Executive Summary and Staff Analysis
Whatcom County Officials – AMENDED 11/18/16
(Jack Louws, Executive; Bill Elfo, Sheriff; David McEachran, Prosecutor)
(16 Complaints, including five 45-Day Citizen Action Complaints)
PDC Case 1122

Background & Procedural Summary

This **Amended** Executive Summary and Staff Analysis highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case 1122. The case includes 16 complaints, filed between October 18 and November 30, 2015 and supplemented on April 17, 2016, five of which are identical 45-Day Citizen Action Complaints filed with the Attorney General and Whatcom County Prosecuting Attorney under RCW 42.17A.765(4). The first five complaints were filed with the PDC, the next five were filed with the Attorney General and Whatcom County Prosecuting Attorney, and the final six were filed with the PDC. All of the complaints alleged that Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor David McEachran may have violated RCW 42.17A.555 by using or authorizing the use of Whatcom County facilities to prepare and distribute a jail mailer on or around October 16, 2015, that promoted Proposition 2015-1, a ballot measure on the November 3, 2015 ballot asking voters to approve a 0.2 percent sales and use tax increase to construct and operate a new jail facility in Whatcom County, and that assisted the re-election campaigns of Executive Louws and Sheriff Elfo. The measure was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

When staff first brought this matter to the Commission's attention on December 3, 2015, there were 15 complaints, five of which were 45-Day Citizens Action Complaints. Staff initially recommended that the Commission dismiss the 10 complaints that had been filed with the PDC, and recommend that the Attorney General take no action concerning the five Citizen Action Complaints filed with the Attorney General and Whatcom County Prosecuting Attorney. However, on November 30, 2015, one week after staff's initial Report of Investigation was completed, Joy Gilfilen filed a 16th complaint making essentially the same allegations, and on December 2, 2015, complainant Richard Jehn presented staff with additional information suggesting that Whatcom County officials may have engaged in a coordinated campaign to promote Proposition 2015-1. Because of the 16th complaint and the additional information from Mr. Jehn, staff suggested that the Commission postpone taking action on staff's initial recommendation and direct staff to conduct further investigative work.

On December 3, 2015, the Commission voted to reject staff's written recommendation, and directed staff to conduct further investigative work concerning the recently received 16th complaint and the additional information from complainant Richard Jehn, and report back at a future meeting.

This Amended Executive Summary and Staff Analysis is the result of staff's additional investigative work. It incorporates the findings of staff's Report of Investigation dated November 23, 2015, and its Addendum to Report of Investigation dated October 31, 2016. The Addendum to Report of Investigation discusses the additional information submitted by complainants Jehn and Gilfilen about possible campaign coordination, summarizes interviews with the three Respondents, a Whatcom County staff person,

and an employee of DLR Group (the County's consultant), and compares the jail mailer with other Whatcom County publications to determine whether the mailer was normal and regular conduct allowed under RCW 42.17A.555.

Allegations & Investigative Findings

On or around October 16, 2015, Whatcom County officials mailed a flyer titled *"Whatcom County Community Report – Whatcom County Jail"* to 62,172 households at a cost of $27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group totaled $18,055.00. The flyer included four pages, each measuring 11 by 17 inches. It had a professional look and glossy finish, and included pictures of, and statements by, the three Whatcom County officials named as Respondents in the complaints, two of whom were up for election, and one of whom was running unopposed. It included pictures of existing jail conditions, and drawings of the proposed facility. The mailer described jail capacity and jail population. It described the jail planning process, a timeline for a new facility, and the wording of the proposed initiative, including the proposed sales and use tax increase. It included a chart of current sales tax rates from other jurisdictions in the Puget Sound region. Finally, it described how the County and participating cities would build a replacement jail if voters approved the proposed measure. The mailer did not include the size, including bed capacity, or the cost to build the new facility, with and without the City of Bellingham's participation, which the County was trying to secure when the mailer was sent out. The information about the jail initiative was mailed close to the time when ballots were sent to registered voters. The complainants alleged that the mailer had the look and feel of a campaign piece, and that it was timed to coincide with the distribution of ballots. **(Amended Executive Summary Exhibit 1 – Jail Mailer)**

The jail mailer was authorized by Executive Louws. Prosecutor McEachran and Sheriff Elfo authorized Executive Louws to use their pictures and the statements attributed to them. Neither Prosecutor McEachran nor Sheriff Elfo otherwise contributed to the flyer or approved its design, content, or distribution. The complaints included eight allegations. Following is a brief description of each allegation and staff's findings.

A. Allegation: "The jail mailer is not a fair and objective presentation of facts because it does not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures are inflammatory because they show incarcerated citizens in deplorable housing conditions."

   Finding: Apparent violation as to Executive Louws, who authorized the distribution of the mailer. The jail mailer did not contain sufficient information about the cost to construct and operate the proposed jail facility based on two likely options of: (1) Participation in the project being limited to the six small cities that had signed interlocal agreements at the time of the mailing; and (2) The project being expanded to include a larger facility with the participation of the City of Bellingham, in addition to the six small cities, which Whatcom County was actively seeking when the mailer was finalized. Option 1 was for a facility costing approximately $75 million with 400 beds, while Option 2 was for a facility costing

approximately $97 million with 521 beds. As late as September 27, 2015, the County's draft mailer discussed Options 1 and 2, but this information was removed from the final version of the mailer that was sent on or around October 16, 2015, and instead the mailer included a statement saying that if the measure passes, *"the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse."* The mailer used neutral language, and pictures showed the condition of the existing jail and drawings of the proposed jail facility.

B. Allegation: "The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a Public Service Announcement (PSA) by Sheriff Elfo and Executive Louws that was prohibited because they were candidates on the ballot during the year the mailing was made."

   Finding: No apparent violation. Executive Louws authorized including in the jail mailer pictures of, and statements by, the three elected officials who are Respondents in this matter. No evidence was found that Executive Louws included his picture or Sheriff Elfo's picture for the purpose of assisting either campaign, or that including a picture identifying each speaker had the effect of assisting the campaigns of Executive Louws or Sheriff Elfo. In addition, Sheriff Elfo was running unopposed, and Prosecutor McEachran was not up for election. A public agency fact sheet, such as the jail mailer, does not meet the definition of a PSA.

C. Allegation: "The jail mailer promoted Proposition 2015-1 because it targeted all Whatcom County households in which there was at least one registered voter."

   Finding: Apparent violation as to Executive Louws, who authorized the distribution of the mailer. The flyer was sent to all households with at least one registered voter rather than to all mailing addresses. This happened after representatives of Whatcom County contacted PDC staff asking if the mailer could be sent to a list of registered voters. Whatcom County officials understood the answer to indicate that a list of registered voters could be used as a mailing list, so long as the list was not filtered to be restricted by political party or voting platforms. PDC staff did not recall the conversation, and typically directs people with such questions to the appropriate PDC Interpretation found on the PDC website. Whatcom County Officials failed to distribute its informational flyer to all households, thus depriving households without at least one registered voter of critical information about Proposition 2015-1.

D. Allegation: "The jail mailer failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years."

Finding: No apparent violation. The mailer did not speculate about the alleged secondary effect of the proposition on the County's ability to raise money in the future to address other public safety issues.

E. Allegation: "The jail mailer, with its information about the ballot measure, was a coordinated campaign effort."

Finding: No apparent violation. Staff reviewed the additional information received December 2, 2015 and shortly thereafter. The information initially indicated that Whatcom County officials may have engaged in prohibited activities to promote Proposition 2015-1. The additional investigative work showed that the County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials rejected these efforts and sent one informational mailer.

Marvin Wolfe and Ray Baribeau - For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

F. Allegation: "The jail mailer promoted Proposition 2015-1 and Proposition 1 by creating confusion when it misidentified Proposition 2015-1 as Proposition 1, a measure concerning district-only voting."

Finding: No apparent violation. The flyer erroneously identified the measure as Proposition 1 rather than as Proposition 2015-1 after relying on information received from the Whatcom County Auditor's office. Staff found no evidence that Whatcom County officials intentionally used the wrong Proposition number, or that using the wrong number would result in incorrect votes.

G. Allegation: "Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273."

Finding: No apparent violation. Whatcom County officials provided four examples of past mailings to the public concerning policy issues or matters of public concern. They included: (1) A 2012 mailing titled, *"Flooding in Whatcom County – What to do Before, During, and After a Flood;"* (2) A Spring 2015 edition of Ag News; (3) A Summer 2015 mailing of Birch Bay Watershed and Aquatic Resources Management; and (4) a 2015 newsletter titled, *"Terrell Creek*

& Birch Bay State of the Watershed Report." The mailings were similar to the Jail Mailer in size, color, or style.

H. Allegation: "The jail mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305."

Finding: No apparent violation. An Electioneering Communication does not include a communication that is exempted by the commission through rule consistent with the intent of RCW 42.17A, and public agencies are allowed to produce and disseminate fair and objective fact sheets about ballot propositions. In addition, an Electioneering Communication is a communication that is not targeted to registered voters. The County's jail mailer was not an unreported Electioneering Communication.

Conclusion

On December 31, 2015, before concluding its additional investigative work set in motion by the December 3, 2015 Commission meeting, staff issued a Notice of Administrative Charges alleging that Executive Louws, Sheriff Elfo, and Prosecutor McEachran had violated RCW 42.17A.555 by: by 1) using and authorizing the use of Whatcom County facilities for the promotion of Proposition 2015-1, a ballot measure on the November 3, 2015 ballot, and 2) by using and authorizing the use of Whatcom County facilities for the purpose of assisting the re-election campaigns of Executive Louws and Sheriff Elfo. The charges stated that the Respondents violated RCW 42.17A.555 by: 1) sending out a mailer that was targeted to registered voters rather than to all households; 2) including pictures of Executive Louws and Sheriff Elfo at a time when both individuals were candidates for re-election and engaged in campaign activities; and 3) failing to include the cost of constructing a new jail based on the participating cities.

Based on the factors identified in staff's Report of Investigation dated November 23, 2015, and in its Addendum to Report of Investigation dated October 31, 2016, staff has concluded that Whatcom County Executive Jack Louws violated RCW 42.17A.555 by (1) sending out a jail mailer that was targeted to households with at least one registered voter rather than to all households; and (2) failing to include a fair and objective presentation of facts concerning the size and cost of constructing a new jail based on two options: (a) participation by the six small cities who had signed interlocal agreements with the County; and (b) participation by the six small cities and the City of Bellingham. Staff has concluded that Executive Louws did not violate RCW 42.17A.555 concerning the remaining allegations in the complaints. Staff has concluded that neither Sheriff Bill Elfo nor Prosecutor David McEachran has violated RCW 42.17A.555 concerning the allegations in the complaints.

Staff is presenting three Stipulations for the Commission's consideration, one for each Respondent, to address the charges issued on December 31, 2015 and the remaining allegations in the complaints. The Stipulation between staff and Executive Louws stipulates to two violations, and stipulates that all remaining allegations should be

dismissed and no penalty assessed. The Stipulations between staff and Sheriff Elfo and staff and Prosecutor McEachran are Stipulations as to Facts and No Violations or Penalty.

Recommendation

For the reasons described above, staff recommends that for Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor David McEachran, the Commission accept the Stipulations and inform the Attorney General that the Commission has acted to resolve all allegations in the 16 complaints.

Amended Executive Summary Exhibit 1 Jail Mailer Distributed by Whatcom County Officials

Timeline for New Facility

- ✓ April 2015 - Authorizing Permit Issued by City of Ferndale
- ✓ July 2015 - County Council Authorizes Sales Tax Ballot Measure
- ✓ August 2015 - Cities and County Agree to Construct and Operate Jail
- **November 2015 - Public Vote for Sales Tax**
- **Winter 2015-2016 - Following vote approval, final Design Work**
- **Spring 2017 - Start Jail Facility Construction**
- **Spring 2019 - Occupy Jail**

Citizens and Experts Develop Plan for the New Whatcom County Jail

In 2011, the County Council tasked a 13-member Jail Planning Task Force (JPTF) to recommend size, location and programming to replace the main jail and conducted 16 public meetings soliciting community input and comments from citizens and stakeholders. In 2013, the JPTF presented unanimous findings to reporting, "Due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail." It described the need as "critical" echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

County Executive Jack Louws developed a proposal to replace the jail and implement the JPTF recommendations. The County Council approved the purchase of the Labounty Road Property in 2013, a centrally located site near I-5, reasonably close to the courthouse and sufficiently sized to accommodate long-term growth if needed. The site selection was unanimously endorsed by the County Police Chiefs' Association.

Modern design features will maximize operational efficiencies and help control expenses and provide needed areas for behavioral and other health issues. Additional medical, counseling and classroom space will facilitate education, literacy, substance abuse, life-skills and other training and treatment programs.

The Ballot Measure

WHATCOM COUNTY,
WASHINGTON PROPOSITION NUMBER 1
JAIL FACILITIES SALES AND USE TAX

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

Should this proposition be:

Approved _____

Rejected _____

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas.

Current Sales Tax Rates from Puget Sound Region

Unincorp. Whatcom County	.085
Bellingham	.087
Blaine	.085
Everson	.085
Ferndale	.087
Lynden	.087
Nooksack	.085
Sumas	.085
Burlington	.085
Mount Vernon	.085
Everett	.092
Bellevue	.095
Seattle	.096
Tacoma	.095

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."

Sheriff Bill Elfo

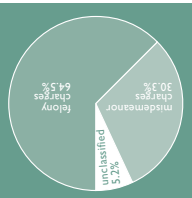
Existing Jail - Overcrowded and Unsafe

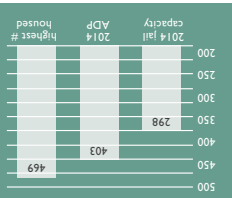
WHATCOM COUNTY JAIL

Whatcom County Community Report

WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





The current jailwas built in 1984 to house 148 inmates, remodeled to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

Our jail population is at 137% percent of capacity, 4th highest in the state.

The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

Whatcom County's Commitment to Behavioral Health Services

Executive Jack Louws

Whatcom County spends $11.5 million annually on a wide and varied behavioral health continuum of care services for citizens designed to make it possible for people to stay out of jail, or to re-enter society after jail with the tools needed for success. This financial commitment to programming is very close to equaling the amount we spend to operate the jail annually. Whatcom County Council has established a task force to target enhanced alternatives to corrections, that would reduce or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personal;
- School and community programs focused on prevention, treatment, intervention and family support programs;
- Juvenile court/detention behavioral health services;
- Community mental health and substance use treatment and opiate outreach;
- Drug, family treatment and mental health courts;
- Homeless housing services;
- District court probation specialized behavioral health unit;
- Intensive case management, supportive housing, and the Rainbow Recovery Center;
- Veterans' relief services;
- Crisis triage center;
- Jail behavioral health services;
- Jail alternative programs, including electronic home detention, work release, and jail work crews.

Budgeted-for Alternatives

Prevention, Alternative and Diversion Programs
$ 11,500,000

Jail Operations net programs
$ 12,300,000

David S. McEachran
Prosecuting Attorney

"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space limits the care the jail can provide which often exacerbates mental health conditions. Mental health and chemical dependency issues are a significant issue for law and justice and the community as a whole. The new jail facility is designed with dedicated programming space. This space will allow for treatment opportunities for those offenders receptive to programs that give them the best chance of staying out of jail."

Existing Jail Conditions

Existing cell.

Existing shower room converted to cell.

Existing dayroom.

Existing inmate programs space.

Existing central control room.

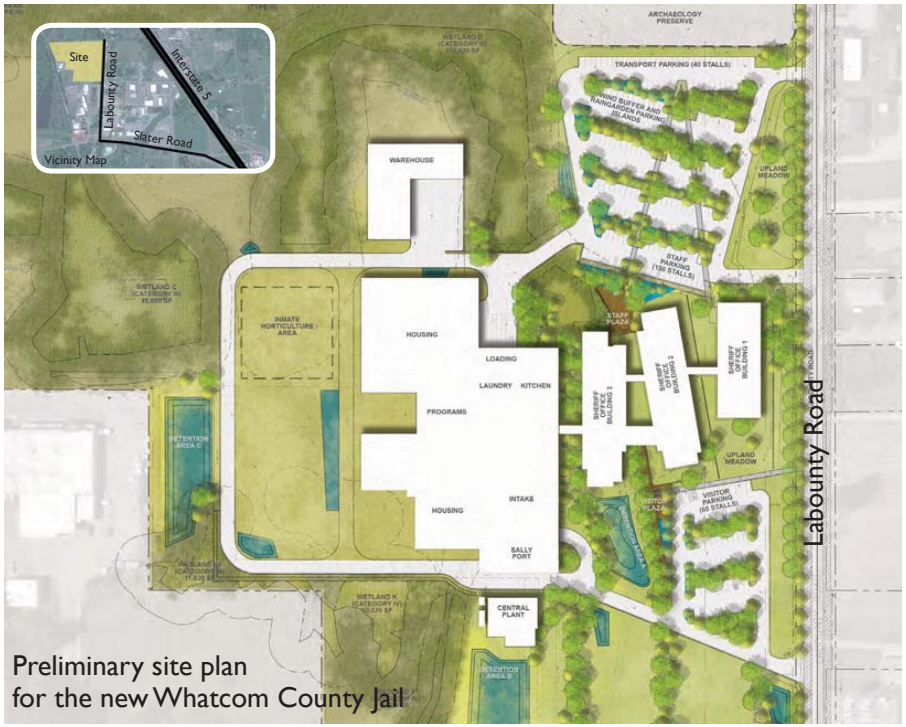
PROPOSED DESIGN

Modern Jail Features

Dayroom with inmate video visiting

Central control room.

- New facility can be constructed with no impact on current jail operations.
- Single story design will substantially increase operational efficiencies.
- New bed count meets and exceeds current need with forethought given to future expansion.
- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation.
- Facility designed to meet current codes and correctional facility standards.
- Building site design to accommodate substantial future growth.



Preliminary site plan
for the new Whatcom County Jail

Four person cell.

Secure outdoor recreation area.

Medical clinic and infirmary for observation.

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action Against: Jack Louws, Whatcom County Executive Respondent.	PDC Case 1122-1 STIPULATION AS TO FACTS, VIOLATIONS AND PENALTY

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent Jack Louws, Whatcom County Executive, through Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, submit this Stipulation as to Facts, Violations and Penalty, and as to Facts and No Violations or Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

II. JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

III. FACTS

1. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

2. On or around October 16, 2015, Whatcom County sent out a mailer concerning Proposition 2015-1. The mailer was sent to all households with at least one registered voter. The mailer was sent out in two batches to 62,172 households at a cost of $27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group, the County's consultant, totaled $18,055.00. Jack Louws, Whatcom County Executive, authorized sending out this mailer. The mailing was not sent to households of residents where there were no registered voters.

3. The mailer contained a statement that the ballot measure would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities and for other public safety purposes. The mailer also stated that half of the tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

4. The jail mailer did not include a good-faith estimate of the cost of constructing a new jail facility based on the participation of the six small cities who had signed interlocal agreements with the County at the time of the mailing. This cost was estimated to be $75 million for a 400 bed facility. Nor did the mailer include a good-faith estimate of the cost of constructing a new jail facility based on the participation of the six small cities and the City of Bellingham, which the County hoped to achieve through negotiations with the City of Bellingham which were on-going at the time of the mailing.

5. Executive Louws contends that representatives of Whatcom County contacted Public Disclosure Commission (PDC) staff asking if the mailer could be sent to a list of registered voters. Executive Louws contends County officials understood the answer to indicate that a list of registered voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms. Executive Louws contends that he relied on what he understood to be advice from PDC staff when deciding to restrict the County's mailer to households with at least one registered voter.

6. The mailer used neutral language, and pictures showed the condition of the existing jail and drawings of the proposed jail facility.

7. Executive Louws and Sheriff Bill Elfo were candidates for re-election in 2015. Prosecutor McEachran was not a candidate for re-election in 2015. Executive Louws authorized including in the jail mailer pictures of, and statements by, Executive Louws, Sheriff Bill Elfo, and Prosecutor David McEachran. Evidence was not found that Executive Louws included his picture or Sheriff Elfo's picture for the purpose of assisting either campaign, nor was evidence found that including pictures of Executive Louws and Sheriff Elfo had the effect of assisting either re-election campaign. Sheriff Elfo was unopposed in his re-election campaign. A public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.

8. The mailer did not speculate about the alleged secondary effect of the proposition on the County's ability to raise money in the future to address other public safety issues.

9. Information received by PDC staff on December 2, 2015 and shortly thereafter initially indicated that Whatcom County officials may have engaged in prohibited activities to promote Proposition 2015-1. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Executive Louws, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Executive Louws, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

10. The mailer erroneously identified the measure as Proposition 1 rather than as Proposition 2015-1 after relying on information received from the Whatcom County Auditor's office. Staff found no evidence that Whatcom County officials, including Executive Louws,

intentionally used the wrong Proposition number, or that using the wrong number would result in incorrect votes.

11. Whatcom County officials provided four examples of past mailings to the public concerning policy issues or matters of public concern. They included: (1) A 2012 mailing titled, *"Flooding in Whatcom County – What to do Before, During, and After a Flood;"* (2) A Spring 2015 edition of Ag News; (3) A Summer 2015 mailing of Birch Bay Watershed and Aquatic Resources Management; and (4) a 2015 newsletter titled, *"Terrell Creek & Birch Bay State of the Watershed Report."* The mailings were similar to the Jail Mailer in size, color, or style.

12. The County's jail mailer was not an unreported Electioneering Communication.

STATUTORY AND RULE AUTHORITY

RCW 42.17A.555 states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

VIOLATIONS

Based on the facts set forth above, Respondent Jack Louws and PDC staff stipulate that Executive Louws, in his capacity as Whatcom County Executive, violated RCW 42.17A.555 by: (1) sending out a jail mailer that was targeted to households with at least one registered voter rather than to all households; and (2) failing to include a fair and objective presentation of facts concerning the size and cost of constructing a new jail based on: (a) participation by the six small

cities who had signed interlocal agreements with the County; and (b) participation by the six small cities and the City of Bellingham.

PENALTY

Based on the facts and violations set forth above, Respondent Jack Louws, in his capacity as Whatcom County Executive, agrees to pay a total civil penalty of $1,000 with $500 suspended on the following conditions:

a. Executive Louws is not found to have committed any of the same or similar violations of the disclosure provisions of RCW 42.17A within four years of the date of the final order in this matter.

b. Executive Louws pays the non-suspended portion of the penalty ($500) within 30 days of the date of the final order.

Executive Louws and PDC staff stipulate that Executive Louws did not violate RCW 42.17A.555, except as noted above, and stipulate that all remaining allegations should be dismissed and no penalty assessed. Respondent Louws affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

Evelyn Fielding Lopez, Executive Director
Public Disclosure Commission

Nov. 17, 2016
Date Signed

Royce Buckingham, Whatcom County Civil
Deputy Prosecuting Attorney on behalf of
Jack Louws, Whatcom County Executive

11-8-16
Date Signed

WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082

Jack Louws
County Executive

November 8, 2016

Public Disclosure Commission
711 Capitol Way #206
PO BOX 40908
Olympia, WA 98504-0908

Dear Commissioners,

RE: Attachment to Case 1122-1

Thank you for the opportunity to discuss the proposed settlement of charges before you. First though, I'd like to thank Phil Stutzman for his professionalism exhibited throughout the investigation over the last year. He has been forthright, accessible, and committed to finding the facts using his skillset as an investigator. I commend him for doing an excellent job.

The mailer that was published by Whatcom County to its citizens was not our best work, and I am truly sorry for that. As an elected official, I would never want to stir the public ire in a way that would detract from the real issues we have, and the document under discussion did that, as demonstrated by the PDC challenges it received. As the Whatcom County Executive, I take full responsibility on behalf of my team for the mailer and personally accept the penalty on behalf of the organization. After staff and legal review, I gave the final go-ahead for the publishing and mailing of the document, and it is therefore my ultimate responsibility to ensure its accuracy and adherence to the law.

I believe it is time to move on from this. Therefore, in the interest of resolution, I ask that the commission accept this proposed settlement, unless the commission considers it appropriate to set aside the charges based on the good faith effort Whatcom County exhibited in its attempt to get it right. As you know from your review of the documents, Whatcom County relied on the help of both a consultant and the PDC in its development of the mailer, and we ultimately failed in two areas according to the stipulated violations. I submit that neither of these violations was committed with any intent to mislead the public, but rather these were honest misunderstandings of what was technically required.

Regardless of whether you find the charges proper and concur with the settlement, or find it appropriate to set aside the charges, I ask that the Commission use this opportunity to ensure that other jurisdictions learn from this as we have.

I ask the following:

- That the PDC refine and publish the Commission's rules for mailers to reflect that any mailer related to a ballot measure cannot be distributed to voters only. As you know, we worked with PDC staff and our consultant related to this issue, and obviously got it wrong by only sending the mailer concerning a ballot issue to registered voters. I don't believe this is a rule in the RCWs or the WACs, so a clear codification of the PDC's interpretation/rule would be appreciated.

