reasonable under the given circumstances shall apply."*

As such, the below changes to Section 5.06.01 (deletions in strikethrough and additions underlined) more clearly captures the intent to have the CAO apply within the shoreline jurisdiction.

~~*"Where not specifically addressed within this Master Program, either directly or through reference;*~~ *Regulation of critical areas within the shoreline jurisdiction shall be pursuant to*

consistent with applicable provisions codified in Lynden Municipal Code Chapter 16.16, adopted by Ordinance No. 1560 in 2018, *now or as hereafter amended*; provided, that the following sections shall not apply:

DOE wants the CAO to be constantly referenced by ordinances and dates not by *now or as hereafter amendments*, therefore, they are asking that the language be removed.

The Commission agreed.

Faber stated that it all looks very straight forward. We are adopting the DOE changes and realistically we are not changing anything else.

Scott motioned to close the public hearing. Seconded by Templeton, and the motion passed 2-1.

Scott motioned to recommend approval of the Lynden Shoreline Master Program – Comprehensive Update and 2020 Periodic Review as presented, and further subject to the following condition: that the proposed “*now or as hereafter amended*” language referenced in 5.06.01 be stricken. Seconded by Templeton, and the motion passed 2-1.

5. COMMISSIONERS CORNER

August Planning Commission Meetings have been cancelled.

Next PC Meeting is on September 12, 2019.

More Pepin Creek discussions to come this fall.

6. ADJOURNMENT

Motion to adjourn by Scott / Second by Templeton. Meeting adjourned at 8:05 pm.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Dumpster Easement Agreement – 610 Front Street	
Section of Agenda:	New Business	
Department:	Planning Department	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
Legal Review:	<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:	Downtown Residential Parking Agreement with edits by the CDC	
Summary Statement:	<p>Property owners of 610 Front Street (the liquor store location), (represented as TWIGA NW & RAH) are developing plans for a significant renovation of the existing building which would add two additional floors and 6 residential units.</p> <p>Working with the Public Works Department, properties owners have developed a plan to utilize a portion of City property at the corner of 7th Street and Front Street on the day of garbage collection. Utilizing the City's property requires an easement to do so.</p> <p>The City's legal counsel has created the attached dumpster easement agreement for the Council's consideration. This issue has been discussed with the Community Development Committee with minor changes as shown in the attached document.</p>	
Recommended Action:	Motion to approve the downtown residential parking agreement with TWIGA NW & RAH, the owners of 610 Front Street, as modified by the Community Development Committee and to approve the Mayor's signature on the document.	

After recording return document to:

City of Lynden
Planning Department
300 4TH Street
Lynden WA 98264

DOCUMENT TITLE:

Dumpster Easement Agreement

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTOR:

City of Lynden, a Washington municipal corporation

GRANTEE:

TWIGA NW, L.L.C., a Washington limited liability company RAH
Properties, LLC, a Washington limited liability company

ABBREVIATED LEGAL DESCRIPTION:

Lot 1 & Ptn. Lot 2, Block 9, Supplemental and Corrected Plat of Lynden

ASSESSOR'S TAX PARCEL NUMBER(S):

400320 202260 0000

DUMPSTER EASEMENT AGREEMENT

THIS DUMPSTER EASEMENT AGREEMENT (“Agreement”) is made by and between THE GRANTOR, the CITY OF LYNDEN, a Washington municipal corporation ("Grantor" or "City"), and the Grantee, TWIGA NW, L.L.C., a Washington limited liability company, and RAH PROPERTIES, LLC, a Washington limited liability company ("Grantee").

WHEREAS, the City owns the real property legally described at Exhibit A hereto (“Grantor’s Property”); and

WHEREAS, Grantee owns property adjacent to the Grantor’s Property, which Grantee is in the process of redeveloping (“the Project”); and

WHEREAS, the City desires to grant, and Grantee desires to receive, an easement for the purpose of placing and using a dumpster on the Grantor’s Property on the day of garbage pick-up only (“Dumpster Easement”); and;

WHEREAS, due to the configuration and conditions of the Grantor’s Property and the Grantee’s property, the only location a dumpster / garbage or recycling bins can be placed is on the portion of Grantor’s Property shown at Exhibit B hereto (“Dumpster Easement Area”); and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW THEREFORE, for mutually accepted good and valuable consideration, the City hereby grants and conveys to the Grantee, a non-exclusive easement for placement of a dumpster / garbage or recycling bins within the Dumpster Easement Area, and access thereto, one day per week, pursuant to the following terms and conditions.

1. Purpose and Scope. This grant shall provide the Grantee with an easement for the placement of one dumpster or equivalent number of garbage or recycling bins upon Grantor's Property within the Dumpster Easement Area for one day per week, which shall be the day garbage is picked up, and for ingress and egress across the Grantor’s Property for access to said dumpster or bins on that one day per week. This Dumpster Easement does not authorize placement of the dumpster or bins at any location on Grantor’s Property other than the location shown in Exhibit B.
2. Payment. There will be no monetary payment for this Dumpster Easement.
3. Commencement of Term and Duration of Agreement. The Dumpster Easement term shall commence on the date written below and shall expire when the Dumpster Easement Areas is no longer needed by Grantee for its purpose and scope described in Section 1.
4. Subordination to City’s Construction and Use Needs. The City anticipates reconstructing the Grantor’s Property. The City reserves the right to exclude Grantee from the Dumpster Easement Area in the event it or its contractor(s) requires access to that portion of the Grantor’s Property in order to redevelop it. The City further reserves the right to relocate the Dumpster Easement Area upon providing thirty (30) days prior written notice to Grantee.
5. Early Termination. If Grantee's use of the Grantor's Property exceeds the purpose and scope of

this grant, Grantor may terminate the Dumpster Easement by providing Grantee with thirty (30) days prior written notice.

6. Construction, Operation, Maintenance, Repair and Replacement. The Grantee shall bear all expenses for operation, maintenance, repair, and replacement of the dumpster / garbage or recycling bins used in the Dumpster Easement Area.
7. Repair Damage. The Grantee shall repair any damage caused to Grantor's Property arising from or related to its use of the Dumpster Easement Area. Grantee shall leave the Grantor's Property in a clean and tidy condition, free of refuse of any kind, following its once weekly use of the Dumpster Easement Area.
8. Run with the Land. This Dumpster Easement and all rights and obligations described herein shall be deemed to touch and concern the land, shall run with the land during its entire term, and shall be binding on all parties having or acquiring any right, title, or interest in the land described herein or any part thereof. Insurance.
9. Insurance. Grantee shall procure and maintain in force, without cost or expense to Grantor, on or before the commencement date of this Dumpster Easement and throughout the term, a broad form comprehensive general liability policy of insurance covering bodily injury and property damage, with respect to the use and occupancy of the Grantor's Property with liability limits of not less than \$1,000,000.00 per occurrence. Grantor shall be named as additional insured on all such policies, which policies shall in addition provide that they may not be canceled or modified for any reason without fifteen (15) days prior written notice to Grantor. Grantee shall provide Grantor with a certificate or certificates of such insurance within ten (10) days of the execution of this Dumpster Easement.
10. Hold Harmless. Grantee shall indemnify and hold the City other harmless from any and all such damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from Grantee's own respective acts or omissions and the acts or omissions of their employees, contractors, residents, or authorized agents, to the extent and in the same proportion as employees, contractors, residents, or authorized agents are determined to be at fault.
11. Assignment. Grantee shall not assign, convey or transfer this Dumpster Easement or any interest herein, without prior written consent of Grantor.
12. Notice. Any notice, declaration, demand or communication to be given by a Party to this Dumpster Easement to the other shall be in writing and transmitted to the other Party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

Grantor:
City of Lynden
Attn: Steve Banham
300 4th Street
Lynden, WA 98264

Grantee:
TWIGA NW, L.L.C.
RAH Properties, LLC
1118 E. Front Street
Lynden, WA 98264