- Refine the Commission's requirements for mailers to reflect the difference between a property tax bond measure with fixed costs and a sales tax measure that is collected in perpetuity. As we all know, property tax collection under most RCWs only allow for the money to be used for capital construction, therefore the cost, duration, and payment are quite easily defined and are extensively regulated by state law. The difference with a sales tax measure under RCW 82.14.450 is that the money is collected in perpetuity, and there is no requirement for a fixed allocation of capital expenditure. My staff and legal team debated extensively concerning the issue of identifying the cost of capital construction versus the amount allocated for operations in perpetuity, and ultimately we decided that we did not have a specific good faith estimate to insert in the mailer. Instead, we detailed the tax rate, and explained the expiration period for repayment of the bonds issued to finance the facilities. I ask that the commission refine and publish a sales tax rule to require jurisdictions to provide a good faith estimate of what is planned for capital construction and/or capital equipment purchases within the first 5 years of the tax collection, so that future expansions of facilities and costs associated with capital facilities infrastructure repair can be accomplished as the RCW allows without controversy.

It has been past practice for PDC staff to work with jurisdictions in the development of these flyers. I understand that due to budget cuts that service was curtailed, and that Whatcom County was one of the first to "go it alone". Unfortunately what was once a collaborative process is not at this time, and it truly will curtail what the PDC in Interpretation 04-02 says "it is not only the right, but the responsibility of local government to inform the general public..." Regardless of the outcome of this case, I will be reluctant (and most likely refuse) to ever lead an organization in the development and distribution of another informational document such as this, as it is not worth the personal political capital it has cost. I anticipate others will concur throughout the state if the penalty for hard work with good intentions on behalf of the organization one is elected to represent results in personal fines with a high likelihood of damaging one's political career. So please use this as an opportunity for all of us to learn, by making strategic and needed changes to your guidelines, so that organizations and those personally responsible have the confidence and assurance to properly "inform the general public....."

Thank you for your time and consideration of my requests. I look forward to resolving this issue.

Sincerely,

Jack Louws
County Executive

cc: Chad Standifer, Assistant Attorney General, State of Washington
Bill Elfo, Whatcom County Sheriff
Dave McEachran, Prosecuting Attorney, Whatcom County

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action Against: Bill Elfo, Whatcom County Sheriff Respondent.	PDC Case 1122-2 STIPULATION AS TO FACTS AND NO VIOLATIONS OR PENALTY

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent Bill Elfo, Whatcom County Sheriff, through Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, submit this Stipulation as to Facts and No Violations or Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

II. JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

III. FACTS

1. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

2. On or around October 16, 2015, Whatcom County sent out a mailer concerning Proposition 2015-1. The mailer was sent to all households with at least one registered

voter. The mailer was sent out in two batches to 62,172 households at a cost of $27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group, the County's consultant, totaled $18,055.00.

3. The jail mailer was not authorized by Sheriff Elfo. It was authorized by Whatcom County Executive Jack Louws.

4. Sheriff Elfo was a candidate for re-election in 2015. Sheriff Elfo authorized Executive Louws to use his picture and the statement attributed to him in the jail mailer. No evidence was found that Sheriff Elfo authorized Executive Louws to use his picture and the statement attributed to him for the purpose of assisting Sheriff Elfo's re-election campaign, or that including the picture identifying Sheriff Elfo had the effect of assisting Sheriff Elfo's campaign. In addition, Sheriff Elfo was running unopposed. Sheriff Elfo did not otherwise contribute to the flyer or approved its design, content, or distribution. The statement attributed to Sheriff Elfo was a fair and objective presentation of facts. Also, a public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.

5. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Sheriff Elfo, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Sheriff Elfo, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

IV. LEGAL AUTHORITY

RCW 42.17A.555 states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

V. NO VIOLATIONS OR PENALTY

Based on the facts set forth above, Respondent Bill Elfo and PDC staff stipulate that Sheriff Elfo did not violate RCW 42.17A.555, as noted above, and stipulate that all allegations should be dismissed and no penalty assessed.

Evelyn Fielding Lopez, Executive Director
Public Disclosure Commission

Nov. 17, 2016
Date Signed

Royce Buckingham, Whatcom County Civil
Deputy Prosecuting Attorney on behalf of
Bill Elfo, Whatcom County Sheriff

11-8-16
Date Signed

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action Against: David McEachran, Whatcom County Prosecutor Respondent.	PDC Case 1122-3 STIPULATION AS TO FACTS AND NO VIOLATIONS OR PENALTY

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Evelyn Fielding Lopez, and Respondent David McEachran, Whatcom County Prosecutor, through Royce Buckingham, Whatcom County Civil Deputy Prosecuting Attorney, submit this Stipulation as to Facts and No Violations or Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

II. JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

III. FACTS

1. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

2. On or around October 16, 2015, Whatcom County sent out a mailer concerning Proposition 2015-1. The mailer was sent to all households with at least one registered voter. The mailer was sent out in two batches to 62,172 households at a cost of $27,670.76 for printing and mailing services. In addition, the cost for research and production by DLR Group, the County's consultant, totaled $18,055.00.

3. The jail mailer was not authorized by Prosecutor McEachran. It was authorized by Whatcom County Executive Jack Louws.

4. Prosecutor McEachran authorized Executive Louws to use his picture and the statement attributed to him. Prosecutor McEachran was not a candidate for re-election in 2015, and the statement attributed to him was a fair and objective presentation of facts. Also, a public agency fact sheet, such as the jail mailer, does not meet the definition of a Public Service Announcement.

5. The County's consultant, DLR Group, attempted to implement an aggressive public outreach campaign promoting Proposition 2015-1, but Whatcom County officials, including Prosecutor McEachran, rejected these efforts. For several years, Marvin Wolff has served in various appointed and volunteer positions supporting Sheriff Elfo and the Sheriff's Office. Mr. Wolff has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now. Ray Baribeau has also served in several volunteer capacities, including supporting Proposition 2015-1 and serving as an officer of Citizens for a Humane & Safe Jail Now. No evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials, including Prosecutor McEachran, authorized Mr. Wolff or Mr. Baribeau to use Whatcom County facilities, directly or indirectly, for the promotion of Proposition 2015-1.

IV. LEGAL AUTHORITY

RCW 42.17A.555 states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but

are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

V. NO VIOLATIONS OR PENALTY

Based on the Facts set forth above, Respondent David McEachran and PDC staff stipulate that Prosecutor McEachran did not violate RCW 42.17A.555, as noted above, and stipulate that all allegations should be dismissed and no penalty assessed.

Evelyn Fielding Lopez, Executive Director
Public Disclosure Commission

Nov. 17, 2016
Date Signed

Royce Buckingham, Whatcom County Civil
Deputy Prosecuting Attorney on behalf of
David McEachran, Whatcom County Prosecutor

11-8-16
Date Signed

STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH RCW 42.17 and RCW 42.17A Whatcom County Officials (Executive Jack Louws; Sheriff Bill Elfo; Prosecutor David McEachran) Respondents.	PDC Case 1122 **Addendum to** Report of Investigation

I. Background

1.1 In 2015, the Whatcom County Council passed Resolution 2015-024 to send a proposed 0.2 percent sales and use tax increase to voters for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

1.2 This document is an Addendum to the Report of Investigation that was signed November 23, 2015 for PDC Case 1122. The Report of Investigation concerned allegations by 15 complainants, five of which were also filed with the Attorney General and the Whatcom County Prosecuting Attorney as identical 45-Day Citizen Action Complaints. The 15 complaints were filed with the Public Disclosure Commission (PDC) between October 18 and November 17, 2015 against Whatcom County Officials (Jack Louws, Executive; Bill Elfo, Sheriff; and David McEachran, Prosecutor). The 15 complaints made similar allegations, that the three officials had violated RCW 42.17A.555 by using Whatcom County facilities to promote Proposition 2015-1, and to assist the 2015 re-election campaigns of Sheriff Elfo and Executive Louws.

1.3 On November 30, 2015, one week after the Report of Investigation was completed and signed, Joy Gilfilen filed a 16th complaint, making essentially the same allegations as the first 15 complainants. On December 2, 2015, complainant Richard Jehn provided additional material suggesting that Whatcom County Officials may have engaged in a coordinated campaign to pass Proposition 2015-1

1.4 Neither Ms. Gilfilen's complaint nor Mr. Jehn's additional material were received in time to be addressed in the Report of Investigation or Executive Summary presented to the

Commission on December 3, 2015. However, staff provided a copy of this additional material to the Commission at the meeting.

1.5 At the Commission's December 3, 2015 meeting, PDC staff presented its Report of Investigation and an Executive Summary with a staff recommendation. Based on factors identified in its initial investigation, staff stated in its Executive Summary that it had not found evidence that Whatcom County Executive Jack Louws, Sheriff Bill Elfo, or Prosecutor David McEachran had violated RCW 42.17A.555 by authorizing and distributing a flyer that promoted Proposition 2015-1 and assisted the 2015 re-election campaigns of Sheriff Elfo and Executive Louws. Staff recommended that the Commission dismiss the allegations in the 15 complaints, and recommend, for the five complaints that are 45-Day Citizen Action Complaints, that the Attorney General take no further action.

1.6 On December 3, 2015, the Commission reviewed staff's Report of Investigation and Executive Summary and voted to reject staff's recommendation. The Commission asked staff to continue its investigation, considering the additional information submitted by Mr. Jehn and the 16th complainant, and bring the matter back to the Commission for consideration at a future meeting.

1.7 On December 21, 2015, the Attorney General's Office sent letters to all persons who had filed Citizen Action Complainants, and informed each complainant that the Attorney General's Office would await the results of PDC staff's investigation and any action taken by the Commission before proceeding further.

1.8 On December 24, 2015, Edward Alexander filed 10-day final notice letters on behalf of two complainants who had filed Citizen Action Complaints under RCW 42.17A.765(4). Mr. Alexander filed the 10-day final notice letters with the Attorney General and Whatcom County Prosecuting Attorney, stating that if the Attorney General and Prosecuting Attorney failed to take action within 10 days of said notice, a Citizen Action may be brought. Also on December 24, 2015, Junga Subedar filed 10-day final notice letters on behalf of two complainants who had filed Citizen Action Complaints, providing notice to the Attorney General and Whatcom County Prosecuting Attorney that was identical to Mr. Alexander's 10-day final notice letters. Neither Mr. Alexander nor Ms. Subedar have filed an action in Superior Court concerning the Citizen Action Complaints. Mr. Alexander has indicated that he intends to wait until the Commission has acted before deciding how to proceed.

1.9 On April 17, 2016, complainant Joy Gilfilen supplemented her November 30, 2015 complaint with 196 pages of additional information.

1.10 Citizen Action Complaints are filed under RCW 42.17A.765(4), and allow a citizen to pursue an alleged violation of RCW 42.17A in Superior Court if, after receiving proper notice, the Attorney General and prosecuting attorney in the county in which the alleged violation occurred, have failed to commence an action.

II. Allegations

2.1 The allegations made by the first 15 complainants, and staff's findings, are part of the Report of Investigation dated November 23, 2015. The 16th complaint was filed by Joy Gilfilen on November 30, 2015, and like the initial 15 complaints, alleged that the jail mailer paid for by Whatcom County promoted Proposition 2015-1, and was authorized and approved by Jack Louws, County Executive, and Bill Elfo, County Sheriff, and was reviewed and approved by David McEachran, County Prosecutor. **(Addendum Exhibit 1)** Like the first 15 complaints, Ms. Gilfilen's complaint also alleged that the flyer assisted the re-election campaigns of Executive Louws and Sheriff Elfo because it included their pictures and was mailed to registered voters.

2.2 Like the initial 15 complaints, the 16th complaint also made allegations that are outside the jurisdiction of the PDC concerning management performance issues by Whatcom County Officials, including how funds generated from a 2004 0.1 percent sales tax increase, and funds raised from a 2008 behavioral health tax were used by the County. The PDC has no jurisdiction over these concerns, and did not investigate these allegations.

2.3 On December 2, 2015, complainant Richard Jehn submitted additional material to PDC staff that was provided to Commission members on December 3, 2015. **(Addendum Exhibit 2)** This material alleged that Whatcom County Officials may have engaged in a coordinated campaign to promote Proposition 2015-1.

2.4 On December 11, 2015, Mr. Jehn submitted a copy of the results of an extensive public records request made by Tip Johnson, a Whatcom County resident, to Whatcom County, concerning jail issues. Whatcom County officials provided this same information when responding to the complaint.

2.5 On January 24, 2016, Mr. Jehn also provided multiple documents concerning jail issues, including copies of outlook files for Marvin Wolff, a volunteer for the Sheriff's office. Also on January 14, 2016, Ms. Gilfilen submitted additional background information concerning the jail issue.

2.6 On April 17, 2016, complainant Joy Gilfilen supplemented her November 30, 2015 complaint with an additional 196 page document. **(Addendum Exhibit 3)** Ms. Gilfilen states that this supplemental information is divided into three sections:

1. Executive Branch Authority Controls, Evidence of a Tax Scam in Progress Operating Under Color of Law, Pages 6-32. She states: "This section includes systems and due process concerns that seem deceptive or may indicate collusion between the top three elected officials responsible for upholding the law – Whatcom County Executive Jack Louws, Prosecutor David McEachran, and Sheriff Bill Elfo – working in tandem with private jail industry contractors and other insiders to the detriment of citizens." The information in this section is most closely associated with "Allegation G - Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273."

2. Jail Industry Insider Tactics, Identifying the Sheriff's Hidden Insider Groups & Campaign Actions, Pages 33-123. She states: "This section is about campaign issues and direct misuse of County facilities and resources prior to and during the campaign." The information in this section is most closely associated with "Allegation E - The jail mailer, with its information about the ballot measure, was a coordinated campaign effort."

3. Restorative Community Coalition, Illustrating Taxpayers Requests for Fiduciary Responsibility, Pages 124-196. She states: "You will find selected key documents sent by the Restorative Community Coalition during the jail planning process and prior to the campaign to the legislative bodies and elected officials asking for taxpayers concerns to be addressed. These concerns were not addressed." The information in this section is not closely associated with Allegations A – H.

2.7 The original allegations, summarized in the Report of Investigation dated November 23, 2015, are again summarized below as items A –H. The original allegation categories include the allegations made by complainant Gilfilen on November 30, 2015 and April 17, 2016, and by complainant Jehn on December 2, 2015, that the jail mailer was a coordinated campaign effort.

Summary of Allegations (Initial 15 complaints, 16th complaint by Joy Gilfilen, and additional information from Richard Jehn)

A. Allegation: "The jail mailer is not a fair and objective presentation of facts because it does not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures are inflammatory because they show incarcerated citizens in deplorable housing conditions."

B. Allegation: "The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a Public Service Announcement by Sheriff Elfo and Executive Louws that was prohibited because they were candidates on the ballot during the year the mailing was made."

C. Allegation: "The jail mailer promoted Proposition 2015-1 because it targeted all Whatcom County households in which there was at least one registered voter."

D. Allegation: "The jail mailer failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years."

E. Allegation: "The jail mailer, with its information about the ballot measure, was a coordinated campaign effort."

F. Allegation: "The jail mailer promoted Proposition 2015-1 and Proposition 1 by creating confusion when it misidentified Proposition 2015-1 as Proposition 1, a measure concerning district-only voting."

G. Allegation: "Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273."

H. Allegation: "The jail mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305."

III. Findings

These findings summarize staff's additional investigative work following the December 3, 2015 Commission meeting. For a complete review of this matter, the reader should review the Report of Investigation dated November 23, 2015 and this Addendum to Report of Investigation. This Addendum concerns findings that relate to two of the allegations, as follows:

Allegation E – "The jail mailer, with its information about the ballot measure, was a coordinated campaign effort."

Allegation G – "Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273."

3.1 The additional information submitted to PDC staff by Mr. Jehn on December 2, 2015 was provided to him by Whatcom County resident Tip Johnson who obtained the documents through a public records request he made to Whatcom County. Whatcom County provided the same information to PDC staff.

3.2 Mr. Jehn alleged that contrary to the findings in PDC staff's Report of Investigation dated November 23, 2015, and the conclusion of the staff's initial Executive Summary, Whatcom County officials themselves called their effort to spread information about the jail tax proposition a "campaign." He alleged that county officials coordinated their efforts with a political action committee and targeted specific groups to visit and speak with about the jail proposal during the months preceding the November 3, 2015 election. As evidence, Mr. Jehn supplied copies of "executive team" meeting minutes for meetings held on June 3, 2015 and July 2, 2015 with DLR Group, Whatcom County's consultant, who was under contract to coordinate the County's public outreach effort which included developing the jail mailer. **(Addendum Exhibit 2)**

3.3 The June 3, 2015 minutes included the following statements:

- (Re: Sheriff Elfo) "Bellingham Herald offered the opportunity for OpEd pieces over the next few months. Sheriff Elfo shall prepare a document for next issue on Friday 6/12."

- (Re: Justin Stranzl, DLR employee) "Justin Stranzl detailed the "20-60-20 approach" where typical populations have approximately 20% of voters who say "yes," and 20% that say "no" regardless of the literature or information provided. Sixty % may be predisposed but are willing to listen to each stance. These are the people who need to be talked to."

- (Re: Tyler Schroeder, Project manager from Executive Louws' office) "Tyler Schroeder shall identify potential local communication companies to help with the outreach to be a sub-consultant to DLR Group."

- (Re: Sheriff Elfo) "Sheriff Elfo is the lead decision-maker from the County team for the campaign. He will identify the key players that shall create the PAC."

- (Re: Justin Stranzl) "Items that may be used to get the message out include direct mailer or trifold (similar to mailer for Skagit County), direct meetings with local organizations such as Rotary and Chamber of Commerce. DLR Group shall provide information and arrange a scientific survey of topics and messages to be called to likely voters with a varied demographic. Calls shall be made by survey callers (not automated messages)."

3.4 The July 2, 2015 minutes included the following statements:

- "Sheriff and County Executive have been attending community meetings as they come up to share the information. Community organizations shall be updated for all months of the calendar as a resource to anyone that intends to attend meetings."

- "Physical mailers will be provided to voters in two mailers. Mailers will be similar in appearance. Mailers will use information from survey as to the topics most relevant to the voters. Layout from Skagit County mailer is acceptable format."

- "Initial message for the mailer may be 'Safe Home. Safe Community. Vote Yes for the Jail.'"

- "Whatcom County executive team will continue collaboration with Bellingham Herald."

- "Survey questions shall be revised to respond to Whatcom County issues. Questions shall have a maximum of 4-5 options to choose between. Information that is requested in particular:

    - Are you a resident of Bellingham or not?

    - Prioritize the issues of programs & services (essential treatment, mental health, chemical health, diversion), Safety for staff and inmates, space/capacity, and modern/efficient design.

    - Are you supportive of the measure if Bellingham doesn't fully participate in the jail?

    - Discuss property tax vs. sales tax.

  Survey will take 3-6 weeks to complete and provide final report. Design and message of mailer will occur immediately following. Questions shall be confirmed by July 10 to start survey on July 14."

3.5 Mr. Jehn also noted that attached to the minutes of the July 2, 2015 meeting was a calendar running from June to November 2015, identifying all meetings of Rotary, Kiwanis, Chambers of Commerce, and Granges. He noted that in the final two weeks of

October, the calendar contained the statement, "Campaigning is Complete. No Additional Events." Mr. Jehn noted that there might be minutes for Executive Team meetings that were scheduled for July 20, August 3, August 17, August 31, September 14, and September 28, 2015.

3.6 On December 3, 2015, PDC staff requested copies of all meeting notes between DLR Group and Whatcom County from June through November 2015, and information about the survey work described in the June 3 and July 2, 2015 meeting minutes.

Whatcom County Response to Additional Allegations (Addendum Exhibit 4)

3.7 On December 17, 2015, Whatcom County responded to the additional allegations. The response included all existing meeting notes between DLR Group and Whatcom County, and correspondence from DLR identifying which phone calls or meetings generated no notes, and which proposed meetings were cancelled.

3.8 The correspondence showed that the activities proposed by DLR during its June 3 and July 2, 2015 meetings, that appear to be prohibited activities, were rejected by County staff, and did not occur.

Meeting Notes

3.9 Two in-person group meetings from DLR's proposed calendar were actually held. Those meetings were held June 3 and July 2, 2015. Other dates for web-based or phone contact between DLR and County staff were proposed for July 20, August 3, 17, and 31, and September 14 and 28, 2015. The results of these six check-in meetings were as follows:

- July 20 call was a two-person call between Erica Loynd of DLR and Tyler Schroeder of Whatcom County. The meeting confirmed that the County would not proceed with the survey, and that action item was closed.
- August 3 call was cancelled.
- August 17 call between Erica Loynd of DLR and Tyler Schroeder of Whatcom County. This was a two-person call confirming the schedule of the outreach efforts.
- August 31 call was cancelled.
- September 14 and 28 calls were between Ms. Loynd and Mr. Schroeder. Ms. Loynd reviewed Mr. Schroeder's comments on the proposed mailer. No notes were generated from these two calls.

3.10 DLR Group's proposal to conduct a survey to help develop the mailer was rejected by Whatcom County officials. Tyler Schroeder, Whatcom County Special Projects Manager, was the staff member who worked most closely with DLR Group in developing the jail mailer. Dan Gibson, Chief Civil Deputy Prosecuting Attorney, attended the June 3, 2015 meeting with DLR Group and advised staff on the prohibition against using public facilities to promote a ballot proposition.

3.11 To determine whether Whatcom County officials engaged in a campaign effort promoting Proposition 2015-1, PDC staff asked the County to provide a complete list of speaking engagements, including the group spoken to, the speaker or speakers and support staff attending, the date of the speaking engagement, and who initiated the contact, along with all emails sent and received between Whatcom County and community groups about proposed speaking engagements.

3.12 The County provided relevant emails for Sheriff Elfo and Jack Louws, and a narrative response from Executive Louws, in Attachments 6 and 7 to its December 17, 2015 response, identified as **Addendum Exhibit 4**. Sheriff Elfo provided a separate narrative response that is identified later in the report as **Addendum Exhibit 12**.

DLR Proposals Rejected by Whatcom County

3.13 The June 3, and July 2, 2015 notes of meetings between DLR Group and the Whatcom County Executive Team indicated that DLR made several proposals to aggressively promote Proposition 2015-1. However, Whatcom County rejected all of the following proposals made by DLR.

- Whatcom County rejected the DLR proposal to send out two mailers. Whatcom County created one mailer, in accordance with their understanding of the PDC guidelines.

- Whatcom County rejected the DLR proposal to conduct a survey that would have provided information about voters' preferences concerning the jail issue.

- Whatcom County rejected the DLR proposal for DLR-coordinated visits to community meetings. The few meetings that County officials attended were not coordinated by DLR, but were previously planned by the official or were done at the request of the group.

- Whatcom County rejected the DLR proposal that the mailer have a promotional message or include the language, "Safe Home. Safe Community. Vote Yes for the jail."

- Whatcom County rejected DLR's calendar characterization of the County's public outreach as "campaigning." County employees did not refer to their efforts to create and distribute the jail mailer as "campaigning."

3.14 Whatcom County produced and distributed one mailer concerning the jail issue. County officials worked with DLR Group, who contacted PDC staff on behalf of the County, reviewed the PDC guidelines concerning sending out fact sheets, and reviewed the mailer with the Prosecuting Attorney's office before its distribution. In email correspondence dated October 5, 2015, Tyler Schroeder (Executive's Office) responded to Royce Buckingham and Daniel Gibson (Prosecuting Attorney's Office) by acknowledging that the final mailer was sent to the PDC for review, and PDC staff indicated that staff no longer provides review services due to reduced staffing levels. Mr. Schroeder told the Prosecuting Attorney's Office that the PDC provides a manual with guidance based on

past reviews, and that his conclusion was that the mailer seemed consistent with the PDC's general guidelines that it be "fair and objective."

3.15 On September 2, 2015, Justin Stranzl of DLR Group contacted the PDC for help, and stated that he understood PDC's advice to be that the mailer should be sent to all registered voters and not to a subgroup of voters. However, on October 14, 2015, DLR Group gave the County three options for sending the mailer: (1) one to each registered voter who had voted in three of the past four major elections; (2) one per household with a registered voter who had voted at least one time in a past election; or (3) one per household with a registered voter without considering the number of times the registered voter had voted. **(Addendum Exhibit 5)**

3.16 Executive Louws made the decision to send one mailer per household with a registered voter without considering the number of times the registered voter had voted. The County sent 62,172 mailers in two batches. The cost of the mailing for printing and postage was $27,670.76. **(Addendum Exhibit 6)** In addition, the cost for research and production by DLR Group totaled $18,055.00, as follows: August - $12,542.50; September - $3,807.50; and October - $1,705.00. **(Addendum Exhibit 7)**

3.17 On October 16, 2015, Executive Louws sent a memo to the Whatcom County Council, informing them that his office had just sent a jail proposition mailer to each household with a registered voter. His memo explained the timeline for the new jail proposal and the process used for developing the jail mailer **Addendum Exhibit 8)**.

3.18 On October 19, 2015, Executive Louws received an email from Whatcom County resident Abe Jacobson expressing concern about the County's jail mailer. Mr. Jacobson expressed concern that the mailer was sent within a day of ballots being sent out by the Auditor's office. He described the mailer as *"a glossy promotional brochure with glossy photographs of two members of the Administration who are currently running for office."* On October 19, 2015, Executive Louws responded to Mr. Jacobson's concerns **(Addendum Exhibit 9)**.

3.19 On October 21, 2015, Executive Louws also responded to the Whatcom County Council to address concerns raised by Council Member Satpal Sidhu about the jail mailer **(Addendum Exhibit 10)**.

3.20 On October 27, 2015, Executive Louws sent a memo to the Whatcom County Council summarizing the planning for a new jail, and defending the jail mailer recently sent to each household with a registered voter **(Addendum Exhibit 11)**.

Jack Louws, Whatcom County Executive, Response to Additional Allegations

3.21 As part of the County's December 17, 2015 response, Executive Louws provided a narrative response. **(Addendum Exhibit 4, Page 28)** Following is a summary of Executive Louws' response.

3.22 As county executive, Mr. Louws spoke to community groups six times between June 1, 2015 and November 3, 2015 that included discussions about the jail.

- On June 3, 2015, Kelli Linville, Mayor of Bellingham, and Jack Louws, held a "State of the City and County" event hosted by the Bellingham Chamber of Commerce. The event was organized by the Chamber in the fall of 2014. Executive Louws spoke on general county issues including the jail proposal.

- On July 2, 2015, Executive Louws spoke at the Semiahmoo Men's Breakfast Club. The meeting was organized by the Club. He spoke about many general county issues, including the jail proposal.

- On August 5, 2015, Executive Louws spoke at the Lynden Noon Kiwanis. The meeting was organized by the Club. He spoke on general county issues including the jail proposal.

- On August 27, 2015, Executive Louws spoke at a Democratic Central Committee meeting organized by the Democrats. Even though he was asked by the Democrats to provide a pro statement for the jail, he informed the Democrats that in his official capacity he could only articulate the facts, and read a prepared statement.

- On September 9, 2015, Executive Louws spoke to the Lynden Morning Kiwanis Club. The Club organized the meeting, and he spoke on general county issues, including the jail proposal.

- On September 19, 2015, Executive Louws spoke at the Whatcom County Republican Central Committee meeting. The meeting was organized by the Republicans, and Executive Louws followed the same script he used when he spoke to the Democrats.

3.23 Executive Louws stated that as Mayor of Lynden and now as Executive, he has traditionally spoken before the Kiwanis groups and the Semiahmoo Men's Club in the past. He said the engagements are organized by the groups, and his pattern is to jot down a few notes and speak to the members for a few minutes, and then answer questions. He stated that starting in September 2015 he was invited, and attended, several community forums hosted by community groups, as a candidate for election.

Bill Elfo, Whatcom County Sheriff, Response to Additional Allegations (Addendum Exhibits 12-16)

3.24 Sheriff Elfo stated that he attended the June 3, 2015 meeting, which had a purpose identified in the Meeting Notes as "Public Outreach Kick Off," with the County's Executive Team and representatives of DLR Group, the County's consultant for the Jail project. Sheriff Elfo said he recalled a presentation by Justin Stranzl of DLR, and cautionary statements by Dan Gibson, Chief Deputy Prosecuting Attorney for Whatcom County, concerning the difference between campaign activity to support ballot initiatives, and providing the public with neutral information. He said he recalled Executive Louws making a statement about the need to adhere to Washington State Public Disclosure laws and asking the Prosecutor's office to provide that assistance.

3.25 Sheriff Elfo said he told DLR Group at the June 3, 2015 meeting that he had provided an extensive number of editorials over the years to local media on the need to replace the jail, and that he had provided a detailed memorandum to the County Council dated April 9, 2015, and a memorandum to Executive Louws dated April 22, 2015, that responded to questions from the Council on the need to replace the jail. He said the only quote attributed to him in the jail mailer was a quote taken from a guest editorial published in the Bellingham Herald on June 14, 2015, that he wrote at the request of the paper's editor and publisher, a request made during a meeting he and Executive Louws had with the Bellingham Herald on May 11, 2015.

3.26 Sheriff Elfo said Deputy Prosecutor Dan Gibson cautioned County employees that County resources should not be used to initiate communications with any Political Committee (PAC) on an issue on the ballot. Sheriff Elfo said Deputy Prosecutor Gibson told them that County officials could respond to requests for information with factual information.

3.27 Sheriff Elfo said he did not identify key players who would create a PAC, as implied in the June 3, 2015 minutes, or organize a PAC to support Proposition 2015-1, as referenced in the June 3, 2015 minutes.

3.28 Sheriff Elfo said he concurred with the content of the jail mailer with the understanding that it would be reviewed by legal counsel and the Public Disclosure Commission.

3.29 Sheriff Elfo said that as Sheriff, he responded fairly frequently to questions from PAC members regarding jail conditions, and provided factual information as requested. Sheriff Elfo said he attended some of the PAC's meetings as a private citizen. He confirmed that no PAC meetings were held at the Sheriff's office or in any other public buildings. He said there was no coordination with the PAC on the design of the flyer mailed by the County. He said that although he was unopposed in his 2015 campaign for Sheriff, he did attend candidate forums and spoke favorably about the jail proposition. He said no County resources were used to facilitate those activities.

3.30 Sheriff Elfo said he told DLR Group that he had spoken with interested community groups in the past, and that he would continue to accept invitations as Sheriff, but said he declined any assistance from DLR concerning these efforts.

3.31 Sheriff Elfo said he was on vacation and did not attend the July 2, 2015 meeting with DLR Group. He said he did not utilize in any way the "calendar of events" referenced by DLR.

Community Meetings Attended as Sheriff (June 1 – November 3, 2015) (Addendum Exhibits 12-16)

3.32 June 2, 2015 – Spoke to the Whatcom Women Republicans at their request to provide an update on the progress of presenting a plan for a replacement jail, and on other criminal justice topics, including behavioral health.

3.33 July 29, 2015 – Spoke to Semiahmoo Resort Association at their request to talk on Neighborhood Security. In a joint presentation with the Blaine Police Department, spoke

on untreated mental illness and the impact on the criminal justice system and the plan that would be presented to voters to replace the jail and provide for improved mental health evaluation, treatment and housing.

3.34 August 27, 2015 – Attended a meeting of the Whatcom County Democrats who had invited Executive Louws to present on the proposal to replace the jail. Sheriff Elfo attended, but did not make a presentation.

3.35 September 2, 2015 – Spoke to the Willow's Retirement Home residents at their request about the proposal for a new jail. The requester asked for "an unbiased, middle of the road description on both sides of the controversy." Sheriff Elfo also spoke about needed improvements in the County's behavioral health system, and provided information about the County's law enforcement bureau and operations, and emergency management operations. He worked off of a previously developed PowerPoint presentation.

3.36 September 15, 2015 – Spoke to the Bellingham Grange at their request on the County's plan to replace the jail and the issue of untreated mental illness and criminal justice impacts.

3.37 September 17, 2015 – Spoke to the Birch Bay Chamber of Commerce at their request to provide information on the jail ballot measure. Sheriff Elfo made a presentation on the proposal to replace the jail as well as the impacts of untreated mental illness on the criminal justice system.

3.38 September 25, 2015 – Sheriff Elfo was invited to what he said he understood to be a meeting of members of the construction trades to discuss the proposal for a new jail. He said when he arrived, there were several candidates for public office in attendance. He said as Sheriff, he primarily answered questions about the jail site selection process and the findings of the Jail Planning Task Force as they related to design and location.

Meetings Frequently Attended Where Sheriff Elfo was Asked to Provide an "Elected Official" Update (Addendum Exhibits 12-16)

3.39 Puget Sound Democrats – Sheriff Elfo frequently attends a monthly luncheon for this group. While all monthly luncheons are listed on his calendar, he does not attend all meetings. During at least two of the meetings, he was asked to provide an update on the jail planning process and answer questions.

3.40 Northwest Business Club – Sheriff Elfo is a member of this organization and frequently attends monthly luncheons. While all scheduled meetings are listed on his calendar, he does not attend all meetings. During at least two of the meetings, he was asked to provide an update on the jail planning process and answer questions.

Meetings Attended as a Private Citizen Where Sheriff Elfo Advocated for Proposition 2015-1 (Addendum Exhibit 12-16)

3.41 On September 19, 2015, Sheriff Elfo was asked by the Chair of the Whatcom County Republican Central Committee to make a presentation on Proposition 2015-1. He was originally invited to attend as Sheriff, but after being asked to take a position on the ballot

issue, he ultimately spoke in favor of the ballot measure. Sheriff Elfo said his presentation did not involve the use of County resources and was presented as a citizen.

3.42 Sheriff Elfo was invited by various organizations and groups to attend political forums as an unopposed candidate for Sheriff at which he publicly supported Proposition 2015-1. He said he did not solicit any of the invitations, which were from: Birch-Bay Chamber of Commerce sponsored candidate forum; Mount Baker Chamber of Commerce sponsored candidate forum; Point Roberts area residents sponsored candidate forum; and Southeast County area residents' sponsored candidate forum.

3.43 Sheriff Elfo said he was invited to speak in favor of Proposition 2015-1 at a meeting of the Northwest Business club. He said no County resources were used to effectuate this advocacy.

Marvin Wolff and Ray Baribeau Activities Re: Proposition 2015-1

3.44 PDC staff asked Sheriff Elfo to explain the activities of Marvin Wolff and Ray Baribeau, two people who volunteer for the Sheriff's Office, and whether these two individuals may have been authorized to use Whatcom County facilities to promote Proposition 2015-1.

Bill Elfo Response Concerning Marvin Wolff

3.45 Sheriff Elfo stated that Marvin Wolff is a resident of Whatcom County who volunteers at the Sheriff's Office. He previously served on the non-profit/non-political action committee "Public Safety Now" which was active from 2012 to 2013. Sheriff Elfo said that because of the limited staffing resources of the Sheriff's Office, Mr. Wolff has for the past 25 plus years provided a number of valuable services to the Sheriff's Office. According to Sheriff Elfo, this included performing analysis, tendering recommendations, preparing written communications, reviewing draft communications, preparing bulletins, coordinating homeland security planning, and assisting with emergency management planning and preparedness. He said Mr. Wolff also serves on the Sheriffs' Advisory Committee which is a group of citizens that updates the Sheriff on community concerns, provides the Sheriff with advice, and provides community input on the operation of the Sheriff's Office. He said Mr. Wolff also represented him at Department of Homeland Security telephonic and live meetings in Washington D.C. regarding local responses to national security issues.

3.46 Sheriff Elfo said Mr. Wolff is no longer physically able to come to the Sheriff's Office on a regular basis, and has rarely volunteered over the past year. He said Mr. Wolff maintains a county email address and communicates with the Sheriff through that medium from his home. He said when Mr. Wolff was able to come into the office he was provided access to a desk, telephone and computer. This equipment was shared by other employees and volunteers. Sheriff Elfo said he has no knowledge of Mr. Wolff using County resources to promote Proposition 2015-1, and does not believe he would do so. A review of Mr. Wolff's outlook files did not show evidence of anyone using or authorizing the use of County facilities to promote Proposition 2015-1.

Bill Elfo Response Concerning Ray Baribeau

3.47 Sheriff Elfo stated that Ray Baribeau is a resident of Whatcom County who was appointed by former County Executive Pete Kremen and confirmed by the Whatcom County Council to serve on the Whatcom County Jail Planning Task Force (2011-2013).

3.48 Sheriff Elfo stated that Mr. Baribeau previously served on the non-profit/non-political action committee "Public Safety Now" which was active from 2012 to 2013. Mr. Baribeau also frequently visited the jail as part of the private non-profit organization "Jail Ministries" which provides chaplains to attend to the spiritual needs of inmates and assists them with re-entry into the community.

3.49 Sheriff Elfo stated that Mr. Baribeau has served as a voluntary chaplain's assistant for the Sheriff's Office since March of 2015, after leaving the Jail Ministries organization. He said Mr. Baribeau's responsibilities involve assisting members of the Sheriff's Office in times of need and making referrals for members of the Sheriff's Office to the Chaplain. He said since about 2005 Mr. Baribeau has served on the Sheriffs' Advisory Committee which is a group of citizens that updates the Sheriff on community concerns, provides the Sheriff with advice, and provides community input on the operation of the Sheriff's Office. He said Mr. Baribeau also assists in coordinating requests for tours of the jail facilities and alternatives to jail programs.

3.50 Sheriff Elfo said Mr. Baribeau is provided a Sheriff's Office email address for any needed official communications, but is not provided a county computer or office space. He said Mr. Baribeau does not have access to a county computer, but could send and receive email through the County's webmail system.

3.51 Sheriff Elfo said he has no knowledge of Mr. Baribeau using County resources to promote Proposition 2015-1, and stated that Mr. Baribeau is familiar with the prohibitions against using public facilities to promote a campaign.

Joy Gilfilen Supplement to Complaint (Addendum Exhibit 3 - Part 1, Pages 6-32) (The information in this section is most closely associated with "Allegation G - Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273.")

3.52 On April 17, 2016, Complainant Joy Gilfilen provided a 196 page supplement to her November 30, 2015 complaint. Part 1 of the complaint supplement, pages 6-32, is titled "Executive Branch Authority Controls, Evidence of a Tax Scam in Progress Operating Under Color of Law." In Part 1 of the supplement, Ms. Gilfilen describes what she believes to be evidence that the jail mailer sent out by Whatcom County officials concerning Proposition 2015-1 was not a "normal and regular" publication as contemplated under RCW 42.17A.555 and WAC 390-05-273.

3.53 In Part 1, Ms. Gilfilen describes the jail mailer as *"a flashy marketing tool that epitomizes the public sales pitch: a pitch 'sealed' by the authority of the three top officials."* She says the mailer *"was intended to walk the line of being legal"* because the Prosecutor said his attorneys spent days planning the mailer.

3.54 Ms. Gilfilen stated that the jail planning process was flawed because it did not include a valid needs assessment or fiscal analysis to justify the taxpayers' investment in the capital project and operations. She claims that the jail mailer was intended to persuade voters to pass a jail tax without fully disclosing that the tax was a forever tax that would fund ongoing jail expansion forever.

3.55 Ms. Gilfilen claims the jail mailer cost much more than the reported $28,452 for printing and mailing expenses. She cites a response from Executive Louws to questions from a County Council member in which Executive Louws states that associated with the public outreach component of the DLR contract, there was $16,350 paid for research, design, and production of the mailer in August and September 2015, and minimal additional work in October devoted to the final coordination and review of the mailer. She claims the jail mailer was unfair and biased advertising that was intended to persuade voters to pass a jail tax.

Joy Gilfilen Supplement to Complaint (Addendum Exhibit 3 - Part 2, Pages 33-123) (The information in this section is most closely associated with "Allegation E - The jail mailer, with its information about the ballot measure, was a coordinated campaign effort."

3.56 Part 2 of Ms. Gilfilen's complaint supplement, pages 33-123, is titled "Jail Industry Insider Tactics, Identifying the Sheriff's Hidden Insider Groups & Campaign Actions." In Part 2 of the supplement, Ms. Gilfilen details what she describes as the many ways Marvin Wolff, who previously served as a Merchant Marine, has been involved in jail issues over several years in appointed and volunteer positions. She alleges that these positions have placed Mr. Wolff in a position within Whatcom County government, where he is able to have input into Sheriff's Office policy matters and advocate for a new jail, including promoting Proposition 2015-1, without accountability to the citizens of Whatcom County.

3.57 Ms. Gilfilen noted that Mr. Wolff's volunteer positons and work in Whatcom County have included: (1) Appointed in 1996 by County Executive Pete Kremen to Criminal Justice Blue Ribbon Panel; (2) Appointed in 1999 by Governor Gary Locke to Washington State Jail Industries Board (JIB), and served as Chair from 2000-2007; (3) Serves as a volunteer for the Whatcom County Sheriff's Office; (4) Authored Pro Statement for Voters Pamphlet for 2004 Jail Sales Tax ballot proposition; (5) Wrote letter to the editor in 2015 supporting Proposition 2015-1; (6) Conducts trainings concerning homeland security issues under the umbrella of the Whatcom County Sheriff's Office Support Foundation, a non-profit organization of which Mr. Wolff served as a Board Member; (7) Member of Sheriff's Advisory Group; (8) Advises the Sheriff on tactics lists and strategic management, data analysis, technical writing and public relations; (9) Coordinates efforts with the Sheriff, Chief of Corrections (Wendy Jones), other deputies, and Ray Baribeau (Co-Chair, Prison Fellowship Whatcom County); and (10) Member of Public Safety Now advocacy group and Citizens for a Humane & Safe Jail Now, the political committee supporting Proposition 2015-1.

3.58 Ms. Gilfilen also described how Ray Baribeau, Co-Chair, Prison Fellowship Whatcom County, is involved in jail operations as a volunteer. She noted that Mr. Baribeau: (1) Was appointed to be a member of the Jail Planning Task Force in 2011; (2) Was a key member of Public Safety Now advocacy group in 2012; (3) Actively promoted the jail

plan in 2015; and (4) Served as Treasurer and Co-Chair of Citizens for a Humane & Safe Jail Now.

3.59 Even though Mr. Wolff has served many years in appointed and volunteer positions, and has openly advocated for a new jail, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now, and even though Mr. Baribeau has been involved in many volunteer efforts concerning jail issues, including supporting Proposition 2015-1 and the efforts of Citizens for a Humane & Safe Jail Now, no evidence was found that Mr. Wolff or Mr. Baribeau used Whatcom County facilities to engage in their volunteer support for Proposition 2015-1, or that Whatcom County officials authorized the use of county facilities by Mr. Wolff or Mr. Baribeau, directly or indirectly, for the purpose of promoting Proposition 2015-1.

Other Relevant Information

3.60 Tyler Ryan, a founding member of Citizens for a Humane & Safe Jail Now political committee, stated that the committee did not at any time coordinate with Whatcom County officials regarding the County's mailer concerning Proposition 2015-1. He also stated that at no time during any of the meetings he attended was there a discussion regarding a mailer being sent by Whatcom County. He said he did not become aware of the mailer, its content, its distribution date, or its intended recipients until he received it in the mail **(Addendum Exhibit 17)**.

3.61 Staff contacted 22 community organizations listed on the project calendars created by DLR as groups County officials should contact about the jail issue. Of the 14 groups who responded, 13 confirmed that no Whatcom County officials spoke to their group between June 1 and November 3, 2015. One group recalled either Executive Louws or Sheriff Elfo speaking sometime during the past year.

Justin Stranzl, DLR Group, 12/28/15 Interview (Addendum Exhibit 18)

3.62 PDC staff interviewed Justin Stranzl on December 28, 2015. Justin Stranzl was the DLR employee who contacted PDC staff member Chip Beatty on September 2, 2015 to ask PDC staff to review the County's proposed jail mailer. Mr. Stranzl said he was told the PDC no longer reviews proposed fact sheets, so instead, he proceeded to ask questions about distributing a fact sheet mailer.

3.63 Mr. Stranzl said Mr. Beatty confirmed that the County could only send out one mailer. Mr. Stranzl said his exact question to Mr. Beatty was, "We need to send this to all registered voters. This should not be broken down into subgroups. Is that correct?" He said Mr. Beatty then explained that the County could not sort by Republicans or Democrats or likely voters. Mr. Stranzl said he followed up by asking whether the County could restrict its mailing to likely voters, or whether they were required to send the mailer to all voters. He said Mr. Beatty told him they needed to send the mailer to all voters.

3.64 Mr. Stranzl said he then followed up with, "I assume we can't send it to specific groups, but we need to send to all registered voters. Is that correct?" Mr. Stranzl said Mr.

Beatty's answer was "Send to all." Mr. Stranzl said he understood Mr. Beatty's answer to mean the County should send the mailer to all registered voters.

3.65 Upon further questioning during the interview, Mr. Stranzl said his follow-up question to Mr. Beatty was, "Does it need to be sent to all voters, or can we send it based on the likelihood of voting, such as by whether they are regular voters, or if they are someone who has not voted in four years?" He said Mr. Beatty told him, "No, you need to send it to everybody."

3.66 When asked if he made it clear to Mr. Beatty that the only distribution by the County was going to be to Registered Voters, Mr. Stranzl said he was trying to communicate to Mr. Beatty that he was asking whether Whatcom County could send its mailer to a complete list of Registered Voters. He said he was not asking whether they needed to send the mailer to all households.

3.67 Mr. Stranzl said that from his conversation with Mr. Beatty, he understood that it was acceptable to send the mailer to a list of Registered Voters.

Tyler Schroeder, Executive's Office, 12/30/15 Interview (Addendum Exhibit 19)

3.68 PDC staff interviewed Tyler Schroeder on December 30, 2015. DLR Group, LLC was hired by Whatcom County to serve as the County's jail consultant and architect, which included public outreach work. Whatcom County officials gave DLR Group strict guidelines for providing public outreach services within PDC guidelines. Mr. Schroeder reviewed DLR's work, as did the Prosecutor's office, to ensure compliance with PDC rules. The County originally relied on DLR Group to stay within the PDC guidelines because of DLR's prior experience working with a number of other public agencies in preparing public outreach materials related to ballot propositions.

3.69 June 3 and July 2, 2015 DLR Meetings: Concerning the action item for writing Op-Ed pieces to the Bellingham Herald, Mr. Schroeder said the County has an on-going standard practice of writing opinion pieces for the Bellingham Herald on a variety of topics. He said the quote attributed to Bill Elfo in the mailer came from an Op-Ed Sheriff Elfo wrote for the paper. Mr. Schroeder said he reviewed statements on the public record, and selected the Bill Elfo quote from the Op-Ed piece in the Bellingham Herald for the mailer because it showed the facts of the overcrowded jail and the impacts of not moving forward with a new jail.

3.70 When asked about the reference to Justin Stranzl's description of a 20-60-20 approach in the June 3, 2015 minutes, in which DLR implied that the County should try to persuade the 60% who are willing to listen to vote for Proposition 2015-1, Mr. Schroeder stated that the County rejected most, if not all, of DLR's suggestions, except that they should send out one mailer. He said the County did not, in any way, focus on a 20-60-20 approach. Mr. Schroeder said that for the past year, the County has provided the facts to the public as best as they could, and within the legal framework of the PDC's rules. He said they engaged in an open dialogue with all of the public that wanted to have it, and provided one facts-based mailer.

3.71 Concerning DLR's plan to conduct a survey of likely voters and use the results to help shape the mailer, Mr. Schroeder stated he and Jack Louws decided that the County would not conduct a survey as recommended by DLR Group. He said this decision was made after reviewing the PDC's guidelines.

3.72 Mr. Schroeder said Whatcom County officials did not reach out to local communications groups to assist with the County's public outreach effort.

3.73 July 2, 2015 meeting notes: The minutes reflected that the initial message for the mailer may be "Safe Home, Safe Community. Vote Yes for the Jail." Mr. Schroeder said this was an initial dialogue for what would be put in the mailer. He said there was a discussion about including "Vote Yes" language in the mailer. The County decided to not include such language after discussing it with the Prosecutor's office. He said this idea was part of an initial brainstorming message that was refined a number of times to be fact-based, and not a message to persuade anyone how to vote. He said the final decision for what to include in the mailer was based on the PDC guidelines.

3.74 Distribution of mailer: Mr. Schroeder said DLR Group proposed two mailers, but a decision was made to send only one mailer after reviewing the PDC guidelines and contacting the PDC. He said the County had not previously sent out a County-wide mailer, and they believed they had two alternatives for creating a mailing list: (1) The assessor's office; or (2) The auditor's office. The County decided to use the registered voters list from the auditor's after contacting PDC staff.

3.75 Mr. Schroeder said DLR Group proposed to send the mailer to around 25,000 registered voters, which would have been to voters who had voted in three of the past four major elections. He said DLR assured County officials that this was consistent with guidance received from the PDC. He said the County compared the cost of sending the mailer to all registered voters (approximately 56,000 households) with the cost of sending the mailer to a smaller subgroup of registered voters, and decided to send the mailer to the larger group of registered voters. The County did however limit the mailing to one per household. Mr. Schroeder said the cost of the mailing (printing and postage) was approximately $28,000.

3.76 Content of the Mailer: Mr. Schroeder said he wanted to include text from Executive Louws, Prosecutor McEachran, and Sheriff Elfo, using statements they had made in the past about the jail issue, and pictures of the existing facility, including drawings of the proposed facility. Mr. Schroeder said he reviewed a Skagit County informational mailer from a different election that DLR had developed, and did not see anything in the PDC guidelines prohibiting the use of photos of individuals who were also candidates. He said he did not know using photos of Executive Louws and Sheriff Elfo might be prohibited. Mr. Schroeder said Mr. McEachran had previously sent a letter to the County Council about the jail issue, and he used a quote from that letter for the jail mailer. He said Mr. McEachran's statement was a fact-based discussion of treatment options for offenders. He said he employed the same logic for using Sheriff Elfo's picture and Executive Louws' picture.