13. Complete Agreement/Modification. This Dumpster Easement grant and the terms and conditions herein represents a complete agreement between the Parties. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this Dumpster Easement other than those set forth herein. Modification of this Dumpster Easement or any of its terms and conditions shall be binding upon the parties only if they are in writing and fully executed by the Parties.
14. Applicable Law/Construction/Venue. This Dumpster Easement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Dumpster Easement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Dumpster Easement shall be laid in Whatcom County, Washington.
15. Attorney's Fees and Costs. In the event of any litigation arising under the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing Party its reasonable costs and attorney's fees.
16. Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision for the same or similar breach then or in the future, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
17. Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement and all which together will constitute a single Agreement.
18. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of the RAH PROPERTIES, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of TWIGA NW, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

EXHIBIT A

Description of Grantor's Property

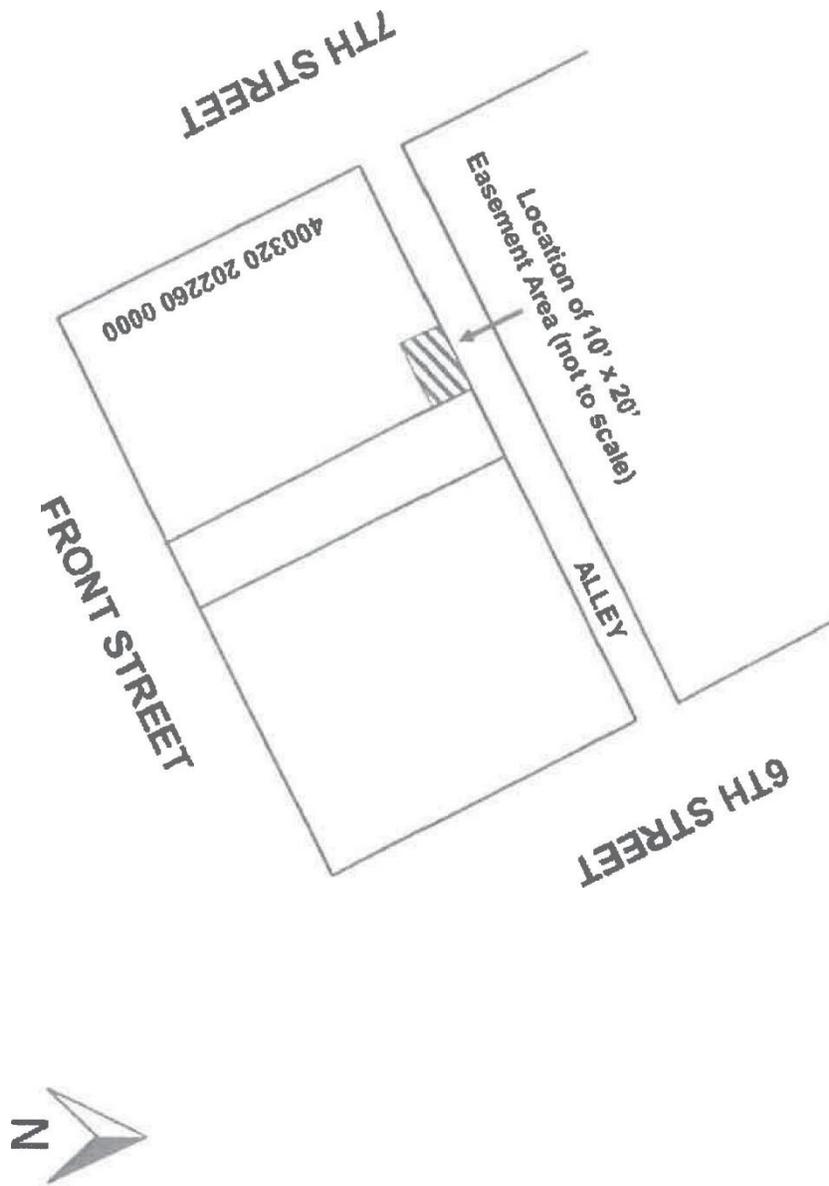
400320 202260 0000

All of Lots 1 and 2, except, the Easterly 2 feet of Lot 2 thereof, Block 9, "Supplemental and Corrected Plat of Lynden", as per the plat thereof, recorded in Book 3 of Plats, Page 48, in the Auditor's Office of Whatcom County, Washington.