3.77 Cost to build a new jail: Staff asked Mr. Schroeder why he did not include a discussion of the cost to build a new jail, the number of beds, etc., in the jail mailer. He said it must

be remembered that the County was asking for a sales tax increase, not a property tax increase. He said for a property tax increase, the County would have to know the cost of the project to get a levy rate that would be consistent with financing the project. He said because it was a sales tax increase, the County did not need to know a specific cost for the project because they would later issue bonds equal to the sales tax revenue being generated for the project. In addition, the sales tax revenue was for the construction and ongoing operation of the new facility, which is not a fixed amount. He said if the City of Bellingham agreed to participate, they knew the sales tax revenue would likely support a $97 million project with 521 beds. He said if Bellingham declined to participate and instead decided to keep their share of the increased sales tax revenue, they knew the revenue would only support a $75 million project with approximately 400 beds. Mr. Schroeder said the County did not want to list the size and cost of the project in the mailer because at the time of the mailing, the County was still negotiating with the City of Bellingham, and they did not know the size or cost of the project. He said the County understood that negotiations would continue after the election, and if the measure passed, they would build a facility based on the revenue generated from the participating cities. He said that is what the County described in its mailer. He said the County felt it was more important to inform voters about the amount of sales tax increase being requested for the project than to inform them about the cost of constructing a new jail facility.

3.78 Mr. Schroeder said that for one year before the election, the County worked with the six small cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas, and with the City of Bellingham about participating in interlocal agreements for the new jail. He said there was an August 14, 2015 deadline for signing interlocal agreements, and by that date, the six small cities had signed agreements, but Bellingham had not signed an agreement. On August 27, 2015, Executive Louws gave a talk to the Democratic Party in which he stated that Bellingham was not participating, and the project would be smaller, with about 400 beds. As of September 23, 2015, the latest draft mailer included a section that stated, "If Proposition 1 passes, the County and 6 of the 7 cities will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new $75 million jail facility will house up to 400 inmates plus space for behavioral health, medical and administrative areas. The City of Bellingham will receive a portion of these tax proceeds per state law and is authorized to use the funds as described in the ballot measure" **(Addendum Exhibit 20)**. This description was removed from the mailer that was sent out in mid-October.

3.79 Mr. Schroeder said that in September 2015, Executive Louws went back to the City of Bellingham to try and convince them to participate. Mr. Schroeder said that throughout September, and into October, there was not a true decision by the City of Bellingham on whether to participate. He said because the County wanted to be as truthful as possible, and because there was still no decision by Bellingham officials, they decided not to describe the size and cost of the new jail in the mailer.

3.80 Mr. Schroeder said the pictures in the mailer showing the conditions of the jail showed existing living conditions, and were not designed to elicit an emotional response. He said the heading in the mailer reading, "Experts developed a plan" referred to the Jail Planning Task Force that was appointed in 2011 to determine the size and needs of a new

jail. He said the County's proposal was consistent with the recommendation of the task force.

David McEachran, Prosecutor, 1/25/16 Interview (Addendum Exhibit 21)

3.81 PDC staff interviewed David McEachran on January 25, 2016. David McEachran is the Prosecuting Attorney for Whatcom County. He was first elected Prosecutor in 1974 and has been elected 11 times. He is the longest serving Prosecutor in the State of Washington. Prosecutor McEachran said the current jail impacts the work of the Prosecutor's office because it is overcrowded. He said Proposition 2015-1 was the fourth attempt to get a new jail. He said the current jail was built in 1984 by the State. He said as soon as it was built, the County realized it was too small, but the State told them this is what we have for you. He said Whatcom County has been working for decades to find a way to have a better jail facility.

3.82 Mr. McEachran said he received a call from the Executive's office, asking if they could put a quote from him in the informational mailer they were going to put out about the jail. He said the Executive's office sent him a quote, and he told them if he was going to make a statement that is certainly what he would say. He said he did not write the statement, but he approved it, and said it was a very accurate statement. Mr. McEachran said he provided a picture at their request, but the Executive's office used the picture from the County's website instead.

3.83 Mr. McEachran said he believed people wanted to know what the Executive, Sheriff, and Prosecutor thought about the proposal. He said the public has a right to know what will happen to the money that is generated, and what proposals are being made. Mr. McEachran said he told the Executive's office they could use a picture of him, and that the suggested quote sounded very realistic to him. He said he did not have anything to do with the design, distribution, or timing of the mailer.

3.84 Mr. McEachran acknowledged that anyone could have made the statement he made in the mailer, but said he was asked to make the statement, and thought it was appropriate for him, as an elected official, to do so. He said government officials have an obligation to make sure its citizens are advised, and then the people can decide whether to support the government's proposal. Mr. McEachran said his statement was not urging people to pass the measure, but just presented them with the facts about the proposal.

Jack Louws, Executive, 1/25/16 Interview (Addendum Exhibit 22)

3.85 PDC staff interviewed Jack Louws on January 25, 2016. Jack Louws is the Whatcom County Executive. He has served one four-year term, and was re-elected in November 2015. Before serving as Whatcom County Executive, he served as the Mayor of Lynden for eight years, and also served on the Lynden City Council. He is starting his 17th year in public office.

3.86 Executive Louws described the history of the Whatcom County jail system, and said the current jail building opened in 1984. He said the jail was constructed with State dollars, and soon after it was built, it became apparent that the jail was too small. He said in the mid-1990s, the sheriff's office was moved into the bottom of the existing jail. He said

the jail has been at over-capacity for many years, and the County has not invested a lot of money into maintaining the jail, resulting in a jail that is sub-standard, and has severe life safety issues.

3.87 Executive Louws said Tyler Schroeder served as Special Projects Manager in 2015, and in 2016 was appointed Deputy Executive. He said Mr. Schroeder was responsible for facilitating the development of the jail mailer. He said DLR put the initial layout and thoughts together, and Mr. Schroeder updated Executive Louws on what was going into the mailer. He said it included a picture and statement from Prosecutor McEachran, Sheriff Elfo, and Executive Louws. He said the mailer was primarily developed through the Executive's office with the advice of the County's paid consultants, DLR Group.

3.88 Executive Louws said DLR Group had a lot to do with the development of the Skagit County jail mailer in 2013, and Whatcom County decided to use the Skagit County mailer, somewhat, as a template for its mailer. He said they noted that the Skagit County mailer had pictures of the County Commissioners and the Prosecutor, and the Mayors of the cities, and based on that mailer, they decided to include factual statements along with statements from the Prosecutor, Sheriff, and Executive **(Addendum Exhibit 23)**. He said the County initially planned to send out two mailers, but while working with Deputy Prosecutors Dan Gibson and Royce Buckingham, and after reviewing PDC guidelines and contacting PDC staff, they decided to take a conservative approach and put out only one mailer.

3.89 Executive Louws said he did not think about whether it was appropriate to include statements from the three elected officials in the flyer. He said the appropriateness of including his picture in the jail mailer at a time when he was up for re-election did not enter his mind. He said there was no discussion about this issue with DLR Group, and he does not believe it assisted his campaign. He noted that it is normal and customary to include the picture of the speaker next to a statement in agency publications. He said he had no knowledge that there was a prohibition against including his picture in the mailing.

3.90 Executive Louws said the County identified the need for a new jail four years ago, and hired DLR Group. He said they went through a facilities study process and a land purchase process, and said he has been working with the mayors of the small cities and the mayor of Bellingham during the past four years. He said in September 2014, he started working diligently on jail facility use agreements with all of the mayors so a proposal could be brought to the voters in 2015. He said in early July 2015, the Whatcom County Council passed a resolution to put Proposition 2015-1 on the November 2015 ballot. He said the Executive's office then worked with DLR Group on the design of the jail mailer, which was completed and sent out in mid-October.

3.91 Starting in September 2014, Whatcom County was able to come to an agreement with the six small cities, but not with the City of Bellingham **(Addendum Exhibit 24)**. He said the Whatcom County Council wanted Bellingham to be part of the project, but passed the resolution to put the measure on the ballot even though Bellingham had not come to an agreement with the County.

3.92 Executive Louws said he worked with the prosecuting attorneys who were advising him on the mailer to make sure he was not exploiting the situation, and after reviewing the mailer, approved its production and mailing. He said a lot of questions were being asked about how much the County was spending on behavioral health expenses, and he contacted the health department to make sure he was factually correct in the statements included in his jail mailer statement.

3.93 Cost: Executive Louws was asked by staff why the size and cost of the proposed facility was not addressed in the mailer, explaining how much money the County expected to generate from the sales tax increase, and the two sizes and costs for a new facility, one with only the six small cities participating, and one with the six small cities and the City of Bellingham participating. Executive Louws said he did not know how to articulate it factually so that it would not put him in a position later of being unable to explain it correctly. He said this issue was discussed when the jail mailer was being developed. He said that explaining a sales tax increase is different from explaining a specific property tax increase to pay for a specific amount of bonds. He said some Council members wanted the size and cost of the jail reduced, and half of the sales tax increase was perpetual, meaning the increased stream of money could be used later to fund additional bonds, and he did not know how to articulate that kind of a situation. He said he did not believe he could accurately say how much money would be generated, how much would be used for construction, and how much would be used for the operation of the jail.

3.94 June 3 and July 2, 2015 DLR Meetings: Executive Louws said DLR came in with a very aggressive approach, and the County did not agree to carry out most of the suggested plans. He said he knew the mailer had to be factual, and after reviewing the PDC guidelines, they went from two mailers to one mailer. Executive Louws said he did not identify community groups to speak to about the ballot proposition. He said just before the mailing he was frustrated that the mailer had not gone out, and asked about the distribution list. He said he was told it was going to voters who had voted in three of the last four elections, and he told those working on the mailing that they could not send to that subgroup, and the restricted list was canceled. He said that is when the County decided to send the mailer to all households in Whatcom County with at least one registered voter.

3.95 Executive Louws said the language "Safe Home, Safe Community, Vote Yes on the Jail" was proposed by DLR Group, but was not used. He said the Executive's Office decided not to use that subjective statement because it was not appropriate based on the PDC guidelines. Executive Louws said DLR Group suggested that Whatcom County officials meet with community groups to talk about the ballot measure, but said he rejected that idea and only talked with groups he normally speaks with, and did not arrange to speak with other groups.

3.96 Concluding Comments by Executive Louws: Executive Louws said the role of both Prosecutor McEachran and Sheriff Elfo was to provide a picture and a statement for the mailer. Executive Louws said he was responsible for the final content of the jail mailer. He said he made those decisions by working with his staff, and by listening to the advice of the deputy prosecuting attorneys who advised him. He said he used the best information he had, and relied on DLR Group and the PDC guidelines. He said he did not believe anyone's motives were wrong, and said he made his decisions with good

intent and in the normal course of business. He said if mistakes were made, they were because of a miscommunication about what was allowed. He said he cannot believe that after 17 years in public service he is being questioned about an integrity issue. He said what he did was done in the normal course of business without any thought that it was wrong. He said a lot of things were proposed that they did not do, and ultimately, they sent out one mailer to the public describing in the best factual way they could, exactly what state law required them to say, and asking registered voters to make a decision about a proposed jail facility. He said he believes that what he did was normal and customary.

3.97 On October 27, 2015, Executive Louws sent a memo to the Whatcom County Council concerning the recently distributed jail mailer, referred to as "Whatcom County Community Report – Whatcom County Jail." The memo described the five-year process of planning for a replacement jail, and the steps taken to prepare the jail mailer. **(Addendum Exhibit 25)**

Bill Elfo, Sheriff, 1/25/16 Interview (Addendum Exhibit 26)

3.98 PDC staff interviewed Bill Elfo on January 25, 2016. Bill Elfo is the Sheriff of Whatcom County. He served as the interim Sheriff from January through November 2003. He was elected Sheriff in November 2003 and was re-elected in 2007, 2011, and 2015. In November 2015, Sheriff Elfo was unopposed.

3.99 The Sheriff's office is responsible for providing law enforcement services to the unincorporated areas of Whatcom County, and for some services, county-wide. The Sheriff operates the Whatcom County jail. The Sheriff is also the director of emergency management, and is in charge of search and rescue operations.

3.100 The County contracts for behavioral health services through the Whatcom County Health Department. Sheriff Elfo said that in 2003, when he became Sheriff, the jail was grossly overcrowded, and was deteriorating. He said there have been six or seven years of studies on the condition of the jail. He said shortly after he took office, he asked the National Institute of Corrections, an arm of the U.S. Justice Department, to conduct a complete review of the jail. He said they warned of the danger of "pancaking" in the event of a seismic event, and noted the County's exposure to liability due to the condition of the facility.

3.101 Sheriff Elfo said he began trying to persuade the County Council and the Executive to replace the existing jail shortly after he became Sheriff. He said the Executive at the time was unwilling to take the matter to the voters, but was willing to commit to building an interim work center that would last from five to seven years, and during that time, plan for a new replacement facility.

3.102 The Jail Mailer: According to Sheriff Elfo, on June 3, 2015, a meeting was held in the Executive's office with DLR Group to discuss a public outreach effort concerning Proposition 2015-1. He said Justin Stranzl of DLR Group, who was purported to be an expert in helping public agencies communicate about ballot measures, was at the meeting. He said Chief Civil Deputy Prosecuting Attorney Dan Gibson was also at the meeting, and made some cautionary statements about distinguishing between campaigns

that support ballot initiatives and providing neutral outreach to inform citizens. He said Executive Louws was also at that meeting, and he highlighted the need to adhere to requirements and laws, and directed the legal advisors from the Prosecutor's Office to work closely with his staff and the Executive's office during this process of providing public outreach for the ballot proposition. Sheriff Elfo said the meeting had an overriding theme of ensuring compliance with the laws relating to the use of public facilities during an election campaign.

3.103 Sheriff Elfo said that at that meeting, DLR Group asked him to provide information for inclusion in the flyer. Sheriff Elfo said he told DLR Group he would limit his comments to the areas for which he is responsible, operation of the jail and how the conditions in the jail affect operations.

3.104 Sheriff Elfo said he informed Justin Stranzl of DLR Group that he had already provided editorials to the Bellingham Herald and other local media since 2003 that describe the failing structure, life safety systems, and overcrowding, as well as a dire need to replace the jail. Sheriff Elfo said he told Mr. Stranzl he had provided a detailed memorandum to the Council on April 9, 2015 and testified to the same at a public hearing in April 2015 before the Whatcom County Council. He said he told Mr. Stranzl that he had provided a memorandum to Executive Louws on April 22, 2015 that responded to the Council about whether the jail needed to be replaced or remodeled. The April 9, 2015 memo contained most of the pictures depicting the conditions of the jail that were used in the jail mailer. Sheriff Elfo said he did not see a need to produce any new information since there was already so much information in the public domain. DLR Group agreed to do a web search to find the information already in the public domain.

3.105 Sheriff Elfo said the quote attributed to him in the jail mailer was taken from the editorial he sent to the Bellingham Herald in early June 2015, that had been requested by the Herald in May 2015. He said a lot of the statement under the heading "Citizens and Experts Develop Plan for the New Whatcom County Jail" also appears to have come from the same article he submitted to the Bellingham Herald in June 2015.

3.106 Sheriff Elfo said the photos used in the jail mailer were not staged. He said he asked his staff to be alert to the conditions in the jail, and to photograph scenes that show the actual conditions of the jail. He said the photos were not in preparation for the 2015 election, but had been taken earlier to document the conditions of the jail. He said he has been publishing these photographs for five or six years. He said the Executive's office has included pictures of the jail on the County's website for several years to inform the public about the condition of the jail and to address what the County is doing to address the problems with the jail.

3.107 Sheriff Elfo said he was not involved in the scope or design of the flyer. He said DLR Group asked for a photo, and he provided three photos. He said DLR Group did not use any of the photos he supplied, but used a picture they obtained from the internet. He said he assumed any pictures or quotes he provided to DLR Group would be approved by the PDC before they were used. Sheriff Elfo said he did not provide any information to DLR Group, but gave them permission to use the quotes that were attributed to him.

3.108 Sheriff Elfo said he did not believe his picture in the flyer assisted his election in 2015 since he ran unopposed. He said he did not need a photograph of him on a brochure asking citizens to raise taxes to ensure that he would prevail in the election. He said because the issue was controversial and divisive, it probably diminished his popularity for future elections.

3.109 Sheriff Elfo said he has appeared on a number of radio stations, including KGMI, for 12 years talking about the need for a new jail. He said he does not believe he spoke on the radio about the ballot measure after the measure was put on the ballot. Sheriff Elfo said if he was called by a radio station, he would only provide factual information.

3.110 Sheriff Elfo said he did not take steps to form a PAC to support the ballot measure. He said the people who support the PAC have been involved in jail issues for years. He identified Ray Baribeau, who has served for a number of years as a volunteer in the jail providing volunteer religious services. He said several individuals who are involved in working to get a new jail formed an educational group that is not a PAC called Public Safety Now. He said they researched jail issues and attended County Council meetings. He said those same people later formed a PAC. Sheriff Elfo said he attended some of the PAC's meetings as a private citizen. He said none of the meetings were held at the Sheriff's Office. He said he was not involved in finding a co-chair for the PAC. He said he attended five or six PAC meetings.

3.111 Sheriff Elfo said he has been in law enforcement for 42 years and has never had a negative finding against him. He asked that PDC staff give him a fair shake, and said he hopes the Commission will do what is right.

Normal and Regular Conduct – Past Mailings by Whatcom County (Addendum Exhibits 27-30)

3.112 Whatcom County officials provided four examples of past mailings to the public concerning policy issues or matters of public concern. The first example was an October 2012 mailing titled "Flooding in Whatcom County – What to do Before, During, and After a Flood" **(Addendum Exhibit 27)**. The document was a four-page, color, mailer, with each page measuring 21 inches high by 10 ½ inches wide. When folded, it measured 5 ½ inches high by 10 ½ inches wide. The mailer had several sections about flooding, and included color pictures and maps. It was mailed on October 18, 2012 to 7,425 landowners in unincorporated Whatcom County, including U.S. and Canadian addresses. The address list was compiled from data received from the Whatcom County Assessor's office.

3.113 The second example was a Spring 2015 edition of Ag News, a four-page, color glossy document, with each page measuring 11inches high by 8 ½ inches wide **(Addendum Exhibit 28)**. It included text, color pictures, and maps. It contained information on: the 2016 Comprehensive Plan; Protecting Prime Soils in Whatcom County; Farmer Spotlight; Farm Conservation Plan; and Ag Watershed Project. The Spring edition of Ag News was mailed on June 10, 2015 to 15,797 property owners in Whatcom County's Ag and Rural zones with addresses in the U.S. and Canada. The address list was compiled from data received from the Whatcom County Assessor's office.

3.114 The third example was a Summer 2015 newsletter of Birch Bay Watershed and Aquatic Resources Management (BBWARM), a four-page, color document, with each page measuring 11inches high by 8 ½ inches wide **(Addendum Exhibit 29)**. It included text, color pictures, and maps, and information concerning local water resources. The newsletter was mailed in September 2015 to 6,791 addresses including all BBWARM rate payers plus Blaine rural routes 2, 3, 4, 7, and 11. Owner names and addresses from the Whatcom County Assessor's database were used to build the rate payer address list. Duplicates between the rate payer list and rural routes were eliminated.

3.115 The fourth example was a 2015 newsletter titled, "Terrell Creek & Birch Bay State of the Watershed Report" a 12-page, color, newspaper-style newsletter, with each page measuring 17 ½ inches high by 11 ¼ inches wide **(Addendum Exhibit 30)**. It included information on the history of the watershed, health concerns, maps and places of interest, and information on water quality and community resources. The Whatcom Conservation District mailed an updated Terrell Creek State of the Watershed Report in 2015 as part of the Terrell Creek Landowner Stewardship Program, a joint BBWARM-Whatcom Conservation District outreach program. The report was mailed to 4,187 addresses in the Terrell Creek and Birch Bay watershed in June 2015. The mailing list was developed over several years of conducting outreach in the Terrell Creek watershed, and used the Whatcom County Assessor's database, U.S. Postal Service mail routes, and the BBWARM newsletter mailing list. The list was refined over time for a number of reasons including: items returned as undeliverable, and resident requests to be added to the mailing list.

3.116 The four publications demonstrate that Whatcom County Officials have regularly communicated with the public concerning matters of public interest, using large, color, multi-page documents, similar in size, color, and style to the jail mailer, which was a four-page, color, glossy, document, with each page measuring 17 inches high by 11 inches wide.

IV. Scope

4.1 PDC staff reviewed the following:

- Joy Gilfilen complaint filed November 30, 2015 (16th complaint).
- Joy Gilfilen supplement to complaint filed April 17, 2016.
- Additional material submitted by complainant Joy Gilfilen concerning the jail issue on January 24, 2016.
- Additional material submitted by complainant Richard Jehn (Information provided to PDC staff on December 2, 2015 from Tip Johnson's Public Records Request of Whatcom County; other material from Tip Johnson's Public Records Request of Whatcom County, and external drive, including emails and other documents concerning Whatcom County staff, submitted January 24, 2016).
- Whatcom County response to additional material submitted by complainant Richard Jehn, submitted by Royce Buckingham on December 17, 2015.

- Additional material submitted by Royce Buckingham, including Attachment 9 to his December 17, 2015 response, and other relevant documents.
- Additional material submitted by Sheriff Bill Elfo.

4.2 Staff interviewed the following individuals:

- Justin Stranzl, DLR Group employee (12/28/15)
- Tyler Schroeder, Whatcom County Executive's Office (12/30/15)
- David McEachran, Whatcom County Prosecutor (1/25/16)
- Jack Louws, Whatcom County Executive (1/25/16)
- Bill Elfo, Whatcom County Sheriff (1/25/16)

4.3 Copies of recent Whatcom County publications:

- Flooding in Whatcom County Newsletter
- Ag News - Spring 2015
- BBWARM Newsletter - Summer 2015
- Terrell Creek & Birch Bay Watershed Report

V. Laws and Rules

5.1 **RCW 42.17A.555** states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

5.2 **WAC 390-05-271(2)** states that RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

5.3 **WAC 390-05-273** defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

Respectfully submitted this 31st day of October, 2016.

Philip E. Stutzman
Sr. Compliance Officer

List of Exhibits

Addendum Exhibit 1	Joy Gilfilen Complaint (15 Pages)
Addendum Exhibit 2	Richard Jehn Additional Materials (17 Pages)
Addendum Exhibit 3	Joy Gilfilen Supplement to Complaint (196 Pages)
Addendum Exhibit 4	Whatcom County's Response to Richard Jehn's Additional Materials (72 Pages)
Addendum Exhibit 5	DLR Mailing Options (1 Page)
Addendum Exhibit 6	Cost of Mailer for Printing & Postage (5 Pages)
Addendum Exhibit 7	Cost of Mailer for Research & Production (1 Page)
Addendum Exhibit 8	Jack Louws Memo to WCC Re Jail Mailer 10-16-15 (1 Page)
Addendum Exhibit 9	Reaction to Mailer & Response 10-19-15 (3 Pages)
Addendum Exhibit 10	Additional Reaction to Mailer & Response 10-21-15 (2 Pages)
Addendum Exhibit 11	Jack Louws Memo to WCC Re Jail Mailer 10-27-15 (3 Pages)
Addendum Exhibit 12	Bill Elfo Response to Additional Allegations (9 Pages)
Addendum Exhibit 13	Bill Elfo Response – PowerPoint (36 Pages)
Addendum Exhibit 14	Bill Elfo Response – Emails (1 Page)
Addendum Exhibit 15	Bill Elfo Response – Emails (23 Pages)
Addendum Exhibit 16	Bill Elfo Response – Emails (24 Pages)
Addendum Exhibit 17	Tyler Ryan PAC Affidavit (2 Pages)
Addendum Exhibit 18	Justin Stranzl Interview Summary (2 Pages)
Addendum Exhibit 19	Tyler Schroeder Interview Summary (5 pages)
Addendum Exhibit 20	Proposed Language on Cost Not Used (4 Pages)
Addendum Exhibit 21	David McEachran Interview Summary (3 Pages)

Addendum Exhibit 22	Jack Louws Interview Summary (5 Pages)
Addendum Exhibit 23	2013 Skagit County Mailer (8 Pages)
Addendum Exhibit 24	Small Cities Letter to WCC 6-8-15 (3 Pages)
Addendum Exhibit 25	Jack Louws 10-27-15 Memo to Whatcom County Council
Addendum Exhibit 26	Bill Elfo Interview Summary (4 Pages)
Addendum Exhibit 27	Flooding in Whatcom County Newsletter – 2012 (4 Pages)
Addendum Exhibit 28	Ag News - Spring 2015 (4 Pages)
Addendum Exhibit 29	BBWARM Newsletter - Summer 2015 (2 Pages)
Addendum Exhibit 30	Terrell Creek & Birch Bay Watershed Report (12 Pages)

DATE: 11/30/2015

Complaint sent via Email, Regular Mail, and Registered Mail - Return Receipt Requested

TO: Public Disclosure Commission
711 Capital Way #206
PO Box 40908
Olympia, WA 98504-0908

TO: Washington Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

TO: Washington Secretary of State
Elections Division
520 Union Ave SE
PO Box 40229
Olympia, WA 98504-0229

TO: Washington State Auditor
Insurance Building
Capitol Campus
302 Sid Snyder Avenue SW
Olympia, Washington 98504-0021

TO: Whatcom County Prosecutor, David S. McEachran
311 Grand Avenue, Suite 201
Bellingham, WA 98225

FROM: Joy Gilfilen
1225 E. Sunset Dr., Ste 145, PMB 487
Bellingham, WA 98226

RESPONDENTS:
Whatcom County Executive Jack Louws
Whatcom County Sheriff Bill Elfo
Whatcom County Prosecutor David S. McEachran

ALLEGED PDC VIOLATIONS – RELATING TO WHATCOM COUNTY DIRECT MAILER *Whatcom County Community Report: Whatcom County Jail*

- RCW 42.17A – Election Law Violations and WAC 390-05-273 – Normal and Regular Conduct Violations

OTHER VIOLATIONS MAY HAVE BEEN ONGOING PRIOR TO AND CONCURRENT WITH THE ELECTIONEERING TO COMPEL VOTERS INTO PASSING A DECEPTIVE TAX:

- Whatcom County Charter and Whatcom County Code Violations
- Revised Code of Washington Violations
- Washington Administrative Code Violations
- American Bar Association Standards Violations regarding Housing of Inmates
- Washington State Constitution Violations
- United State Constitution and the Bill of Rights Violations

The complainant has reason to believe that serious violations of law may have occurred in Whatcom County during the 2015 Election Campaign season that deserve outside scrutiny.

Injustice under color of law

The system of governance in Whatcom County appears to have been corrupted to encourage voters to pass two more taxes to resolve a conflict created by and benefiting the administration. This created a self-destructive condition in which the drive to pass the tax compromised public safety to justify an expansion that would profit earmarked regulatory government departments and state and national jail and prison vendors; leaving the taxpayers compromised with excessive debt and expanding overhead.

1. **Civil Rights and Constitutional Rights were violated:** Prosecutorial and administrative decisions and directives purposefully increased jail populations long after both had noted the jail as overcrowded, inhumane and in violation of laws. The Executive Branch has refused to follow **Whatcom County Code 1.28.100 – Overcrowding** laws. They actively refused to propose a plan to reduce the jail population during this campaign, even though passage of this tax could not resolve the humane conditions until 2019. Other laws that have perhaps been violated include and are not limited to:

   UNITED STATES BILL OF RIGHTS:
   - Article the eighth... "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial…"
   - Article the tenth... "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

   UNITED STATES SUPREME COURT
   April 3, 2015 Finding that Washington State is to take immediate corrective action in the handling of the mentally ill in jails.

   AMERICAN BAR ASSOCIATION: CRIMINAL JUSTICE STANDARDS ON TREATMENT OF PRISONERS (Approved by ABA House of Delegates, Feb. 2010)
   Standard 23-1.1 General principles governing imprisonment

2. **Rights to Due Process and Transparency for the Citizens were violated:** There is no evidence of any approved Public Participation Process for the jail's planning. There is ample evidence that the process has been prolonged, diverted, constrained and actively gamed to specifically prevent consideration of alternative sites. Hundreds of citizen concerns were systematically excluded by administrative review: dismissing them as 'outside the scope' of planning to build a jail. Repeated requests for review of administrative policies and practices causing over-incarceration and over-criminalization were ignored. Critical information about alternatives was withheld from the policymakers and the public. No public hearings were held at critical junctures in the process.

3. **Fiduciary Responsibilities to the Policymakers and the citizens were violated:** Council members lacked timely and complete facts crucial to their decision-making. The Executive Branch produced inaccurate, incomplete and confused information in response to Council questions. The context for decision-making has been intentionally constrained, artificially controlled, and action requested under a false sense of urgency.

4. **Violation of Fiscal Accountability to the taxpayers:** Since 2004 the voters and taxpayers have provided two new taxes and paid tens of millions of dollars to support building a new jail in Whatcom County, and to provide necessary mental health services to reduce incarceration and improve recovery. The money has not been used as promised and has been misdirected and consumed by bureaucratic expansion. Today we have worse conditions that violate state and national laws, and violate the recent US Supreme Court ruling on housing people with mental illness.

5. **Selling False Solution:** The jail sales tax even if passed will not solve the crisis in the jail before 2019 so the crisis used to sell the tax is not solved by the passage. The Executive branch has continually misdirected the policymakers and the voters to a false solution by withholding necessary information that could be used to resolve the problems immediately, and by not allowing alternative economic solutions to be discussed for longer term solutions.

Bottomline, taxpayers felt they were being scammed in full daylight during an election using taxpayer's money and facilities. It seems like it is a version of "noble cause corruption" done under the leadership of elected officials, specifically Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor David S. McEachran working together or separately (with the cooperation of some of their staff) who can be identified during the investigation.

Noble cause corruption is defined by Wikipedia as:

> "Corruption caused by the adherence to a teleological ethical system, suggesting that persons "will utilize unethical, and sometimes illegal, means to obtain a desired result,"[1] a result which appears to benefit the greater good. Where traditional corruption is defined by personal gain,[2] noble cause corruptions form when someone is convinced of their righteousness, and will do anything within their powers to obtain or concertize the execution of righteous actions. Ultimately, noble cause corruption is police misconduct

"committed in the name of good ends"[3] or neglect of due process through “a moral commitment to make the world a safer place to live."[4]

In Whatcom County the administration of our government system has become imbalanced whereby the Executive Branch dominates and controls the information flow to the Legislative branch which compromises the decision making process.

It has been observed that this puts the people at risk to exclusion from the process, and at risk of being professionally scammed. In Whatcom County, this sales tax initiative was seen as a scam: It was selling the pretense that a big earmarked and forever tax would build a big, new jail and that this jail equals public safety. The facts do not substantiate this conclusion.

Rather than address the facts about over-incarceration to find the best solution for the taxpayers, the Executive Branch set about achieving their jail building goals in the following manner:

1) **Set Up: Create demand/crisis – Expand and control the “emergency conditions” in the jail.** The Executive branch has been continually operating the Whatcom County Jail in consistently overcrowded conditions for decades. Ironically, as arrest rates have recently dropped, the average length of stay has effectively doubled. The Executive Branch asked for and received tens of millions of extra dollars in two prior sales tax moves, while misdirecting the funds and not producing the results promised; then continued to perpetuate civil rights violations and liabilities by not maintaining the facilities which created more fear in the people; knowingly violating Washington State laws – ultimately creating an inhumane situation that established urgency.

2) **Escalate Fear: Pushing the jail initiative to the voters using high pressure sales tactics.** The Executive branch was in the power position to control the fear state by using emotional drama, fear-mongering, sensationalism and high pressure tactics to compel the voters: dismissing citizen concerns by administrative action, fast tracking the purchase of the land in 10 days, bypassing the process to approve the jail plan, spending millions in planning using flawed and incomplete assessments; fast tracking the initiative itself past the Council by ganging up on the Whatcom County Council using the small city mayors, refusing to negotiate with the City of Bellingham and threatening to exclude the City’s misdemeanants from the jail, using hard ball negotiating tactics, and even threatening the senior population with severe property taxes and dire consequences of liabilities caused by catastrophic loss of life. Then violated the voters trust by producing the mailer.

3) **Increase pain: Withheld services to compel compliance from non-profits and families and to compel a ‘yes’ vote on the sales tax initiative.** Withholding promised services and funding from those most vulnerable created extreme fear in the populace. When loved ones were being harmed, families and staff were effectively silenced. This happened by not providing adequate mental health services, crisis care, rehab, detox and other services as promised; repeatedly dismissing citizen concerns; reducing drug court, misrepresenting the amount of

services provided. Some non-profits were told they would be at risk for losing their funding if they opposed the jail. Then obviously violating the April 3, 2015 US Supreme Court Ruling regarding treatment of the mentally ill and not using the tens of millions of dollars received from the mental health tax as expected.

All of these allegations can be substantiated with documentation, and most is available through public records. There is a file compiled on this case that would be available in an investigation. Experience and documents show that these three officials have substantially breached Section 9.50 of the Whatcom County Code regarding their Oaths of Office, and should resign, be removed from office, or prosecuted as appropriate.

This combination of factors created extreme pressure on the electorate, and the political campaign affected the elections results in Whatcom County. In your investigation, please review the issues brought forward by the citizens of Whatcom County in the following cases:

- PDC #1122 – complaints by multiple citizen's about the mailer
- Civil Rights complaint filed by Junga Subedar, Edward Alexander and others
- PDC Case # 1125 filed by Mike Estes regarding Citizens for a Safe and Humane Jail Now
- PDC Case # 1217 filed by Alex Ramel and Sandra Robson regarding Clear Ballot Choices.

Misuse of Funds and Facilities that violate PDC Regulations RCW42.17A

Directly regarding the production and mailing of the Whatcom County Community Report: Whatcom County Jail mailer

The largest, most immediate and clear violations were caused by the recent and pre-meditated production, distribution and use of the Jail Sales Tax Mailer to directly influence the 2015 Whatcom County Election by Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor McEachran, among other Whatcom County staff and the DLR Group, a jail industry consultant. Two of these officials were candidates in this election.

Election interference with this mailer used taxpayer facilities, staff and funds:

Whatcom County mailed promotional material for a ballot measure in violation of RCW 2.17A.555 and WAC 390-05-273. Mailer: http://www.whatcomcounty.us/documentcenter/view/13253.

Legal Issues to consider include (and are not limited to):

- General applications of RCW 42.17A.555 says in part, "RCW 42.17A.555 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use

of the facilities of a public office or agency."

- RCW 42.17A.555 says in part "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency…."

- WAC 390-05-273 says, in part, "Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555 means...No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

Concerns and Analysis:

1. **The mailer appears to have been produced by staff in coordination with consultant DLR Group** advising the County on jail design and construction. Whatcom County Contract No. 20140913 stipulates that the consultant will develop a "coordinated message and...graphics to support the message". The message in this mailer appears to be supportive of the sales tax measure since it is missing critical information that would not support the sales tax and misinforms the voters. Therefore it is does not constitute a fair and objective fact sheet as required by law.

2. **Written to emotionally sell the sales tax issue to the voters**.
    a. Using taxpayer's funds and facilities, this is a direct sales and marketing piece developed and designed with the agreement of these three elected officials.
    b. The layout style was an oversized commercial sales piece used for marketing and promotion, a style to influence close rates.
    c. The mailer includes emotionally contrasting pictures of real inmates in overcrowded conditions, and then shows dramatically different imaginary new-jail conditions. This triggers emotional reactions.

3. **Deceptive Sales/Promotion Tactics:** Two of the officials quoted and given top billing in the mailing, were running campaigns for re-election. Their comments and photos occupied prime and substantial marketing space on the mailer. Their photographs, statements and official positions were used in the mailer to invoke the authority of their office to authenticate the mailing as an official mailing, and to promote their stature. The Sheriff was in uniform. It was then further validated by using the seal of the County, and mailed from the County address to voters which mailing coincided with the date ballots were received on or after Oct. 16, 2015. Even without a direct statement to compel voters to vote Yes, it is by the selection of the information presented, and by the omission of critical information, that the implied sales pitch

was delivered.

4. **Withheld Facts about 2004 and 2008 sales taxes avoids use of funds discussion**
   In the mailer, the authorities did not disclose that voters had already passed a 2004 Jail Sales Tax and a 2008 Mental Health Tax. These funds have not been used as the voters expected. By withholding these facts in the mailer, the voters are misled to conclude that the extreme conditions in the jail must be caused by a lack of funds…otherwise why would the officials be asking to pass a big tax? This withhold is deceptive and untruthful.

5. **The data given with the pie charts and facts is lacking adequate information.** It was skewed to look like, by law, the County has no choice but to house everyone. While this seems to remove blame from the administration for the overcrowding, this is a false conclusion. The administration is fully capable of relieving the overcrowding – they have the authority, capacity and funds to get it done. To the voter, not providing full facts is a form of obfuscation and deception = lying.

6. **Voter's Guide Information is deceptive by omission:** It is deceptive to exclude from the description of the tax the highly relevant fact that the taxpayers have already passed a new jail tax in 2004, and the Mental Health Tax in 2008 – both to resolve this exact problem. By stating that $1/10^{th}$ of the tax goes away in 30years is deceptive, for it does not explain that the remaining $1/10^{th}$ of 1% of taxes will be a forever tax is similarly deceptive.

   The fact that this forever tax is specifically earmarked to exclusive use by the Executive Branch, uncontrolled by the County Council is also deceptive, for it does not show that this earmarking is unusual or has implications on the future ability for the County to use this tax for emergencies. Technically you can figure it out, but by omission as written it is deceiving.

7. **Misrepresentation shifts 'Responsibility' away from those in Responsible Charge to Voters**:
   In Sheriff Elfo's section of the mailer, he infers that the current conditions are not his fault by shifting the blame away from today to being decades old; then underscores this by writing about "18 years" of reports. Voters are left to speculate that it must be the Council's fault, or it is because the voters are not paying enough. In effect, the message "shames and guilt's" the voters to pay up more money – when in fact the problem is mismanagement.

   a. The Sheriff is in direct responsible charge of maintenance, and that jail is less than 30 years old.
   b. The Sheriff is directly responsible for ignoring reports, not maintaining the facility, not managing the jail to code and as mandated by law.
   c. The Sheriff is responsible for Emergency Management.
   d. Combined with the actions of the Prosecutor and the County Executive, ultimately these elected officials are directly and indirectly responsible for the overcrowding, for allowing the "severe and unsustainable" conditions inside the jail to increase the liabilities to the County, to the taxpayers and the inmates.

Passage of the 2004 and 2008 taxes provided the County money to fix the problems. This money has been misappropriated. Millions have been saved to build the Sheriff's new facility, to build a new mental health facility…even as inmates are being treated in an inhumane manner. To the layman, this is manipulation = lying.

8. **False Reporting Misleads Voters into a False Sense of Security in Due Process**:
In the *Citizens and Experts Develop Plan* section, facts and sentences are convoluted and miss critical information that would change the meaning for the voters. The net effect misleads voters into concluding that citizens working with experts developed the plan, that there seems to be unanimous support for the jail plan from public meetings, that it is all authorized, on track, with the full support of the County Council and others. This glosses over facts.

   When diagramming the facts, it can be shown that these statements are opposite of the truth, and therefore misleading. For example:

   a. No one has yet to approve the actual jail plan, so there is no consensus on the size, location or the price tag for the jail.

   b. The Jail Task Force was created as a result of citizen complaints - to rein in and downsize the original facilities demand from an oversized 2400 bed proposal.

   c. Citizens tried to stop the excessive planning to build a big jail, tried to bring forward restorative justice and other economic alternatives. Most of the citizen concerns were not addressed and instead summarily dismissed as "outside the scope" in the FEIS document, and afterwards. Questions at Council Meetings asking about the due process, calling for review, asking for facts, even requesting more information on the past use of sales tax monies were ignored or obscured by this administration.

   d. Contrary to allegations by the County Executive, there truly was no Needs Assessment completed to justify the fundamental basis of the jail expansion. The alleged needs assessment was in fact an incomplete Jail Capacity Needs Document delivered after the fact - delivered after the entire proposed jail was designed (not before) and it was dismissed on Page FS-7 of the FEIS as being inadequate.

   e. There has not been one full public hearing on the final jail plan, no agreement on the final size, and no agreement on the jail tax proposal with the cities.

   f. The planning to build the jail was initiated by the administration as far back as 2003. The Jail Task Force was created by voter outrage. The Task Force was composed of an exclusive selected group that included a preponderance of Executive branch and sheriff's influences. This Task Force intentionally excluded the Restorative Community Coalition from being represented, the only non-profit that was actively speaking out for alternative options to building the jail. The Task Force took in limited public testimony. The Sheriff, while not officially on the Task Force, sat at the planning table and participated fully as if he was a

member of the Task Force and his bias and recommendations were imbedded in discussions.

g. When bringing forward the plan to buy the land, the Executive recommended that the Council not hold public hearings. The DLR Group told the Council that a public hearing was not necessary, and that the land could be purchased 10 days from the date the FEIS was delivered to the Whatcom County Council…coincidentally only 7 days away, since the FEIS had been delivered to the Council online on a Friday before a 3-day weekend. The date of the option expiration coincidentally coincided with the 10 day timeline that was given by the Executive Branch and DLR Group for purchasing the land.

h. The process of bringing this sales tax to the voters was "fast tracked" past the Council by the Executive Branch maneuvers, not because of consensus.

i. The fact was omitted that the Bellingham City Council and Mayor refused to sign the Interlocal Agreement. In the mailer, it was omitted that they refused to build the proposed jail and pass this tax without addressing prevention, early intervention and other alternatives to incarceration first. Since Bellingham is the single biggest consumer of jail services, this is a substantial omission of facts.

j. To the average citizen or layman, it is bearing false witness to pretend that the community is backing this, and that so many things are true when they are not true. To the average person this is deception or lying.

9. **Misdirection from the County Executive avoids addressing efficacy of Programs:**
The Executive takes credit for $11.5 Million dollars being spent on Behavioral Health Services. This is misleading to the voters. Just because money is spent on bureaucratic expansion and planning does not mean that that taxpayers got the results they were promised. The sales tax passed for mental health in 2008 has been collecting millions a year, yet the impact of that money is not getting to the field. Why it is not yielding the expected results should be investigated for elections violations and material misrepresentation.

The Executive's section compared the total money spent on behavioral health services to jail operations costs. This is a false comparison; it is misleading and illogical. Louws discussed spending but did not include the lack of return on investment of these programs and he excluded critical information needed for contextual perspective. For example, some of the programs listed are maxed or have been reduced in size, or are only partially related to the jail. Some are only recently created and are token programs that benefit 5 or 8 people. This is misleading to the voters, for spending does not equal results. It may equal bureaucracy.

The gross misdirection is when Louws says, 'these programs are designed to make it possible for people to stay out of jail, or re-enter society with the tools needed for success.' This is only partly true. Louws' statement avoided discussing the real demand. The demand for new, high return on investment alternative programs that could immediately divert 50 or 100 people out

of the incarceration funnel before they are arrested; programs that would immediately reduce overcrowding and make building a bigger jail obsolete. That is all missing.

Instead the voter is given the impression that the County is outperforming in this area. This is a half-truth. There was no discussion about the lack of preventive care, restorative justice programs, early education, job education and mentorship programs – all programs that were brought forward by citizens and dismissed as outside the scope. There was no discussion about known demand for intervention programs like expanding crisis care, detox, rehabilitation, trauma, and recovery programs that would interrupt the cycle of incarceration at inception, thereby reducing the demand for jail beds and sharply reduced costs.

This section of the mailer was especially deceptive and untrue to those who have family members affected by addiction and mental illness issues and who have not been able to access these services because they do not exist. They felt outraged to read this glossing over of truth. To the layman, this was like raising a false flag = lying with intent to deceive.

10. **Financial Comparison illustrated by Prosecuting Attorney is Questionable:**
How was the prosecutors section useful for the reader? It seems incongruent and unexplainable, except to somehow lend credibility to the Budgeted-for Alternatives comparison used by the Executive in the comments in the section above. By placing the jail operating costs beside the diversion costs is not comparing like-kind issues. It puts information out of context.

    It seems that McEachran's testimonial was there just to validate the contention that a bigger jail was needed to support new mental health and treatment programs. Why use a Prosecuting Attorney, who is not a mental health professional, to explain the lack of treatments available? Are they trying to prop up either Jack Louw's image or the Prosecutors stature as an official who endorses the sales tax? While an informed voter might question the logic, an uninformed voter would assume the Prosecutor must know best, so they just accept the endorsement by a high ranking official. Once seen, this is a form of subterfuge = lying.

11. **Mailer shows a pattern of misconduct.** This mailer illustrates how the Executive Branch has a practice of circumventing logical due process, using deception and intentionally not informing the public of critical information. According to USLegal.com, "Misconduct means dereliction of duty or unlawful or improper behavior. It also refers to an attorney's dishonesty or attempt to persuade a court or jury by using deceptive or reprehensible methods."

Related Issues:

1. **Conflict of Interest:** Might there be a conflict of interest with using the DLR group as a lobbying consultant on this tax? This company is in the business of building jails and is and will continue to profit from the results. Why has the DLR Group been continually contracted with, and have been paid for research, planning, permitting, designing, recommending and now promoting the tax to fund the jail? This seems to cross the line of conflict of interest and potential cronyism. Their work has been found to be faulty, and resulted in a plan that has still

not been approved by the Whatcom County Council.

2. **Targeted Mailing:** A key question is how many and who of the County's 129,345 registered voters were selected to receive this mailing? Estimating that this mailer may have cost $1 each…how much of taxpayer dollars was really spent on this mailing? And if not sent to all of them, then why did they use a targeted list? Many voters have reported not receiving one. Was it sent to swing precincts? How does this mailer meet electoral guidelines? Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent only to select voters instead of property addresses. It is not clear how selecting voting recipients constitutes a jurisdiction-wide distribution.

3. **Confusion to Gain Advantage:** The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting), a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members. Given that the attorneys were conversant on the issues, the question should be asked… Was this intentional? This is a substantial issue, for the Charter Review issue is a constitutional issue and changes the balance of power. It seems odd that the writers of this mailer could have confused the issues, for they are not the same issues.

4. **Distraction:** This confusion also distracted voters from paying attention to other Charter Amendment issues, like the amendments limiting the power and manner in which the Council can change the Charter, again changing the balance of power. Was there a side benefit to the Executive Branch in creating this confusion?

5. **Sidestepped Due Process:** During the lead-up to the campaign, during the campaign and leading up to the mailer, the logical due process of working with and engaging the Councils and the voters was not followed. It seems that the logical step of gaining approval of the jail plan first by the Whatcom County Council, the tribes and the other cities would have happened. In fact, this process was sidestepped completely.

6. **Ganging Up:** Executive Jack Louws did an end-run, and stated his intention to "fast track" the sales tax initiative to the ballot. He did this first by meeting with the small cities independently to get them to approve a funding plan (without an approval on the jail plan), and used this to compel the Whatcom County Council and the City of Bellingham to agree.

   This sideswiped the opposition, creating instant conflict, outrage and upheaval in the political world. It created distrust and a polarizing situation which emotionalized the conversations, costing people critical time and energy, distracting the people from logical thinking. It felt like the small city mayors were used to gang up on the County Council and the City of Bellingham, to compel these policymaking bodies to move by political pressure. This is contrary to good business practices.

   Is this illegal? It was an effective red herring. The illogical process created confusion and distraction as the Councils and the public spent months of this campaign period arguing over

the Interlocal Agreements. Councils were not holding public meetings and were distracted from addressing the emergency conditions inside the jail or the liability issues. As a consequence, real people have been harmed.

7. **Fast Tracking:** Executive Louws added to the pressure by publicly announcing he was "fast tracking" to get the sales tax initiative to the Primary Ballot, providing a pre-fabricated excuse to shortcut the processes. (He had roughly 16 months of pre-planning time with no public meetings preceding this maneuver.) Again, this forced the conversation away from solid planning. As a tactical maneuver, this compressed and shortened the public disclosure and education period for the voters to discover what was happening. Since public debates don't happen until the General Election period, getting the sales tax initiative on the primary would have bypassed public discussion, and it would have required a smaller number of voters to pass the tax.

   The effect of this is that a fraction of the conservative voters would have been needed to encumber large numbers of people to pay the jail tax forever. Only a fraction of the voters are needed to pass the tax in the primary, and they are known in political circles as the conservative voters, which would have set up a condition where the odds of passing the tax were reduced substantially. This tactic set up confusion and a political pressure cooker. Even as the measure failed to get on the primary and it failed to gain consensus, the lack of support or any of the concerns brought up during that compressed time period was not represented in the mailer.

8. **Contrarian Logic:** The Prosecutors section in the mailer was misleading for his comments are not necessary to the subject and seemed to overreach his office. His comments seem to instead be used to create credibility for the jail tax by using his official title to promote the need for a bigger jail on a general threat of public safety, and without factual substantiation.

   Notably, the issues that are within the expertise of the Prosecutor were not included in the mailer. Is that because the information he would need to share was contraindicated to passing the tax? Are they avoiding exposing the fact that the Prosecutor's office is at least partially responsible for the overcrowding in the facility, even though the overcrowding is contraindicated to public safety?

   > According to USLegal.com, Prosecutorial Discretion Law & Legal Definition says that,
   >
   > "Prosecutorial discretion refers to the fact that under American law, government prosecuting attorneys have nearly absolute powers. A prosecuting attorney has power on various matters including those relating to choosing whether or not to bring criminal charges, deciding the nature of charges, plea bargaining and sentence recommendation. This discretion of the prosecuting attorney is called prosecutorial discretion."

   The Prosecutor's demonstrated practices, combined with the unwillingness of this administration to review or release people from the jail even under overcrowded conditions

has partially contributed to the fact that the average length of stay (ALS) daily jail bed occupancy rate has dramatically increased from roughly 9.07 days in 1986 to as high as 22.91 days in 2006. Statistics are from page S2 in the Draft Environmental Impact Statement dated October 18, 2010. In 2012 the ALS was 22 days as per page S1 in the Final Environmental Impact Statement. Why would the Prosecutor condone and help increase the average jail bed stay rate when statistics show that more trauma and longer incarceration is contraindicated to public health?

Ironically, based on this Prosecutor's testimony before the County Council in May, 2015, his trends show a Whatcom County decrease of 25% on serious offense arrests, and 80% reduction in juvenile arrests in the past 5 years - indicating a clear downtrend in demand for jail bed space. Yet he still testified that this reduction in arrests meant that we needed a bigger jail.