Subject to an Agreement for Joint Use of Party Wall as set forth in an instrument recorded under Auditor's File No. 505068.

Situate in Whatcom County, Washington.

EXHIBIT B
(Depiction – Not to Scale)



CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Restrictive Covenant Agreement – 610 Front Street	
Section of Agenda:	New Business	
Department:	Planning Department	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:	Restrictive Covenant	
Summary Statement:	<p>Property owners of 610 Front Street (the liquor store location) are developing plans for a significant renovation of the existing building. The renovation would add two additional floors and 6 residential units.</p> <p>Notably the western façade of this building is the location of a well known mural sponsored by the Lyons Club. The owners seek to preserve this mural.</p> <p>To facilitate the protection of the mural and the residential addition to the building, the property owners have requested the City to grant a 10 foot “no build easement” along the west property line of the adjacent City-owned parking lot in the form of a restrictive covenant.</p> <p>The covenant would prevent construction of structures within 10 feet of eastern property line of the City’s parking lot property located at the intersection of Front and 7th Street. The covenant would not prevent the City from continued use of the parking lot. The restriction would allow for more appealing architecture at 610 Front Street building by permitting windows on a property-line wall (which would otherwise be prohibited by fire code). And, the covenant would offer some protection of the existing mural.</p> <p>This issue has been discussed with both the Community Development Committee and the Public Works Committee. Both committees agreed the mural preservation had value and noted that it would be unlikely that the City would sell or build on the parking lot property. They and were therefore amenable to the covenant. As a result, the City’s legal counsel has created the attached restrictive covenant for the Council’s consideration.</p>	
Recommended Action:	Motion to approve the restrictive covenant affecting the City’s parking lot property located at the intersection of Front and 7 th Street and to authorize the Mayor’s signature on the document.	

FILED FOR AND RECORDED AT REQUEST OF AND RETURN ORIGINAL TO:

STARKENBURG - KROONTJE
Attorney At Law,
P.S.
PO Box 231
Lynden, WA 98264
(360) 354-7822

ASSIGNED/RELEASED DOCUMENTS:

Whatcom County AF No. 505068

GRANTORS:

- 1. City of Lynden
- 1. TWIGA NW, L.L.C.
- 2. RAH Properties, LLC

GRANTEES:

- 3. City of Lynden
- 4. TWIGA NW, L.L.C.
- 5. RAH Properties, LLC

LEGAL DESCRIPTION: Full legal descriptions found on pages 1-2.

Abbreviated:

- 1. Lots 1 & 2, and Ptn. of Lot 3, Block 9, Supplemental and Corrected Plat of Lynden

ASSESSOR'S PARCEL NUMBER(S):

- 1. 400320 202260 0000
- 2. 400320 206263 0000

**RECIPROCAL
RESTRICTIVE COVENANTS**

THESE RECIPROCAL RESTRICTIVE COVENANTS ("Reciprocal Restrictive Covenants") are entered into this ____ day of _____, 2019, by the CITY OF LYNDEN, a Washington municipal corporation ("City"), and TWIGA NW, L.L.C., a Washington limited liability company, and RAH PROPERTIES, LLC, a Washington limited liability company ("TWIGA NW"), as follows:

RECITALS

WHEREAS, City is the owner of the real property legally described as follows (the "City Property"):

400320 202260 0000

All of Lots 1 and 2, except, the Easterly 2 feet of Lot 2 thereof, Block 9, "Supplemental and Corrected Plat of Lynden", as per the plat thereof, recorded in Book 3 of Plats, Page 48, in the Auditor's Office of Whatcom County, Washington.

Subject to an Agreement for Joint Use of Party Wall as set forth in an instrument recorded under Auditor's File No. 505068.

Situate in Whatcom County, Washington.