Prosecutor McEachran testified that he increased the standards to make it harder for drug court participants to enter the Department of Justice awarded and well-functioning drug court program. As a result the program participation was reduced by 1/3. This is counter intuitive when the overcrowded, inhumane conditions exist.

Also in County Council chambers, Prosecutor McEachran described how he has created a Fast Track Program for quickly punishing and releasing known drug offenders who do not want to be rehabilitated. He apparently reduces their charges if they admit to their wrongdoing, pay their bail and fines, and they get a short stay. The inference was that this saved the taxpayers money from incarcerating them longer. This is also counter to logic. If these are the drug dealers, why release them early? His testimony can be checked in the public records not just before the Whatcom County Council, but when he restated this before the Incarceration Prevention and Reduction Task Force.

This Prosecutorial dichotomy of releasing a small number of known drug offenders faster, and keeping the larger number of addicted people away from treatment and in jail longer is counterproductive to public safety. Where is his credibility to argue for a larger jail? Are we over-criminalizing and over-incarcerating our citizens to expand the size of a jail?

9. **Public Tours of the Jail** – Is this constitutional, legal and an acceptable use of facilities and funds in a campaign? As the campaign progressed, the Whatcom County Sheriff announced in debates that the public could call a special number, so people could receive full tours of the jail.
    1. Is this a violation of inmate civil rights?
    2. Was this a fair and unbiased use of information or emotional manipulation?
    3. Did these tours come with a fair and unbiased fiscal analysis of alternatives?
    4. Was this an appropriate use of facilities and resources for electioneering?
    5. How much of staff time, money and resources were allocated?
    6. Employees and staff were videotaped giving testimonials about the jail and sales tax initiative, about the unclean and unsafe conditions and these were posted on You Tube at

the Whatcom Jail section. https://www.google.com/search?q=You+Tube.com&ie=utf-8&oe=utf-8#q=Whatcom%20Jail%20site%3Ayoutube.com; https://www.youtube.com/watch?v=NvMBOrs-WLc and https://www.youtube.com/watch?v=grA-8ourv9E

Breach of Integrity Violated Public Trust and the Oath of Office

This mailer complaint deserves to be seen in context of the whole campaign, the whole issue, and inside the context that these three elected officials have sworn an oath of office to protect and uphold the laws of our land, including the US Constitution, our Washington State Constitution and he Whatcom County Charter (our County's constitution).

> **Whatcom County Charter Section 9.50 Oath of Office and Bonds.**
>
> "An oath or affirmation to support the Constitutions of the United States and the State of Washington and the Charter and ordinances of Whatcom County and to perform faithfully, impartially, and honestly the duties of office, shall be made by each elected officer before entering upon the duties of office."

This mailer is a direct violation of public trust. It extends to abuse of authority and a violation of honor. Even under the auspices of providing public safety it is out of integrity to withhold critical information with the purpose to deceive the people to build a jail under false pretenses.

This piece violated not just the PDC rules, but it violated personal integrity. Citizens trust their elected officials who are in charge of the administration of justice to tell them the truth. To find that our officials are untrustworthy is a deep violation of our core beliefs, and it is challenging to accept.

Voters do not expect a sales pitch inside a civic report. We expect our Executive leadership, the law enforcement officers, the Prosecutor, our court systems to uphold the law and play be rules of fair play and honor. It is hard for voters to believe people in these positions will violate this trust, and the laws they are sworn (and being paid) to uphold. This is a line that should not be crossed when writing a factual report, for it sets up voters to be taken advantage of and victimized.

It was deeply disturbing for voters to receive this commercial sales pitch on the jail. To find out this was done by using their elected influence and our taxpayer money was shocking. It was with a sense of deep betrayal that voters stood up at a Whatcom County Council meeting to complain to the Council on October 27, 2015, that these trusted officials were telling untruths, confusing the voters, and 'selling a bill of goods'.

On that date, the County Executive and the Prosecutor came fully prepared to defend their actions during the public comments section of the County Council meeting. They used public comment time to explain how they spent days examining this mailer to ensure they were in compliance. They showed how they used multiple county attorneys to cross-examine their work. What this

demonstrated to the people is that this event was a pre-meditated violation of public integrity.

This destabilizes voter trust in government. It is disruptive to a safe society, for voters have realized that these officials violated the voters while using deliberate intent to walk the lines of legality, while using the predatory tactics of emotional manipulation inside the mailer to achieve their end results, calculating their risk of violating the PDC rules.

Therefore, voters feel that our "most trusted" public servants, three elected officials who swore to uphold our constitutional rights, violated the public's trust. In effect, the feeling is that these officials deliberately preyed upon public innocence. Due to this flagrant flouting of the law, the voters deserve to have this entire situation investigated to the fullest extent of the law.

CITIZENS DESERVE THE RIGHT TO A FULL INVESTIGATION:

1. IMMEDIATELY AND FOREMOST - to correct the inhumane conditions inside the jail
2. Reveal truthful information to the voters and to the policymakers to ensure good policy
3. Expose any corrupted systems or failures in our democratic process to stop further loss
4. Expose any misappropriation of tax dollars, breaches of contracts, or conflicts of interest
5. Expose any election fraud, electioneering violations, or criminal violations
6. Expose any dysfunctional behaviors of our government that are promoting the growth of the jail industry to the detriment of our citizens, our freedom

Filed by Joy Gilfilen – Phone number 360-739-7493

Materials for December 3, 2015 PDC Meeting

Richard D. Jehn reported 7 minutes ago (Wed, 2 Dec at 1:47 PM) via Email
To: evelyn.lopez@pdc.wa.gov
Cc: jana.greer@pdc.wa.gov, pdc@pdc.wa.gov
Director Lopez:

I live in Bellingham, Washington and was one of the complainants for PDC case #1122. I have reviewed the final report and wish to submit a question and a comment to the December 3 meeting of the PDC. I believe it is critically important that the commissioners discuss this case in some detail and I hope this brief submission is helpful to your deliberations.

The minutes of Whatcom County "Executive Team" meetings attached to this email only came to my attention yesterday. I would certainly have included these materials in my original complaint had I been aware of them.

Thank you for considering it. I intend to watch the proceedings tomorrow and would be happy to participate in a Skype call if you have any questions of me.

Richard Jehn

Bellingham, WA

360-734-1955

Question and Comment Regarding Final Report for PDC Case # 1122

Did the result of the Whatcom County election measure Proposition 2015-1 have any bearing on the result of the Washington Public Disclosure Commission final report for case # 1122? Why would it have been cited in the text of that final report, complete with the actual votes For and Against, if it was not important to the outcome of the PDC decisions?

Concerning "Allegation E," cited here in full from the PDC final report for case #1122:

"Allegation E – The jail mailer, with its information about the ballot measure, was a coordinated campaign effort.

3.27 Whatcom County denied that its informational mailer about Proposition 2015-1 was coordinated with any campaign efforts, and no evidence of coordinated campaign activities was cited in the complaints."

Contrary to the conclusion of the PDC report, county officials themselves called their effort to spread information about the jail tax proposition "a campaign." They also coordinated their efforts with a political action committee and targeted specific groups to visit and speak with about the jail proposal over the course of many months prior to the election on November 3, 2015. As evidence, please find attached minutes of "executive team" meetings held on June 3, 2015 and July 2, 2015.

From page 2 of the minutes of the June 3, 2015 meeting of this group:

"Whatcom County shall confirm the appropriate communication the team may have with the PAC following the issue being confirmed on the ballot based on voter outreach regulations.

Sheriff Elfo is the lead decision-maker from the County team for the campaign. He will identify the key players that shall create the PAC. Tyler shall remain the point of contact to DLR Group. Tyler shall address responses to taxes questions, and Sheriff Elfo will address responses to operations."

From page 1 of the minutes of the July 2, 2015 meeting of this group:

"Sheriff and County Executive have been attending community meetings as they come up to share the information. Community organizations shall be updated for all months of the calendar as a resource to anyone that intends to attend meetings."

Also from page 1 of the minutes of the July 2, 2015 meeting of this group:

"Initial message for the mailer may be **'Safe Home. Safe Community. Vote Yes for the Jail.'**"

Attached to the minutes of the July 2, 2015 meeting is a calendar that identifies all meetings of Rotary, Kiwanis, Chambers of Commerce, and Granges. It also includes all Executive Team meetings and Ballot Measure event dates. The calendar runs from June 2015 to November 2015. In October 2015, key ballot measure events listed are "Mailer #2 Mailed" on October 9, 2015 and "Ballots Issued" on October 16, 2015. In the final two weeks of October, the calendar contains in very large font: "CAMPAIGNING IS COMPLETE. NO ADDITIONAL EVENTS."

Moreover, all of the email evidence provided by Whatcom County clearly shows that Whatcom County staff members were heavily involved in producing the mailer, coordinating efforts to campaign about the jail and sales tax proposition, and do everything they could to ensure the success of that tax proposition. Significant time and effort were devoted to this "campaign" at taxpayers' expense, in direct violation of the provisions of RCW 42.17A.555 which states, "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition."

A request for minutes of Executive Team meetings that took place on July 20, August 3, August 17, August 31, September 14, and September 28, 2015 has been submitted to the Public Records Officer of Whatcom County (request submitted on December 2, 2015). It is possible that those minutes will reveal a continuing pattern of political campaigning that the county executive undertook in the lead-up to the November 3, 2015 election.

This is a serious matter that the Washington Public Disclosure Commission is taking far too lightly, presumably because Whatcom County staff and consultants from the DLR Group were in frequent contact with the PDC during the development of that glossy jail mailer. The Public Disclosure Commission is not serving the interests of the people of Washington by so cavalierly dismissing the complaints against County Executive Jack Louws, Sheriff Bill Elfo, Prosecuting Attorney David McEachran, and the Whatcom County administration.

Meeting Notes

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

Meeting Date	6/3/2015
To	Tyler Schroeder
From	Erica Loynd
Location	Whatcom County Executive's Conference Room
Project	Whatcom County Adult Corrections Facilities and Sheriffs HQ
Project No.	73-15102-01
Attendees	Jack Louws, Whatcom County Executive Tyler Schroeder, Whatcom County Special Projects Manager Sheriff Bill Elfo, Whatcom County Sheriff Office Jeff Parks, Whatcom County Sheriff Office Dan Gibson, Whatcom County Prosecuting Attorney Erica Loynd, DLR Group Justin Stranzl, DLR Group Bill Valdez, DLR Group Lori Coppenrath, DLR Group
Purpose	Public Outreach Kick Off

Notes	Action
There are added benefits to a sales tax vs. property tax such as tourist and commuter taxes included in paying for the measure and the taxes are not centered on property tax payees only. The logistics of the technical working of the sales tax measure such as expiration dates, etc. are important to confirm and communicate to the people.	
Messaging needs to include information on the consequences if the measure does not pass. The outreach shall provide a clear idea of what will occur if the jail does not get built, but not use fear or threat approaches. Items include the financial impact, overcrowding limitations, raised cost/inmate (higher capital costs), and ongoing facilities maintenance of an aging building. These impacts cannot be "bluffed."	Bill Elfo shall describe consequences and provide full description for literature and message.
Sheriff Elfo has been determining a Plan B approach that would be required if the measure does not pass. • The County jail is required to meet regulated life safety conditions for the County needs. • Cities may be required to find alternative solutions at their own cost if this measure does not pass. • Population cap may be required to ensure the building is able to be maintained and not over-stressed by overpopulation.	
Bellingham Herald offered the opportunity for OpEd pieces over the next few months. Sheriff Elfo shall prepare a document for next issue on Friday 6/12.	Sheriff Elfo to write OpEd.

Justin Stranzl detailed the "20-60-20 approach" where typical populations have approximately 20% of votes that say yes, and 20% that say no regardless of the literature or information provided. Sixty % may be predisposed but are willing to listen to each stance. These are the people who need to be talked to.

Upcoming Schedule Topics:
19 weeks until October 16 (ballots are released) – Public Outreach work shall be complete.

Bi-weekly leadership team meeting – Review with staff and County administration

- Work to create a mailer and make the unified voice.

Tyler Schroeder shall identify potential local communication companies to help with the outreach to be a sub-consultant to DLR Group. — Tyler Schroeder

Whatcom County shall confirm the appropriate communication the team may have with the PAC following the issue being confirmed on the ballot based on voter outreach regulations.

Sheriff Elfo is the lead decision-maker from the County team for the campaign. He will identify the key players that shall create the PAC. Tyler shall remain the point of contact to DLR Group. Tyler shall address responses to taxes questions, and Sheriff Elfo will address responses to operations.

Justin Stranzl

Items that may be used to get the message out include direct mailer or trifold (similar to mailer for Skagit County), direct meetings with local organizations such as Rotary and Chamber of Commerce. DLR Group shall provide information and arrange a scientific survey of topics and messages to be called to likely voters with a varied demographic. Calls shall be made by survey callers (not automated messages).

DLR Group
Seattle, Washington
o: 206/461-6000 f: 206/461-6049

Action Items	Next meeting in approximately two weeks. At this meeting ... DLR Group shall provide: • Draft questions for survey • DLR Group workplan of included scope • Master calendar with all dates and issues of when needs to be complete • Checklist items to do – confirmation items have completed Whatcom County shall provide: • Itemized list of the consequences if measure does not pass • Identify communications consultant (attend meeting if available and set up) • Confirmed go ahead from all cities (expected by June 17). • Names of potential PAC co-chairs • Any public meetings that are available to be attended by leadership team shall be confirmed and attended prior to next meeting.
cc	Attendees

DLR Group
Seattle, Washington
o: 206/461-6000 f: 206/461-6049

Meeting Notes

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

Meeting Date	July 2, 2015
To	Tyler Schroeder
From	Erica Loynd
Location	Whatcom County Executive's Conference Room
Project	Whatcom County Adult Corrections Facilities and Sheriffs HQ
Project No.	73-15102-01
Attendees	Jack Louws, Whatcom County Executive Tyler Schroeder, Whatcom County Special Projects Manager Jeff Parks, Whatcom County Sheriff Office Erica Loynd, DLR Group Justin Stranzl, DLR Group
Purpose	Public Outreach Progress Meeting

Action

Notes

Calendar of events was reviewed. Sheriff and County Executive have been attending community meetings as they come up to share the information. Community organizations shall be updated for all months of the calendar as a resource to anyone that intends to attend meetings. Updated calendar with deadlines for measure are added to calendar attached to these minutes to reflect new information. City groups shall also be included (approximately 6-8 per month).

Physical mailers will be provided to voters in two mailers. Mailers will be similar in appearance. Mailers will use information from survey as to the topics most relevant to the voters. Layout from Skagit County mailer is acceptable format.

Initial message for the mailer may be "Safe Home. Safe Community. Vote Yes for the Jail."

Whatcom County executive team will continue collaboration with Bellingham Herald.

Scope of work for additional community consultant shall not be pursued at this time.

Survey questions shall be revised to respond to Whatcom County issues. Questions shall have a maximum of 4-5 options to choose between. Information that is requested in particular:

- Are you a resident of Bellingham or not?
- Prioritize the issues of programs & services (essential treatment, mental health, chemical health, diversion), Safety for staff and inmates, space/capacity, and modern/efficient design.
- Are you supportive of the measure if Bellingham doesn't fully participate in the jail?

- Discuss property tax vs. sales tax.

Survey will take 3-6 weeks to complete and provide final report. Design and message of mailer will occur immediately following. Questions shall be confirmed by July 10 to start survey on July 14.

Action Items

Next phone call meeting is scheduled for July 20. Biweekly meetings will be confirmed if necessary.

Survey Questions to WC by July 10. — Justin Stranzl

cc
Attendees
Sheriff Bill Elfo
Dan Gibson
Bill Valdez

DLR Group
Seattle, Washington
o: 206/461-6000 f: 206/461-6049

June 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE

June 2015

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 31 - Jun 6	**May 31**	**Jun 1**	**2**	**3** EXEC. TEAM KICKOFF MEETING	**4**	**5**	**6**
Jun 7 - 13	**7**	**8** BELLINGHAM	**9** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**10** ROME GRANGE	**11** B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE	**12** B'HAM C.O.C. BFAST HAYNIE GRANGE	**13** LAUREL GRANGE
Jun 14 - 20	**14**	**15** BELLINGHAM	**16** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**17** INTERLOCAL CONFIRMED FERNDALE C.O.C. LUNCH	**18** B'HAM SUNRISE WC NORTH	**19**	**20**
Jun 21 - 27	**21**	**22** BELLINGHAM	**23** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB B'HAM C.O.C. LUNCH	**24** B'HAM ELKS	**25** B'HAM SUNRISE WC NORTH B'HAM LIONS	**26**	**27**
Jun 28 - Jul 4	**28**	**29** BELLINGHAM	**30** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB KING MOUNTAIN	**Jul 1**	**2**	**3**	**4**

July 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
NEIGHBORHOOD
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jun 28 - Jul 4	**Jun 28**	**29**	**30**	**Jul 1** LUMMI ISLAND GRANGE	**2** B'HAM SUNRISE WC NORTH N. B'HAM GRANGE HOPEWELL GRANGE EXEC. TEAM CHECK IN (IN PERSON)	**3**	**4** B'HAM C.O.C. 4TH OF JULY
Jul 5 - 11	**5**	**6** BELLINGHAM	**7** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**8** ROME GRANGE FAIRHAVEN	**9** B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE FAIRHAVEN	**10** HAYNIE GRANGE QUESTIONS CONFIRMED	**11** LAUREL GRANGE
Jul 12 - 18	**12**	**13** BELLINGHAM SURVEY BEGINS	**14** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB SUNNYLAND	**15** FERNDALE C.O.C. LUNCH	**16** B'HAM SUNRISE WC NORTH ROOSEVELT	**17**	**18**
Jul 19 - 25	**19**	**20** BELLINGHAM EXEC. TEAM CHECK IN (WEBEX)	**21** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**22** SOUTH	**23** B'HAM SUNRISE WC NORTH B'HAM LIONS B'HAM ELKS	**24**	**25**
Jul 26 - Aug 1	**26**	**27** BELLINGHAM	**28** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB BIRCHWOOD (TBC)	**29**	**30** B'HAM SUNRISE WC NORTH	**31**	**Aug 1**

August 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7/26 - 31	**Jul 26**	**27**	**28** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**29**	**30**	**31**	**Aug 1**
8/2 - 7	**2**	**3** BELLINGHAM EXEC. TEAM CHECK IN (WEBEX) SURVEY ENDS	**4** PAMPHLET DESCRIPTION DUE LETTERED STREETS	**5** LUMMI ISLAND GRANGE	**6** B'HAM SUNRISE WC NORTH N. B'HAM GRANGE HOPEWELL GRANGE	**7**	**8** LAUREL GRANGE
8/9 - 14	**9**	**10** B'HAM CITY COUNCIL RESOLUTION BELLINGHAM	**11** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**12** ROME GRANGE BARKLEY FAIRHAVEN	**13** B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE SAMISH	**14** INTERLOCAL COMMITTMENTS HAYNIE GRANGE	**15**
8/16 - 21	**16** BELLINGHAM (MON.)	**17** EXEC. TEAM CHECK IN (WEBEX) COMMITTEE FORMS DUE	**18** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**19**	**20** B'HAM SUNRISE WC NORTH ROOSEVELT	**21**	**22**
8/23 - 28	**23**	**24** BELLINGHAM REPORT COMPLETE	**25** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**26**	**27** B'HAM SUNRISE WC NORTH B'HAM LIONS B'HAM ELKS	**28**	**29**
8/30 - 9/4	**30**	**31** BELLINGHAM EXEC. TEAM CHECK IN (WEBEX) - MAILER DESIGN OPTIONS	**Sep 1**	**2**	**3**	**4**	**5**

September 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE

EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

September 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October 2015

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug 30 - Sep 5	**Aug 30**	31	**Sep 1** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	2 LUMMI ISLAND GRANGE	3 B'HAM SUNRISE WC NORTH N. B'HAM GRANGE HOPEWELL GRANGE EDGEMOOR	4	5 LAUREL GRANGE
Sep 6 - 12	6	7 BELLINGHAM	8 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	9 ROME GRANGE FAIRHAVEN	10 B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE FAIRHAVEN	11 HAYNIE GRANGE MAILER #1 MAILED	12
Sep 13 - 19	13	14 EXEC. TEAM CHECK IN (WEBEX) MAILER DESIGN CONFIRMED BELLINGHAM	15 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB PUGET	16	17 B'HAM SUNRISE WC NORTH B'HAM LIONS B'HAM ELKS ROOSEVELT	18	19
Sep 20 - 26	20	21 BELLINGHAM	22 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	23	24	25	26
Sep 27 - Oct 3	27	28 EXEC. TEAM CHECK IN (WEBEX) BELLINGHAM	29 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB KING MOUNTAIN (TBC)	30 PUBLISH NOTICE OF NOV. G.E.	**Oct 1**	2	3

October 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE

EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

October 2015

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Sep 27 - Oct 3	Sep 27	28	29	30	Oct 1	2	3
Oct 4 - 10	4	5	6	7	8 FAIRHAVEN	9 MAILER #2 MAILED	10
Oct 11 - 17	11	12	13	14 COLUMBIA FAIRHAVEN	15 ROOSEVELT	16 BALLOTS ISSUED	17
Oct 18 - 24	18	19	20	21	22	23	24
Oct 25 - 31	25	26	27	28	29	30	31

CAMPAIGNING IS COMPLETE.

NO ADDITIONAL EVENTS.

November 2015

ROTARY | KIWANIS | CHAMBER OF COMM. | GRANGE

EXECUTIVE TEAM | BALLOT MEASURE | SURVEY

November 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 1 - 7	Nov 1	2	3	4	5	6	7
			VOTING DAY!				
Nov 8 - 14	8	9	10	11	12	13	14
Nov 15 - 21	15	16	17	18	19	20	21
Nov 22 - 28	22	23	24	25	26	27	28
Nov 29 - Dec 5	29	30	Dec 1	2	3	4	5

Whatcom County ACFSHQ Public Outreach
73-15102-01

Note: Input fields highlighted in blue.

DLR Group Team (Region)	Role	Initials	Hourly Rate
Bill Valdez	CL	BV	$235
Erica Loynd	PM	EL	$175
Justin Stranzl	PD1	JS	$175
Lori Coppenrath	PD2	LC	$175
Matt Virkler	AR1	MV	$175
Virginia Bosworth	AR2	VB	$115
Name7	AR3	GG	$0
Name8	ID1	HH	$0
Name9	LA1	II	$0
Name10	CE1	JJ	$0
Name11	CE2	KK	$0
Name12	SE1	LL	$0
Name13	SE2	MM	$0
Name14	ME1	NN	$0
Name15	ME2	OO	$0
Name16	EE1	PP	$0
Name17	EE2	QQ	$0
Name18	RBM	RR	$0
Name19	QA	SS	$0
Sabrina Ames	AA	SA	$90

Construction Budget	**$0**
Total Gross Fee	**$86,138**
Consultants	
Communication Consultant	$0
Survey Consultant	$13,000
Consultant No. 3	$0
Consultant No. 4	$0
Consultant No. 5	$0
Consultant No. 6	$0
Consultant No. 7	$0
Consultant No. 8	$0
Consultant No. 9	$0
Consultant No. 10	$0
Consultant No. 11	$0
Consultant No. 12	$0
DLR Group Net Fee	**$73,138**
Estimated Average Hourly Rate	$175
DLR Group Net Hours	**418**

Percentage Fee Breakdown

	PD	SD	DD	CD	BN	CA	PO	TOTAL
Project Management	60.00%							**60.00%**
Programming	10.00%							**10.00%**
Civil Engineering	0.00%							**0.00%**
Landscape Architecture	0.00%							**0.00%**
Interior Design	0.00%							**0.00%**
Architecture	25.00%							**25.00%**
Structural Engineering	0.00%							**0.00%**
Mechanical Engineering	0.00%							**0.00%**
Electrical Engineering	0.00%							**0.00%**
Construction Administrator	0.00%							**0.00%**
Administrative Assistant	5.00%							**5.00%**
TOTAL	**100.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**
TOTAL FEE	**$73,138**							**$73,138**

Hours Breakdown

	PD	SD	DD	CD	BN	CA	PO	TOTAL
Project Management	251							**251**
Programming	42							**42**
Civil Engineering	0							**0**
Landscape Architecture	0							**0**
Interior Design	0							**0**
Architecture	104							**104**
Structural Engineering	0							**0**
Mechanical Engineering	0							**0**
Electrical Engineering	0							**0**
Construction Administrator	0							**0**
Administrative Assistant	21							**21**
TOTAL HRS	**418**	**0**	**0**	**0**	**0**	**0**	**0**	**418**
TOTAL FTE	**0.5**							

	PD	SD	DD	CD	BN	CA	PO
Project Duration (Weeks)	22						

Project Work Plan - Summary

Whatcom County ACFSHQ Public Outreach

DLR Group Project No. **73-15102-01**

DLR Group

Client: Whatcom County
Project Size (SF): Total Program SF (no commas)
Total Project Budget: Total Project Budget (no $ or commas)
Project Type: Project Type
Project Description: Project Description

BUDGETED Hours:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	TOTAL 357
CL	PM	PD1	PD2	AR1	AR2	AR3	ID1	LA1	CE1	CE2	SE1	SE2	ME1	ME2	EE1	EE2	RBM	QA	AA	
BV	EL	JS	LC	MV	VB	GG	HH	II	JJ	KK	LL	MM	NN	OO	PP	QQ	RR	SS	SA	
235	175	175	175	175	115	0	0	0	0	0	0	0	0	0	0	0	0	0	90	$63,795

Total Hours per Staff:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	357

Project Phase	*Duration:*	*DUE Date:*	*TOTAL Hrs:*
PRE DESIGN	22 Weeks	10/16/2015	357

Total Workplan Net Fee Reqd: **$63,795**
Total Workplan Hours Reqd: **357**

Total Contract Net Fee: **$73,138**
Total Budgeted Hours: **418**

Project Work Plan - Pre Design

Whatcom County ACFSHQ Public Outreach

DLR Group Project No. 73-15102-01

DLR Group

Client: Whatcom County
Project Size (SF): na
Total Project Budget: na
Project Type: na
Project Description: na

BUDGETED Hours:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	TOTAL 357	*Project Phase*	*Duration:*	*DUE Date:*	*TOTAL Hours:*
CL	PM	PD1	PD2	AR1	AR2	AR3	ID1	LA1	CE1	CE2	SE1	SE2	ME1	ME2	EE1	EE2	RBM	QA	AA		**PRE DESIGN**	22 Weeks	10/16/2015	**357**
BV	EL	JS	LC	MV	VB	GG	HH	II	JJ	KK	LL	MM	NN	OO	PP	QQ	RR	SS	SA					
235	175	175	175	175	115	0	0	0	0	0	0	0	0	0	0	0	0	0	90					
																					MEETINGS:			
1.5	1.5	1.5	1.5																	6	Kickoff meeting - On 6/3/2015			
	1.5	1.5																		3	Outline meeting on 7/2/2015 - in Bellingham			
4	7	7	4																	22	Bi-weekly coordination meeting - Web based conference call			
6	9	20	6																	41	Windshield time - Travel to Bellingham			
																					Interlocal Reconciliation - Configuration for ~400 beds			
1																				1	Review meeting			
4			8																	12	Program Analysis for facility with up to 400 beds			
20	2		2																	24	Cost estimate reconciliation			
																					SURVEY			
		8																		8	Coordinate professional survey			
2	8	16	2																	28	Provide options and questions to survey consultant for review and development of survey			
																					MAILERS			
1	4	1		24																30	Develop branded handout and mailings for publicity			
1	6	1			16															24	Graphic assistance - Renderings or imagery for handouts			
	1	1			2														1	5	Printing assistance of mailers			
																					GENERAL			
8	70	70																	5	153	Ongoing coordination with Whatcom County			
																				0				
																				0				
																				0				
																				0				
235	175	175	175	175	115	0	0	0	0	0	0	0	0	0	0	0	0	0	90					

Total Hours per Staff:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	357

Total Hours per Week:

2	5	6	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Total Workplan Net Fee Reqd:	*Total Workplan Hours Reqd:*
$63,795	357

Total Net Fee Budgeted on PIF:	*Total Hours Budgeted on PIF:*
$73,138	418

DATE: 04/17/2016

TO: Public Disclosure Commission
Investigator Philip Stutzman

FROM: Joy Gilfilen, Taxpayer

RE: Misuse of Facilities, Authority & Resources Addendum to Noble Cause Corruption
PDC Complaint #1122 filed 11-30-2015

Thank you for meeting with me when you came up to Bellingham. I appreciated you taking the time to more deeply investigate this case. The eventual determination of the Commissioners will affect the future health of our communities, will set the stage for future behavior of officials, and will establish a precedent for proper business conduct in the administration of justice in our state for generations to come. I appreciated hearing about the limitations of enforcement and the Commissioner's concerns about investigating the misuse of taxpayers' funds and facilities.

I believe that specific factual evidence and documentation I have uncovered may assist your investigation. (I have discovered facts about the noble cause corruption process I did not know before.) Attached please find a three-part report and compendium of facts selected from over 3000 pages of research material.

I am neither an attorney nor a professional investigator, so I am providing a whole and integrated picture of what I have observed as a concerned citizen. I rely on the PDC and other state investigators to identify all the issues where legal violations have occurred. I trust you will respect and understand that my use of any legal term is limited to that of a layman. I swear that the evidence provided is true to the best of my ability to acquire and provide.

I separated the analysis and evidence into three segments for your benefit, so you can choose which segment is most appropriate to your investigation, although they each inform the other:

1. **Yellow Flagged: Executive Branch Authority Controls – Pages 6**
   Evidence of a Tax Scam in Progress Operating under Color of Law
   This section includes systems and due process concerns that seem deceptive or may indicate collusion between the top three elected officials responsible for upholding the law – Whatcom County Executive Jack Louws, Prosecutor David McEachran, and Sheriff Bill Elfo – working in tandem with private jail industry contractors and other insiders to the detriment of citizens.

2. **Red Flagged: Jail Industry Insider Tactics – Pages 33**
   Exposing the Sheriff's Hidden Insider Groups & Campaign Actions
   This section is about campaign issues and direct misuse of County facilities and resources prior to and during the campaign.

3. **Exhibits from Restorative Community Coalition – Pages 124**
   Illustrating Taxpayers Requests for Fiduciary Responsibility
   You will find selected key documents sent by the Restorative Community Coalition during the jail planning process and prior to the campaign to the legislative bodies and elected officials asking for taxpayers concerns to be addressed. These concerns were not addressed.

Friends have asked "Why have I taken so much time to do this?"

Honor. Integrity. Freedom. I believe that freedom is the ultimate responsibility. This is one way I can defend my own freedom and the freedom of our children. As taxpayers we deserve fair and honest business management from our elected officials. We deserve to not be bullied, duped, defrauded and misused by false authority and/or for the benefit of corporate or industrial market development.

I dislike that our elected and responsible Council members and the taxpayers are being manipulated and bullied inside or outside the jail. I oppose the underhanded growth of the jail and prison industry on the backs of trusting solid citizen taxpayers and on the backs of our young, displaced and poor.

I have some unique perspectives on what's happened since I was a candidate running for Whatcom County Executive in 2015 (against the jail tax). As President of the Restorative Community Coalition, I've spent six years doing socio-economic and field research work with hundreds of local people to understand the dynamics of these matters. As a result I co-authored the alternative economic plan called "Stop Punishing Taxpayers, Start Rebuilding Community".

I learned in our County specifically about police and court bias, about how unnecessary and deliberate overcrowding works. I learned about the disparity in civil rights, and the debilitating socio-economic and civic impacts of mass incarceration. I learned real facts about the economic impact on our youth, the addicted, and the displaced middle class. I am also an experienced businesswoman of 30 years with a background in real estate, business consulting, with a specialty in free enterprise leadership, sales and marketing. I've worked at the economic and political intersections of non-profits, government and business.

I have compiled this data for your investigation. And, I am giving it to the Whatcom County Council and to the taxpayers so they can comprehend what's been happening on our watch. My intent is to help the leadership discover what went wrong locally so we can work together to resolve the problem. Let's help people who are inside that jail be treated humanely and not be used as pawns in a con game that manipulates taxes to benefit the growth of jail industry markets.

Addendum to Noble Cause Corruption Complaint #1122 filed 11-30-2015

By Joy Gilfilen – Addendum submitted 04-15-2016
Written as a matter of public record to the Public Disclosure Commission

This report is prepared for investigators as a 3-Part Report providing evidence of the following:

Executive Branch Authority Controls

1. Yellow Flagged: Executive Branch Authority Controls – Page 6 Evidence of a Tax Scam in Progress Operating under Color of Law

This section includes due process and systems concerns that are deceptive or may indicate collusion between the top three elected officials responsible for upholding the law (Whatcom County Executive Jack Louws, Prosecutor David McEachran, and Sheriff Bill Elfo) who have been working in tandem with private jail industry contractors and other insiders to the detriment of other policy making bodies and Whatcom County citizens.

Jail Industry Insider Tactics

2. Red Flagged: Jail Industry Insider Tactics – Page 30 Identifying the Sheriff's Hidden Insider Groups & Campaign Actions

This data-filled section is more specifically about the 2015 campaign issues, and illustrates direct misuse of County facilities and resources prior to and during the campaign. It provides details of how jail industry strategists and insiders have worked inside Whatcom County facilities as volunteers. Campaign work includes fundraising, marketing, blogging, training, recruiting, strategizing, and tactical projects. It was done using county facilities, resources, e-mail addresses and staff time prior to and during this election cycle and in coordination with the jail planning consultant's (DLR Group) campaign calendar, and Citizens for a Humane and Safe Jail Now PAC.

Testimony & Letters from the RCC

3. White Flagged: Exhibits from RCC – Page 120 Illustrating Taxpayers Requests for Fiduciary Responsibility

This is a supplementary selection of background correspondence and testimony sent by the Restorative Community Coalition (RCC) to County, City and Tribal officials during the jail planning process that shows that taxpayers have been asking for due process and accountability. It illustrates how their concerns, while expressed, were ignored and summarily dismissed as 'outside the scope' (of planning to build the jail). This Coalition is a non-profit representing the 'silent silo' of people affected by an arrest, together with their hundreds of volunteers. They were expressing civic and economic concerns raised by County staff, other groups, businesspeople and many citizens directly concerned about civil rights. Yet these taxpayers were effectively shunned and bullied, and their ideas and concerns not addressed. Why not?

Overview:

The author of this document has found research that indicates the 2015 campaign mailer issue was just the tip of the iceberg in unearthing a bigger problem – the existence of what amounted to a tax scam that was thankfully voted down by taxpayers in 2015. However, the conditions and planning is now continuing into 2016, so the matter is ongoing. A scam is defined as a "dishonest scheme, a fraud, or a swindle".

This document addresses some of the decades old issues raised by Sheriff Bill Elfo in the Whatcom County Jail Report mailer, and then raises more questions about the intentional misuse of facilities and funds that were to benefit jail industry interests. And it raises even more questions about the taxes that were passed in 1999, 2004 and 2008 – why they were used to expand jail industries programs and not quite used for the purposes they were promoted to solve. This is all directly relevant to the sales tax Proposition 2015-1 issues – yet this information was excluded from the mailer.

In essence, the scam looks like this:

The Executive Branch of Whatcom County (specifically the top three offices of the County Executive, Sheriff and Prosecutor who were named in the mailer, and who are responsible for enforcing the law), used their economic, enforcement and legal influence to manipulate the people. They control the conditions of the jail. They control the administration and process of policy making. They controls the press, public relations initiatives and "story" contrary to the public's best interest. They manipulated conditions to convince the voters to fund more bureaucratic and jail industry market expansion. How?

1) They worked closely with jail consulting contractors and biased insiders (over time and deliberately);
2) to control planning to build a bigger jail and expand jail industry markets (without educating Council);
3) used 'fast track' and hardball sales tactics at critical points such as the 10-day duress method to compel the purchase of over-valued land (called a Tax Heist by citizens), then used the small cities to gang up on the Council, to pass the sales tax initiative to the ballot; and
4) used techniques such as overcrowding, fear-mongering and emotionalism to compel the voters to pass another sales tax that would put taxpayers in both capital and operating debt for generations to come.

They did this ***without disclosing*** that the sales tax was in fact contrary to public safety, that the jail plan yields a massive negative return on investment relative to alternatives, and without disclosing that the passage of that tax, prior to the approval of a jail plan, would have presumptively authorized the over-building of a regional jail project, creating the economic vacuum to expand the private jail vendor industry interests in Whatcom County to the detriment of taxpayers.

Deeper analysis shows this was done using the false flag of offering public safety while not discussing and withholding emergency solutions, and simultaneously using the shame of being inhumane, together with the guilt of overcrowding and the fear of catastrophe and financial liability to threaten taxpayers. They used County tax money, facilities and resources: all without full disclosure, due process and transparency.

Sources of Information:

The information in this report has been synthesized by the author's experience, with facts and documents gleaned from six years of hard work. Where it seems appropriate in the report, pictures of documents are included, references are given, and more evidence is available to investigators as needed. Several thousand pages of documents are stored in PDF form online in multiple locations. A disclaimer is that this author is not an attorney, so cannot define all the legal issues that are involved here, and may unwittingly use a technical term with a layman's understanding. Please clarify and excuse this if you find an error. The author understands that this is a complex problem with many intersections that must be unsnarled and resolved for the taxpayers. The knowledge of this subject and source information comes after:

- **3,000 pages of unique documents** that were collected, cross-checked and analyzed over time that came from public records requests, social media, websites, press releases, newsletters, Google searches, e-mail correspondence, minutes of meetings, and items sent to the author by investigative journalists. This doesn't include the other thousands of pages examined from public meetings, public testimony, radio shows, Environmental Impact Statement documents, personal correspondence with officials both as an individual and as President of the Restorative Community Coalition. All of this information can be made available – most already is in PDF format.

- **Participating in dozens of Whatcom County Council meetings, Jail Planning Task Force meetings and public meetings submitting concerns.** Testifying during the Scoping Hearings, during the Supplemental Draft EIS and the Final Environmental Impact Statements processes, researching the land purchase, and subsequently attending the Incarceration Prevention and Reduction Task Force meetings. All these events and documents are a matter of public record. An 80 page packet of Restorative Community Coalition testimony and correspondence submitted to policymaking bodies during this process is attached. In it you will see that the Executive Branch has been asked for reviews, public hearings, for a proper Needs Assessment, for discussions of alternative economic options and they stonewalled.

- **Acquiring and studying the local to national statistics of crime trends, return on investment figures,** prison and recovery stats, issues of trauma, abuse and economic development as it relates to trends in business, poverty, incarceration, addiction, social decay, joblessness, free enterprise and politics.

- **Interviewing hundreds of people – people who are part of the system** as employees, inmates, or family members who have been affected, their bosses. And people involved in prison reform, restorative justice, mental health, or civil rights issues. Some of these people would be willing to step forward as witnesses to the inhumane treatment of people, to the duress people in the jail, their families and people in the streets experienced, to the civil rights violations and more.

- **Attending and hosting panel discussions, trainings and conferences**, talking with County staff, politicians, police officers, judges, prosecuting attorneys and public defenders, non-profit executives, business owners, emergency and homeless service providers about the intersections of all these social problems. You can verify at RestorativeCommunity.com or on our Facebook page Restorative Community Coalition.

From this research, the author has been able to see the paper trails, to identify the patterns, trends and facts that show how the people are being manipulated, how campaign rules have been violated, where the misuse of funds and facilities occur and the how the misuse of authority has set the stage for a master con game.

Part 1:

Executive Branch Authority Controls

Evidence of a Tax Scam in Progress Operating under Color of Law

Snapshot of the Con Game

Chart Illustrates Layers of Deception below the Mailer Image

A paper trail of evidence has emerged that shows how taxpayers were deceived – just with the premeditated planning and obvious use of the local mailer. This chart is a step-by-step illustration of how the use of taxpayers' money is hidden (in plain sight) inside a flashy marketing tool that epitomizes the public sales pitch: a pitch "sealed" by the authority of the three top officials. Behind the shield of credibility is the hidden story of how this mailer was intended to walk the line of being legal[1]. What's behind the ink?

Beautiful, Strategic Marketing Mailer:	Hides the Negative Impacts:
1. The Whatcom County Mailer was "Official." It used **much more than the reported** $28,452 of taxpayers' money to produce and distribute unfair and biased advertising to targeted groups… (see next page email)	(Non-trustworthy promotional advertising is biased, deceptive, triggers emotional compassion & fear, is misleading, incomplete, non-transparent and detrimental to citizens)
2. which was intended to persuade voters to pass a jail tax…or feel irresponsible	(without fully disclosing that this forever tax will fund ongoing jail expansion forever)
3. to fund an unapproved capital project and incur a high cost forever operations debt…	(without full discussion with voters nor a full disclosure of long term impact and risks)
4. which underwrites jail industry contracts & expansion projects with cash flow…	(guaranteeing a revenue stream to industry contractors without full disclosure to voters)
5. as industry vendors continue to infiltrate our government, using privileges both as paid contractors and insiders…	(who are underhandedly given privilege which results in an imbalance and potential abuse of power)
6. against our social good…and contrary to best return on investment statistics	(as proven by recent DOJ statistics, Vera Institute and other nationwide studies)
7. without a valid needs assessment or fiscal analysis to justify taxpayers investment in the capital project & operations[2]	(unsubstantiated claims of facilities need does not include SWOT analysis, market facts and trends from down-trending crime stats)
8. without full disclosure to the voters that they have already invested and earmarked sales taxes in 1999, 2004 and 2008	(millions of dollars have been collected, appropriated, and redirected differently than promised)
9. And…ultimately if passed, the empty and big regional jail opens up new markets to be filled by the supply and demand forces…which ***insures inflow of citizens into the jail, which increase the demand for jail services and a compounding positive return on investment to the jail industry*** (at the net debt/expense of taxpayers). →	(Bottomline: While jail industry business profits increase, there is a net negative internal rate of return on investment to the taxpayers, who are now in a high hard cost operating system grinder where increasing costs produces a contrarian business model that holds taxpayers hostage, and creates a degenerative spiral of social decay.*

*The fundamental lie is that serious crime has dropped in Whatcom County since 2009 – lowering demand. Yet contrarily, the Average Length of Stay went from 9.7 days in 1986 to 22 days by 2012[3]. Why?

[1] In testimony to County Council on 10-27-2015 the Prosecutor declares his attorneys spent days planning the mailer.
[2] The claimed Needs Assessment is in fact only a 6 page Jail Capacity Needs Document that was delivered after planning was already completed and was dismissed on Page FS-7 in the Whatcom County FEIS report as faulty and therefore unused.
[3] Data from Page S-1 of the FEIS Report on Whatcom County Adult Corrections Facilities and Sheriff's Headquarters 11-08-2013

Email Correspondence from Taxpayer with Executive's Office asking for Clarification of Facts related to Costs of Mailer

From: Tyler Schroeder <tschroed@co.whatcom.wa.us>
Date: January 13, 2016 at 10:36:45 AM PST
To: Sandra Robson <[redacted]>
Cc: Jack Louws <JLouws@co.whatcom.wa.us>
Subject: RE: Following up on my voice mail from Jan. 11

Sandy,
Thanks for your email on this subject. I have attached an email sent to Councilmember Sidhu in October of last year on this subject. Please see the email for additional information.
The informational mailer was sent to every registered voting household in Whatcom County. 62,172 mailers were printed and sent to every registered voting household in Whatcom County. The cost of the mailing for printing and postage was $27,670.76. The contract with DLR had a budget amount of $28,452 for printing and mailing. Associated with the public outreach component with the DLR contract there has been $16,350.00 for research, design and production of the mailer.
Please let me know if you have [illegible] questions.

Thanks,
Tyler R. Schroeder
Whatcom County Deputy Executive

Whatcom County Executive's O
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

Disclaimer: Public docume
Records Act (RCW 42.56).
disclosable to third party re

From: Sandra Robson [mailto:
Sent: Wednesday, January 13, 2
To: Tyler Schroeder
Cc: Jack Louws
Subject: Following up on my voice mail fro

REAL COST??

This answer is misleading. **What is the total?** This answer looks good, but doesn't add up. What's the hidden cost? If there were 62,172 mailers printed (at an estimated $1 each for a full color 4-page double sided glossy) plus mailing costs + all the soft contract cost to DLR, research, design, and the time of multiple attorney's reviewing it for days (as per Prosecutor's testimonial before the Council on Oct. 27, 2015) -- what's the REAL COST at the end of the day?

It certainly IS NOT the minimized figure given to the Herald and quoted by Louws.

Tyler,
Hope you are doing well. I called Monday, Jan. 11, and left you a voice mail asking a question. That question was something to the effect of:
1) What exact criteria was used for mailing out the 2015 new jail mailer to Whatcom County residents that was mailed out during the 2016 general election?
I have heard several different answers on that so I would like to get an official answer from you/Whatcom County.
The Bellingham Herald had reported in an October 15, 2015 article that:
"The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the 'Whatcom County Community Report: Whatcom County Jail.'"
Also, the Herald reported in the same article that the cost to the County for the jail mailer was $28,452 according to a county contract.
2) Can you tell me if that $28,452 included the design work by DLR and/or any others who might have

worked on creating and producing the mailer?
3) Or was it just the mailing costs?
I would appreciate you providing me with answers on my three questions as soon as possible.
Thank you.
Regards, Sandy Robson

---------- Forwarded message ----------
From: Jack Louws <JLouws@co.whatcom.wa.us>
To: Council <Council@co.whatcom.wa.us>
Cc: Bill Elfo <belfo@co.whatcom.wa.us>, Dana Brown-Davis <dbrown@co.whatcom.wa.us>, NaDean Hanson <nhanson@co.whatcom.wa.us>, Jill Nixon <jnixon@co.whatcom.wa.us>, Marina Engels <mengels@co.whatcom.wa.us>, Kristi Felbinger <KFelbing@co.whatcom.wa.us>, Tyler Schroeder <tschroed@co.whatcom.wa.us>, Dewey Desler <DDesler@co.whatcom.wa.us>, Tawni Helms <THelms@co.whatcom.wa.us>, Daniel Gibson <dgibson@co.whatcom.wa.us>, David McEachran <dmceachr@co.whatcom.wa.us>
Date: Wed, 21 Oct 2015 15:48:07 +0000
Subject: Response to Councilmember Sidhu's questions concerning mailer

Dear Council Member Sidhu:

Please see my responses below each of your questions. Thank you.

1. In the past 4 years of your tenure as County executive, how many times you / your admin has sent similar Community Informational brochure to the residents covering what kind of subject matters.

Yes, the County has sent out informational mailers a number of times over the last four years. Examples of these mailers are on specific countywide issues pertaining to;

A huge glossy at election time to sell an 'emergency' jail tax to voters is not comparable to these public works pieces. Inquirers were told it was a select mailing.

- ***Water resources and flood matters to residences that those issues pertain to (BBWARM newsletter, Lake Whatcom postcard, Annual River and Flood Newsletter),***
- ***Postcards and letters on on-site septic operational and maintenance issues in specific watersheds and printed brochures for recycling and solid waste,***
- ***Annual postcards to residences in the Swift Creek area to remind those residences of actions needed during floods and***
- ***Ag newsletter to Countywide (Rural and Ag) residences***

Most of these mailers on our specific issues to specific residences in Whatcom County. These mailers have been in the newsletter and postcard format, sent to between 7,000 and 16,000 residences in Whatcom County and have cost between $5,000 to $8,000 for printing and mailing. My office has some examples of those mailers if you would like to see them.
If you mean specifically the County Executive's Office, please note, given the importance and cost of this entire jail project our office is the manager and oversees the planning and development of the new jail project. Since the ballot measure for the sales tax increase is a countywide issue the information mailer was sent to all registered voting households.

Has this been a standard practice by your admin and prior admins to mail similar community updates?
The informational brochures and update as discussed above have been used as a method of informing Whatcom County residents on important matters.

2. If yes, has the occasions been coinciding with election ballot drop dates ?

Generally no, but please note the County does not often take large public projects for taxes and ballot measures. The jail information mailer was sent out to inform Whatcom County residents of this important and large public works project. While it is not part of your question, please note that Skagit County issued

an extensive community report to their residents just prior to the August 2013 jail and sales tax ballot measure. Please see a copy of the attached reports to compare the content of these reports.

3. Was this brochure mailed to every registered Voter in the County or every resident of Whatcom County?

The informational mailer was sent to every registered voting household in Whatcom County.

4. How many copies were printed and mailed?

62,172 mailers were printed and sent to every registered voting household in Whatcom County.

5. Does the cost of approx $28,000 is for printing alone or both Printing and postage cost ?

The cost of the mailing for printing and postage was $27,670.76. The contract with DLR had a budget amount of $28,452 for printing and mailing.

6. How much, if any contribution was made in-kind or cash by DLR towards this brochure?

No in-kind or cash contribution was provided by DLR for this informational mailer. This public outreach service is a part of the DLR contract and the services are provided in conjunction with their other design, architectural and engineering responsibilities for the new jail project.

How much County staff time (approx dollar value) was spent to prepare this brochure?

No new content was created by County staff for this informational mailer. The report contains information from existing documents created over the last few months for County Council and community review in preparation for their decision to place the ballot measure on the General Election. The total County staff time was not tracked but is considered minimal. The County staff time encompassed compiling the existing information, reviewing DLR's work in preparing the mailer and working with the Prosecuting Attorney's office to ensure consistency with PDC guidelines.

7. How much was paid to the third party contractor / Copy Writer to prepare this brochure?

Associated with the public outreach component with the DLR contract there has been $16,350.00 for research, design and production of the mailer in August and September. The invoice for October has not been received but only minimal work by DLR was devoted towards the final coordination and review of the informational report.

I would like to thank you for your questions on the information mailer. The intent of this mailer was to inform our citizens on this very important public project. This informational report is in line with the guidelines as authorized by the PDC where they note ***"it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."*** It was reviewed by county legal staff. The PDC further describes ***"that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."*** The need to inform the public concerning this important issue stems from the fact that not correcting the deficiencies of our existing jail facility by building a new replacement jail continues to have the County at significant risk for potential liability, as has been discussed in the last years.