WHEREAS, TWIGA NW is the owner of the real property legally described as follows (the "TWIGA NW Property"):

400320 206263 0000

The Northeasterly two feet of Lot 2 and the Southwesterly thirty feet of Lot 3, in Block 9, "Supplemental and Corrected Plat of Lynden", according to the plat thereof, recorded in Volume 3 of Plats, Page 48, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

WHEREAS, the TWIGA NW Property contains a one-story structure that is built on the common property line between the City Property and the TWIGA NW Property for which a party wall agreement exists as filed with the Whatcom County Auditor under file 505068 ("Party Wall Agreement"),

WHEREAS, TWIGA NW is remodeling the TWIGA NW Property to incorporate a second story with residential space;

WHEREAS, in order to incorporate windows into the second floor of the structure an open set back is required which could not be accommodated by a solid wall located on the common property line;

WHEREAS, the Party Wall Agreement anticipates additional agreement between the parties in the event that either party desires to add to the height of the wall;

WHEREAS, the structure on the TWIGA NW Property contains a mural on the wall that is located on the common property line ("the Mural");

WHEREAS, The Mural provides public art that is important to the downtown Lynden area and is seen by residents and visitors as they enter the downtown core, and maintaining it is important to the City;

WHEREAS, TWIGA NW agrees to maintain the Mural, or a similar one that is accepted and approved by the City of Lynden, in perpetuity, in exchange for a restrictive covenant on the City Property to create a no build zone for the benefit of the TWIGA NW Property;

WHEREAS, because of the no build zone, the Party Wall Agreement is no longer necessary and should be terminated or extinguished;

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the parties hereby covenant and agree as follows:

1. Recitals Incorporated. The recitals set forth above are fully incorporated herein by this reference.
2. Nature and Extent. The purpose of these Reciprocal Restrictive Covenants is to create a no build zone on the east ten (10) feet of the City Property (the "No Build Zone") for the benefit of the TWIGA NW Property and to require TWIGA NW to maintain the Mural, or a similar one that is accepted and approved by the City of Lynden, in perpetuity.
3. Restriction of City Property. Within the No Build Zone City shall not erect or construct any building of any type or nature, whether permanent or temporary. The No Build Zone may however be landscaped with grass and groundcover plants and may be paved and otherwise improved as a parking lot with the necessary and related improvements. This section does not prevent the City from erecting small structures such as parking meters or boxes or from erecting non-building structures such as tents or scaffolding on a temporary basis.
4. Restriction of TWIGA NW Property. In exchange for the City maintaining the No Build Zone, TWIGA NW will retain and cause to be maintained the Mural. Maintenance as used in this section includes both regular maintenance due to expected deterioration and repair in the case of accident or vandalism. In the event that the Mural requires replacement or altering beyond normal maintenance, TWIGA NW will propose a replacement public art form, which form shall require the approval of the City of Lynden.
5. Extinguishment of Party Wall Agreement. These Reciprocal Restrictive Covenants make the Party Wall Agreement unnecessary. The Party Wall Agreement is hereby extinguished.
6. Establishment of Wall Easement. The City hereby grants TWIGA NW and its successors and assigns a perpetual, nonexclusive easement to maintain and improve the wall described in the Party Wall Agreement at its present location, but not to increase the extent to which the wall encroaches into the City Property ("Wall Easement"). This Wall Easement shall remain in effect so long as the Mural is retained, maintained, or replaced at its present location in accordance with paragraph 4. In the event the Mural is not so retained, maintained, or replaced at its present location, the City shall provide written notice thereof to TWIGA NW. In the event TWIGA NW fails to cure the breach hereof to the City's satisfaction within thirty (30) days of receipt of said notice, or in the event the wall is for any reason destroyed in its entirety, this Wall Easement shall be automatically extinguished.
7. Run with the Land. These Reciprocal Restrictive Covenants and all rights and obligations described herein shall be deemed to touch and concern the land, shall run with the land during its entire term, and shall be binding on all parties having or acquiring any right, title, or interest in the land described herein or any part thereof unless mutually terminated in writing by the owners of the TWIGA NW Property and the City Property.
8. Breach. Subject to paragraphs 4 and 6, in the event of a perceived breach by the other party, a party's rights are limited to seeking an injunction or specific performance, consistent with sections 10, 11, and 12 below. Neither party may resort to "self-help" tactics to rectify a perceived breach by the other party. This section does not prevent either party from attempting to work with the

other party cooperatively to resolve concerns before court involvement becomes necessary.

9. Hold Harmless. City and TWIGA NW shall indemnify and hold each other harmless from any and all such damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from their own respective acts or omissions and the acts or omissions of their employees, or authorized agents, to the extent and in the same proportion as employees or authorized agents are determined to be at fault.

10. Notice. Any notice, declaration, demand or communication to be given by a Party to these Reciprocal Restrictive Covenants to the other shall be in writing and transmitted to the other Party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

City:

City of Lynden

TWIGA NW, L.L.C.

RAH Properties, LLC

1118 E. Front Street

Lynden, WA 98264

11. Complete Agreement/Modification. These Reciprocal Restrictive Covenants and the terms and conditions herein represents a complete agreement between the parties. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting these Reciprocal Restrictive Covenants other than those set forth herein. Modification of these Reciprocal Restrictive Covenants or any of its terms and conditions shall be binding upon the parties only if they are in writing and fully executed by the parties.

12. Applicable Law/Construction/Venue. These Reciprocal Restrictive Covenants shall be governed and interpreted in accordance with the laws of the State of Washington. In the event these Reciprocal Restrictive Covenants is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of these Reciprocal Restrictive Covenants shall be laid in Whatcom County, Washington.

13. Attorney's Fees and Costs. In the event of any litigation arising under the terms of these Reciprocal Restrictive Covenants, the prevailing party shall be entitled to recover from the non- prevailing party its reasonable costs and attorney's fees.

14. Nonwaiver of Breach. Failure of either party at any time to require performance of any provision of these Reciprocal Restrictive Covenants shall not limit such Party's right to enforce such provision for the same or similar breach then or in the future, nor shall any waiver of any breach of any provision of these Reciprocal Restrictive Covenants constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

15. Counterparts. These Reciprocal Restrictive Covenants may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of these

Reciprocal Restrictive Covenants and all which together will constitute a single agreement.

16. Severability. In case any one or more of the provisions contained in these Reciprocal Restrictive Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and these Reciprocal Restrictive Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties have executed these Reciprocal Restrictive Covenants as of the date and year set forth above.

CITY:

City of Lynden

By: _____

Its: _____

TWIGA NW, L.L.C.

By: _____

Its: _____

RAH Properties, LLC

By: _____

Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of the RAH PROPERTIES, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of TWIGA NW, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	September 3, 2019	
Name of Agenda Item:	Temporary Construction Easement – 610 Front Street	
Section of Agenda:	New Business	
Department:	Planning Department	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Temporary Construction Easement Agreement		
Summary Statement:		
<p>Property owners of 610 Front Street (the liquor store location) are developing plans for a significant renovation of the existing building. The renovation would add two additional floors and 6 residential units.</p> <p>To facilitate the residential addition to the building, the property owners have requested that the City grant a temporary construction easement along their west property line which is adjacent City-owned parking lot on Front and 7th Street.</p> <p>The easement is temporary in nature and consistent with others the City has granted.</p> <p>The City's legal counsel has created the attached temporary construction easement for the Council's consideration.</p>		
Recommended Action:		
Motion to grant a temporary construction easement to the property owners of 610 Front Street for the proposed renovation of the existing building and authorize the Mayor's signature on the document.		

RETURN TO:

Starkenbug-Kroontje
Attorney at Law P.S.
PO Box 231
Lynden, WA 98264

DOCUMENT TITLE:

Temporary Construction Easement Agreement

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTOR:

City of Lynden, a Washington municipal corporation

GRANTEE:

TWIGA NW, L.L.C., a Washington limited liability company RAH
Properties, LLC, a Washington limited liability company

ABBREVIATED LEGAL DESCRIPTION:

Lot 1 & Ptn. Lot 2, Block 9, Supplemental and Corrected Plat of Lynden

ASSESSOR'S TAX PARCEL NUMBER(S):

400320 202260 0000

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THE GRANTOR, the CITY OF LYNDEN, a Washington municipal corporation ("Grantor" or "City"), in consideration of the terms and conditions specified herein, grants and conveys to the Grantee, TWIGA NW, L.L.C., a Washington limited liability company, and RAH PROPERTIES, LLC, a Washington limited liability company ("Grantee"), a temporary easement for construction purposes as described herein ("Temporary Easement") over, under and across the real property described at Exhibit A and depicted as Exhibit B hereto (hereinafter referred to as "Grantor's Property").

This Temporary Easement has been granted under and shall be governed by the following terms and conditions.

1. Grant of Temporary Easement. For the mutual promises herein, Grantor hereby grants and conveys to the Grantee a non-exclusive temporary construction easement over Grantor's Property under the terms and conditions set forth herein.
2. Purpose. This grant shall provide the Grantee with a temporary construction easement for construction, inspection, alteration, ingress and egress over, under, and across Grantor's property ("Temporary Easement") for the construction of the Grantee's adjacent building (the "Project"). Grantee hereby agrees that it shall not use the Grantor's Property in any manner that exceeds the scope of this Temporary Easement or is a violation of local, state, or federal law. The Grantee shall be solely responsible for all aspects of the Project.
3. Payment. There will be no monetary payment for the Temporary Easement.
4. Commencement of Term and Duration of Agreement. The Temporary Easement term shall commence on the date written below and shall expire one (1) year from the date of commencement.
5. Early Termination. If Grantee's use of the Grantor's Property exceeds the scope of this Easement, Grantor may terminate this Temporary Easement by providing Grantee with thirty (30) days written notice.
6. Construction, Operation, Maintenance, Repair and Replacement. The Grantee shall bear all expenses for construction, installation, operation, maintenance, repair, and replacement of the Project.
7. Restoration. Excepting improvements made to the party wall between Grantor's and Grantee's Properties during the course of the Project, the Grantee shall, upon completion of the Project, repair any damage caused when performing the Project work and leave the Grantor's Property in a clean and tidy condition equal to that which existed on the date of execution of this Agreement.
8. Run with the Land. This Temporary Easement and all rights and obligations described herein shall be deemed to touch and concern the land, shall run with the land during its entire term, and shall be binding on all parties having or acquiring any right, title, or interest in the land described herein or any part thereof.

9. Insurance. Grantee shall procure and maintain in force, without cost or expense to Grantor, on or before the commencement date of this Temporary Easement and throughout the term, a broad form comprehensive general liability policy of insurance covering bodily injury and property damage, with respect to the use and occupancy of the property with liability limits of not less than \$1,000,000.00 per occurrence. Grantor shall be named as additional insured on all such policies, which policies shall in addition provide that they may not be canceled or modified for any reason without fifteen (15) days prior written notice to Grantor. Grantee shall provide Grantor with a certificate or certificates of such insurance within ten (10) days of the execution of this Temporary Easement.

10. Hold Harmless. Grantor and Grantee shall indemnify and hold each other harmless from any and all such damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from their own respective acts or omissions and the acts or omissions of their employees, or authorized agents, to the extent and in the same proportion as employees or authorized agents are determined to be at fault.

11. Assignment. Grantee shall not assign, convey or transfer this Temporary Easement or any interest herein, without prior written consent of Grantor.

12. Notice. Any notice, declaration, demand or communication to be given by a Party to this Temporary Easement to the other shall be in writing and transmitted to the other Party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

Grantor:
City of Lynden
Attn: Steve Banham
300 Fourth Street
Lynden, WA 98264

Grantee:
TWIGA NW, L.L.C.
RAH Properties, LLC
1118 E. Front Street
Lynden, WA 98264

13. Complete Agreement/Modification. This Grant of Temporary Easement and the terms and conditions herein represents a complete agreement between the Parties. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this Temporary Easement other than those set forth herein. Modification of this Temporary Easement or any of its terms and conditions shall be binding upon the parties only if they are in writing and fully executed by the Parties.

14. Applicable Law/Construction/Venue. This Temporary Easement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Temporary Easement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Temporary Easement shall be laid in Whatcom County, Washington.

15. Attorney's Fees and Costs. In the event of any litigation arising under the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing Party its reasonable costs and attorney's fees.

16. Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision for the same or similar breach then or in the future, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

17. Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement and all which together will constitute a single Agreement.

18. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Dated this _____ day of _____ 2019.

GRANTOR:

City of Lynden

By: _____
Its: _____

GRANTEE:

TWIGA NW, L.L.C.

By: _____
Its: _____

RAH Properties, LLC

By: _____
Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of the RAH PROPERTIES, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of TWIGA NW, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 20_____.

{Notary Signature}
NOTARY PUBLIC in and for the State of Washington
Residing at _____
My appointment expires: _____

EXHIBIT A

Description

The _____ of the following described property:

400320 202260 0000

All of Lots 1 and 2, except, the Easterly 2 feet of Lot 2 thereof, Block 9, "Supplemental and Corrected Plat of Lynden", as per the plat thereof, recorded in Book 3 of Plats, Page 48, in the Auditor's Office of Whatcom County, Washington.

Subject to an Agreement for Joint Use of Party Wall as set forth in an instrument recorded under Auditor's File No. 505068.

Situate in Whatcom County, Washington.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	September 3, 2019	
Name of Agenda Item:	Calendar	
Section of Agenda:	Other Business	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: N/A
Legal Review:	<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	Outlook Calendar	
Summary Statement:	See next page.	
Recommended Action:	None	

September 3, 2019

Tuesday

258

8:30 AM - 9:30 AM

LT Meeting -- City Hall 1st Floor Large Conference Room

5:00 PM - 6:30 PM

Design Review Board Meeting -- Annex South East Conference Room

7:00 PM - 9:00 PM

Council Meeting -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

September 4, 2019

Wednesday

9:00 AM - 5:00 PM

Court -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

10:00 AM - 11:00 AM

Check-In -- Mike's Office

10:30 AM - 6:30 PM

Court -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

4:15 PM - 6:00 PM

Public Works Committee Meeting -- City Hall 2nd Floor Large Conference Room

September 5, 2019

Thursday

9:00 AM - 10:30 AM

Technical Review Committee -- City Hall 2nd Floor Large Conference Room

4:00 PM - 5:00 PM

Public Safety Committee Meeting -- Police Training Room

September 6, 2019

Friday

8:30 AM - 9:30 AM

Check In-Mike/Anthony -- Mike's Office

September 9, 2019

259

Monday

9:00 AM - 10:00 AM

Check-In Vern/Mike -- Mike's Office

7:00 PM - 9:00 PM

Park & Trail Advisory -- Annex South East Conference Room

September 10, 2019

Tuesday

8:30 AM - 9:30 AM

LT Meeting -- City Hall 1st Floor Large Conference Room

12:00 PM - 1:00 PM

Lunch & Learn (To Be Determined) -- Police Training Room

September 11, 2019

Wednesday

9:00 AM - 10:00 AM

Check-In Mark/Mike -- Mike's Office

7:00 PM - 9:00 PM

Rec. District Meeting -- Annex South East Conference Room

September 12, 2019

Thursday

7:30 PM - 9:30 PM

Planning Commission Meeting -- Annex Council Chamber

September 13, 2019

Friday

10:00 AM - 11:00 AM

Check-In Steve/Mike -- Mike's Office

11:00 AM - 12:00 PM

Check-In Heidi/Mike -- Mike's Office

3:00 PM - 4:00 PM

Finance Committee Meeting -- City Hall 1st Floor Large Conference Room
Visit WWW.LYNDENWA.ORG to view the agenda

4:00 PM - 5:00 PM

Parks Committee -- City Hall 1st Floor Large Conference Room

7:00 PM - 9:00 PM

Copy: Council Meeting -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room