I'm planning on engaging the council on this issue at the Finance Committee meeting at 11 AM, next Tuesday.
(Dana, please forward as per Councilmember's request)

Jack Louws
Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225

Is this true? These answers are confusing and seem to seriously minimize the true hard and soft costs of writing and producing a brand new 4-page, full color double-sided, one-piece glossy brochure that has to go through full marketing design, then multiple attorney's legal review, then PDC review – then designing, printing, folding and mailing 62,000 of them.

Resistance to Economic Alternatives to Building a Big Jail was a Red Flag

At first, the author simply trusted the authorities when they said they needed a big new jail. O.K. They said that public safety was a big issue, that the border brought in extraordinary trouble, that the jail was overcrowded and in bad shape. OK. Then they said we were going from 300 or so to 800 beds, with room to expand to 2400 beds…outside the county seat, on a railroad spur. What? Eight times the size? Hmmm.

Wake up: Then various members of the Board of Directors of the Restorative Community Coalition started comparing information, starting interviewing people arrested about the process. We asked about what happened to them from arrest to release from County Jail - what their stories were, about the conditions, what was happening from the inside? Their stories did not match the stories of the authorities. At first we doubted, then started seeing consistent patterns of misinformation, abuse and injustice by the authorities. What's up with that? Information came in from people who were very different and did not know each other. We started gathering local statistics, observing court proceedings, tracking more and comparing to national statistics and behavior at other regional jails, state and federal prisons. Things were not adding up.

Pay Attention: Then we started witnessing officials prevaricating, using doublespeak and changing facts for different audiences – targeted audiences. We knew then that something was seriously wrong. As we asked clarifying questions, definitions of things changed, context of information given and received didn't always add up. Nothing matched with what we were hearing from certain employees, defenders and it didn't match the stories from the streets, from other non-profits, and not from the inmates, family members.

Get Involved: As solid citizen taxpayers and business owners, our RCC Board members started to stand up and testify, share ideas, produce solutions – to participate in the process we believed in. We were naïve. It was not well received by the officials and certain groups. In the last section of the Addendum, you will find over 80 pages of selected documents we submitted to different authorized bodies. The response was often stonewalling and marginalizing. No one wanted the information. Why not? Then these things happened:

1. **Scoping Hearing** – Were told politely we could speak, but that our kinds of comments would most likely be outside the scope (their job was to plan to build a jail on that property, not discuss alternatives)
2. **Uninvited from the Right-sized Jail Group**
3. **Denied a seat on the Jail Planning Task Force** (JPTF) by then Executive Pete Kremen
4. **Restorative justice, economic recommendations** not discussed or included in the final report of the JPTF
5. **Testified at SDEIS Hearings** – and found out that most comments were dismissed as "outside the scope" in the **FEIS document**. Attended Council meetings, testifying in 3 minutes increments. **Requested Public Meetings, Analysis, Opportunities to present** a full presentation to the Council – denied repeatedly.
6. **Council purchased the land for the jail** – with no public hearing, no approved plan…under duress.
7. **Author was told to "stand down"** by a "big businessman", told the jail was a "done deal, you can't win."
8. **Board was asked to "stand down" from opposing the jail** - by two non-profit leaders "you can't win".
9. **Board member was uninvited from being a speaker at a Behavioral Health Event**
10. **Asked to leave a Small Cities Mayor's Meeting** – even though we were invited by a Council member

The author knew beyond a doubt we were in a serious mess and registered to run for County Executive to challenge the status quo, stop the jail tax. That weekend two officials and a campaign consultant called – not to congratulate, but to ask the candidate not run for office, to resign immediately. I did not stand down. I stayed in the race and did more research. And I found answers I did not expect. Please go to pages 23-29 if you want to read further stories of our challenges. Otherwise, the next pages will illuminate discoveries.

Hidden Agenda

Discovered: Codependent Government and Jail Industry

Right off the top, few voters know the economic power and the push/pull tug-of-war that was created economically as policies of mass incarceration spawned the growth of the privatized prison industrial complex nationally. This is like a mushroom cloud that has become an $80 billion dollar mega-force injecting many hidden dynamics into our current economy. Whether or not we have private prisons is not the point. The privatized "punishment for profit" economy has spawned thousands of offshoot companies that make money on incarceration expansion. This is contrary to protecting freedom. Instead our country is #1 in the world at excellence in incarceration.

Under that bigger umbrella, the smaller 'jail industrial complex' has been born. The author discovered that this industry is the marketing funnel for the jail industrial complex. It has expanded in cities, counties and states across the nation. Especially in Whatcom County – a national border County. As funding for jails increases, funding goes down for the less hidden education and tourism industries. Incarceration companies contract with government corporations to provide exclusive and specialized services such as food, toiletries, telephone, urinalysis, video conferencing, Electronic Home Monitoring technology, etc. See the next two pages to get a general idea of the size and scope of this emerging "free venture" industry.

1. **Contrarian Industry in Washington State:** The Washington State Jail industry Board was established by legislative mandate in 1993 to help expand and grow these jail industry markets. It has become a nightmare for voters, for we pay on the front end to underwrite the costs of expanding big jails, and then write vendor contracts to build and service the clients. Voters pay again at the backend as family members, employees or neighbors get arrested and consumed by the system (refreshes cash flow). This industry has created a market demand for people to get arrested and incarcerated and to support the increase in mass incarceration. It is oppositional.

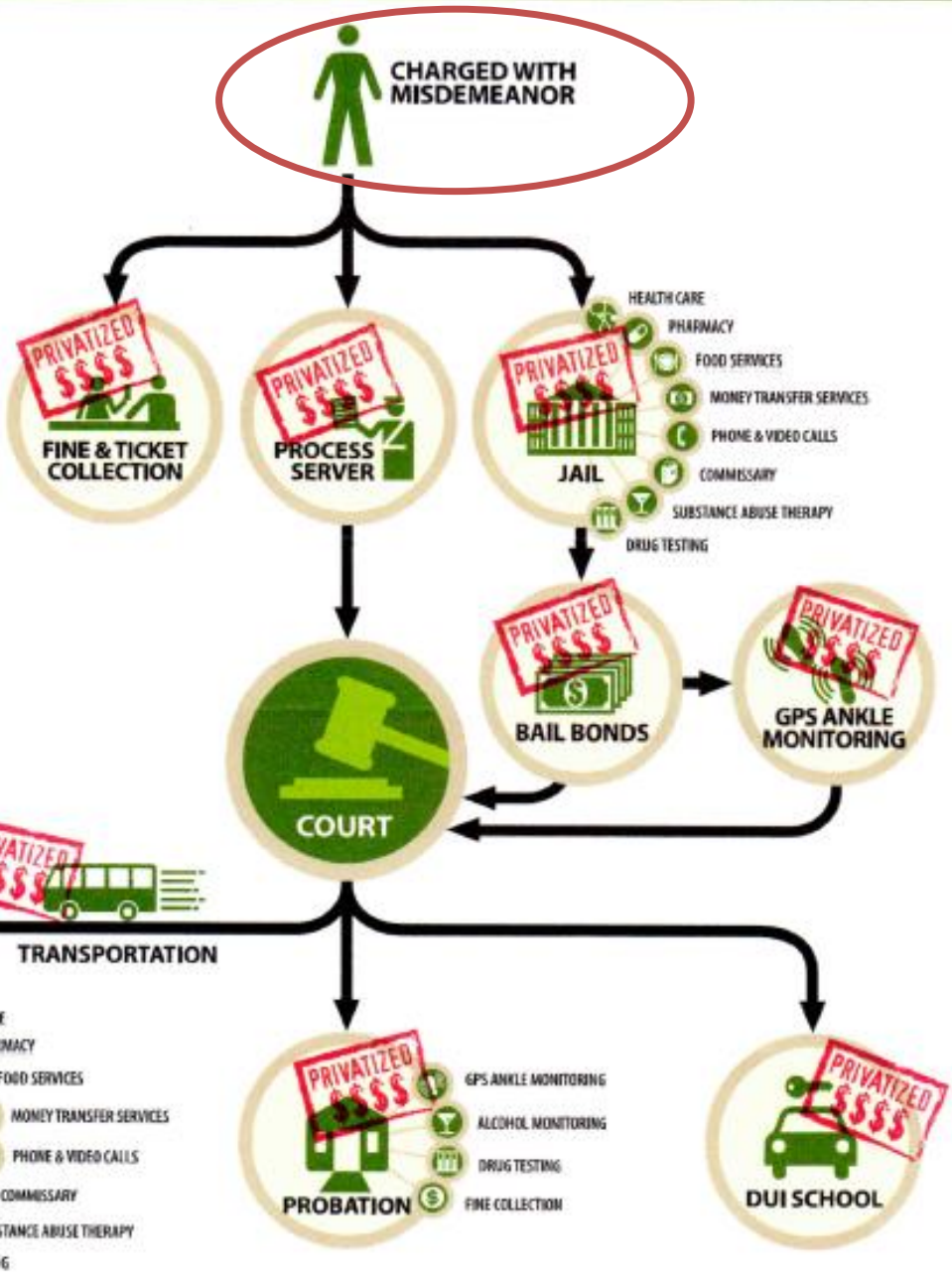
2. **Closed Loop Profiteering:** Let's examine a cell phone vending company that receives an exclusive contract with the County to provide services to inmates. For an inmate to place a call his family must pay a fee to preload money on a card. With that contract, the vendor receives a pretty well guaranteed steady income from the County and acquires the right to exclusively market/sell their high cost goods and services to captive inmates and their families. Inmates and families are vulnerable to extraordinary fees, for they have no choice of vendor. This is closed loop profiteering where the vendor receives a stable source of steady cash flow from the County who gets kickbacks called expense revenue. And vendors increase their profit margins.

3. **Human Cash Value Commodity:** Once arrested, people become a commercial cash flow asset to the companies who will market products and services to them and their families. Since they are incarcerated, they are a targeted audience. They get offered credit cards, telephone services, canteen foods & gift packages and more. 1st time arrestees are a low value asset, but as they stay longer, or become repeat offenders their cash value goes up…they are buying more services. And taxpayers pay. A one-time minor offender might only generate $10,000 in cash flow spin, but a person who goes in for 5 years could be worth $250,000 in cash flow spin[4] to the bureaucracy and contractors. There is a negative, contrarian incentive to keep people recycling.

[4] Ave. Cost of incarceration in Washington State for 1 year is $51,775 according to Vera Institute.

Which Sectors of America's Criminal Justice System Are Run by Private Companies?

Today, private companies hold contracts that allow them to profit off all corners of America's criminal justice system. Consequently, many people charged with crimes are exposed to the profit-seeking of companies every step of the way, from entering the system to being released. This graphic depicts the possible paths of someone who is charged with and found guilty of a misdemeanor, revealing the various privatized services provided by the corrections industry.



PROGRAMS NOT PROFITS

A campaign from In the Public Interest

Each year, the private corrections industry collects hundreds of millions of dollars in profits from taxpayers. To strengthen safety and justice in our communities, we should invest that money in improving and expanding treatment and rehabilitation programs. **Programs Not Profits** is a multi-year campaign that promotes replacing private profits that hurt incarcerated people, correctional officers, and taxpayers, with publicly funded and managed programs that provide job training, mental health care, and substance abuse treatment. Follow along and get involved at: **www.programsnotprofits.org**.

V2-44

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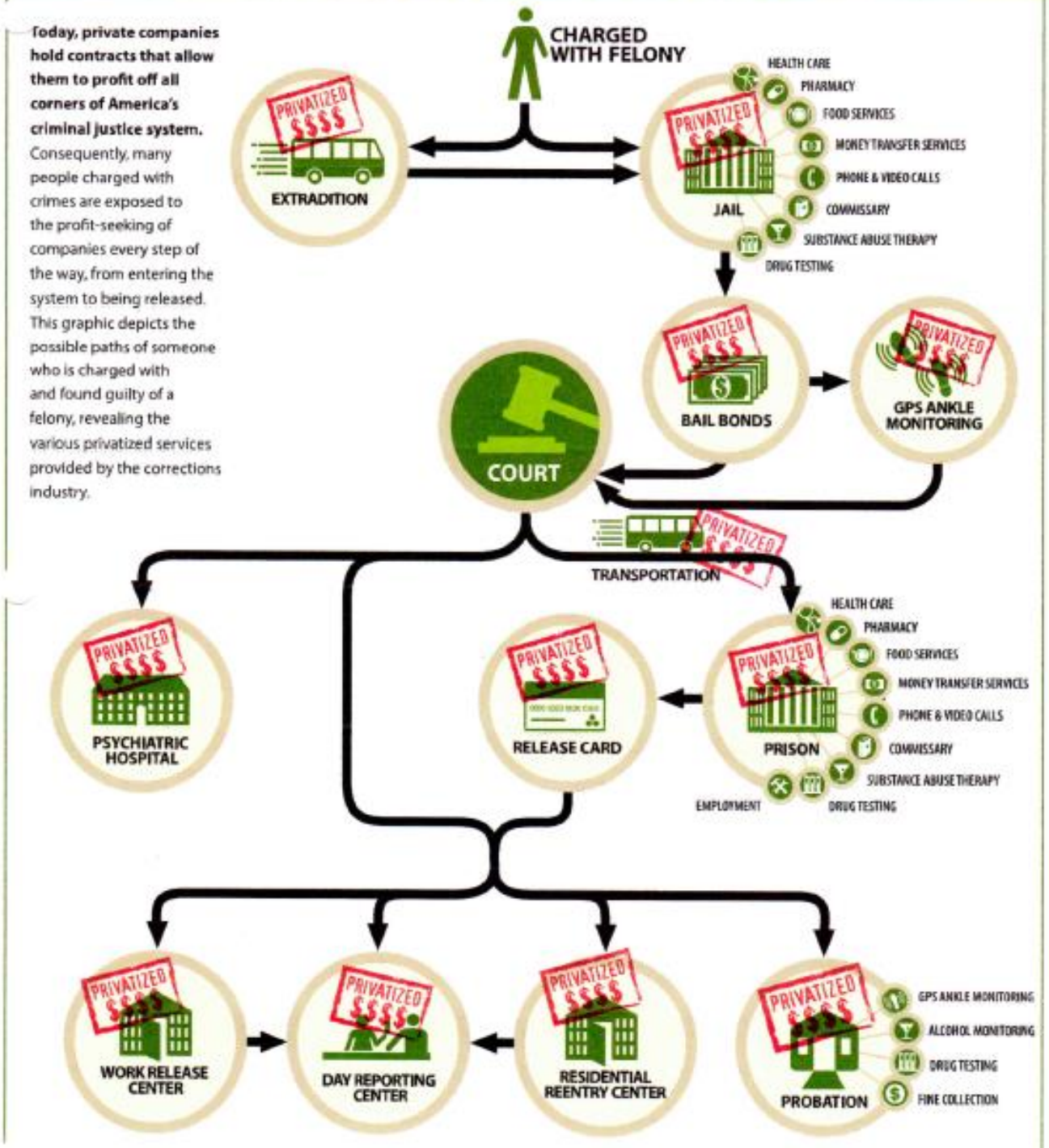

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Bias

Local Law Enforcement Bias
Hid the Jail Industry Marketing Game

Whatcom County voters are especially vulnerable to the jail industry market pressures and to the law enforcement bias. We are a border county, a college town. We have a native tribe standing up for treaty rights and we are all under pressure from economic challenges, from environmental issues and from coal, oil and other industries. In the last couple decades, it has become increasingly confusing to live here. For example:

1. Citizens get bombarded with mixed messages from our authorities.
Whatcom County is on the northern border of the nation. It's reported that this County has an over-abundance of police per capita (with families to support). Taxpayers are paying for an expanding enforcement bureaucracy with expanded SWAT teams and military equipment. Even with an extraordinary number of border patrol agents, the comparative arrest statistics at the border have gone down. What's up with that?

See Part 3 - White Flagged: Testimony and Letters from RCC, page 1 Email where the RCC reports 15 Revenue Generating Practices. ***We have had three police caused deaths just in the last few years, and revenue generating practices seem to be systemic.***

The Prosecutor testified before Council that since 2009 serious crime rates are down 25% and that juvenile crime rates are down 80% - and that is why we need a bigger jail.[5] What? Rather than this reduction in crime reducing our occupancy rate in the jail – the occupancy rate stays contrarily high? The RCC found evidence that administrative decisions like reducing good time have overcrowded our jails, bails remain high, and people can spend days inside waiting to find out what they have been charged with, others spend months waiting for drug court – when drug court was reduced and is not full. People wonder why?

2. Citizens witness Inhumane Treatment of Offenders. Voters are aware that people who are arrested are mistreated, even the non-violent. Yet, rather than working to solve the problems inside the jail using prosecutorial discretion, administrative changes, and their own WCC 1.28.100 - the three top elected officials who are responsible for upholding the law and protecting the citizens are instead pushing to expand the jail industry market share. They have not been willing to examine past practices for police bias, or bureaucratic revenue generating or over-criminalization. See Red Flagged section – the last section about potential violations of WCC 1.28.100 and other taxpayer questions. As pointed out, the RCC sent in 15 concerns for consideration and review – and these questions have gone unanswered by these officials.

3. Taxpayers' Default Setting is to Assume Authorities Tell the Truth: To not trust them feels like betrayal. The average taxpayers default setting is to want to trust authorities and to mind authorities. We are taught to respect them, not argue. Taxpayers are pre-disposed to trust those who will face bullets to protect us. Taxpayers pay taxes. Taxpayers trust in our ideals of justice as a core value. We elect and then put our trust in the local authorities who take an oath to protect us, to manage our business affairs.

[5] Whatcom County Council Meeting May 12, 2015 – Prosecutor David McEachran testified and showed slides.

Taxpayers blindly believe that our civil rights are guaranteed by the US Constitution. So even when things don't add up, normally we still default to trust these authorities when they claim they need more money, that "public safety = jails". It turns out the logic is flawed, and bias skews truth.

4. Taxpayers are Conditioned to Pass Public Safety Taxes. As authorities asked, taxpayers already passed multiple taxes - in 1999, 2004, and 2008 for criminal justice, the jail, mental health. Now taxpayers have learned that the tax money was diverted from the purpose taxpayers expected. We've learned that by 2010 when crime was dropping, and even with the millions in additional revenue coming in, still the problem of overcrowding got worse, mental health issues got worse, and now the jail is in emergency conditions? It's suspicious. When asked, part of the answer is that the 2004 taxes were used to expand work release and jail industries by increasing arrests – not to build the replacement jail as we were promised. We've learned these are two different things.

Taxpayers have learned that the jail vendor intake from family members of inmates has accelerated to the point some people spend $1000 a month for food, phone and fees to support of a family member who is in jail. Some people spend months before they are allowed to go to drug court. All this can be verified. The public has discovered statistics that prove that jails don't work, that they cause poverty – and they perpetuate trauma, the root of dysfunction. These elected officials continually refused to address the jail related issues with concerned taxpayers.

5. Sales Pitch: Inhumane. This time the core marketing message of this sales pitch – from the press releases to the videos from the Sheriff's advisory groups and the PAC – was guilt and fear of being inhumane, backed up by a deeper fear of violent people, then a threat of severe liability. Notice however, that the Sheriff has no emergency plan to reduce overcrowding, or remove his staff from harm's way. Even if voter's passed the tax, a new jail still wouldn't be ready for four years. What's happened when the man in charge of the jail's maintenance and operations, in charge of emergency management, and in charge of directing the budget provided by past taxes – gives us a report that the jail is in emergency crisis conditions? Why is there no call for investigation into mismanagement?

Summary: Taxpayers in the past three campaign cycles have trusted the authorities' story. This time, trust failed. Taxpayers discovered that the sales pitch – the marketing story – was a lie. The marketing and media messaging was dishonest, untrue and a cover-up. The mailer was deceptive, the videos were hyped up, the press was fear based and amped up to scare taxpayers into buying the jail, buying the tax or fear the consequences…catastrophe or violence.

Taxpayers discovered that jail planners, builders and vending contractors are all profiting on the taxpayers in a vicious cycle. The ideal of "justice" has sold out to bureaucratic protectionism and expansion. Government contractors and jails have become the profit centers and the marketing arm for the prison industrial complex. Yet, nationally the political climate and market trends are changing. Locally, our authorities refused to talk about that, and did not include that fact in the mailer.

Instead of promoting public safety, the taxpayers realized they have been duped. Statistics now clearly prove that jails promote criminalization, revenue generating, biased and predatory behaviors by our police, law enforcement and court systems. Taxpayers have learned that the public's true safety comes from a healthy population of people, not more punishment. The solution to safety is to invest in people, employment & education! None of this information was included in the mailer.

Process Bias

Executive Branch and Jail Industry Contractors Controlled the Rules and Contained the Process

What are the "hidden dynamics" or underground market currents that are driving jail planning and jail tax initiatives in Whatcom County? Who controls the big picture game? Facts about what happened are shown in the next pages. A short story on this page provides a snapshot look at how the system of governance got out of balance at its foundation. Biased assumptions were made that were never corrected. Once a bias is established as fact, the habit to reinforce and 'cover-up' past decisions corrupts due process. The process took years, cost taxpayers millions of dollars for a jail that the Council did not sign off on. Cities did not agree to cooperate and the voters did not approve the funding to build a bigger jail. What happened?

1. **'Authority':** Timing, sequencing and due process of the initiative is essentially controlled by Executive Branch authority, specifically the CEO or County Executive. This office controls the timing of reports, budget requests, RFP's, contracts; is in charge of facilities; controls the records and facts regarding supply and demand. The CEO has power with the home court advantage. They control hiring and firing – and in essence the administration of law. Many elected officials and employees have been established in positions of power and privilege for 20- 40 years in Whatcom County - focused on building a big, new jail.

2. **Experts Endorse:** The Executive branch writes the RFP's, and hires jail industry consultants to support the big jail plan. Without a valid independent Needs Assessment and SWOT analysis to analyze taxpayers return on investments and trends ***for the people***, the biased "experts" (who benefit by the outcome of building a big jail) endorse the flawed agenda.

3. **Insider Volunteers:** Establishing jail industry volunteers inside the Executive branch in key positions behind the scenes provides extra leverage. This was done in the Sheriff's office with the tacit consent and approval of the Executive and the Prosecutor. Volunteers are unseen by the common observer, and they are automatically excused from accountability. As volunteers they only reported to the Sheriff. Yet they know everything because they rub shoulders with everyone.

4. **Inside Teams:** Two of the top level 'inside volunteers' coordinated with the Sheriff through a 501C3 non-profit and other groups to gain advantage using presumed authority to push the agenda.

5. **Result: In effect, insiders 'run under the radar'.** They are free to advocate for the jail, they managed the campaign to expand jail industries plan and to pass the tax.
   - These insiders have space inside the Sheriff's office using taxpayers facilities
   - They have direct access to build relationships and work directly with county staff
   - Privileges extended by the Sheriff produces climate of presumptive position & implied authority
   - There is no public oversight, review or accountability, no employee review of work produced
   - Using county facilities, privileges and email addresses they get additional rights to access privileged information, and receive stature in the community
   - Being an insider they essentially have 'cover' to move easily throughout the Executive Branch
   - They give and receive favors, share privileged information, help facilitate and buffer the process
   - They coordinate, synchronize and regulate communications and are the hub or 'go to' person
   - They then consolidate resources, centralize efforts to organize and direct the distribution of information into targeted niche market segments.

Control Bias

Jail Industry Consultants Hired - Controlled Due Process

The county staff pre-determined the goal to expand facilities to build a 750 bed jail as far back as 1996 with the Blue Ribbon Panel. Jail industry experts were hired repeatedly, moving the goal forward as they passed taxes in 1999, 2004 and 2008 conditioning the taxpayers to accept a big plan in 2010 – for up to 2400 beds.

Fatal Flaw: No Basis Established. No valid Needs Assessment was produced to establish a solid economic or factual basis for funding a $100 million forever tax. All attempts were flawed, excluded discussions of economic alternatives to building the jail, and were not vetted by outside un-biased parties.

2010 Flawed Plan Grossly oversized facilities plan is for 2400 Bed Jail	In May 2010, the Restorative Community Coalition presented the Executive Branch ***restorative justice, prevention and other alternatives to building the big jail.*** Offer was dismissed; instead the first EIS was delivered ***with a known faulty Needs Assessment that raised the psychological bar for the public to accept a smaller jail.*** The Council then created the Jail Planning Task Force – which was weighted to jail industry interests.
Jail Planning Task Force Insider group **specially selected**	The Restorative Community Coalition, the one organization representing inmates and in opposition to building a big jail, was intentionally excluded from the Task Force. ***No corrected Needs Assessment*** was provided to the Task Force; instead they worked without facts or a solid basis and eventually hired ***another jail consultant*** who recommended the 700 bed jail, which paved the way for the new SDEIS. This consultant ***did not include alternatives to building the jail*** either. Council members did not attend any of the 7 AM meetings. 3 min. comments were allowed, ***no open public discussion.***
Scoping Hearing Process controlled by Jail Industry Consultants	Public comments ***asking for alternative options to building the jail*** were given by the pubic in the 3-minute jail industry controlled public hearings. Most concerns were summarily dismissed as 'outside the scope' of planning to build the jail. No concern was given to the NEPA issues raised, to issues of inmate and family impact, to economic impacts of moving the jail out of the county seat. Hundreds of issues raised by dozens of people were ignored. Council was not present, ***no open public discussion***.
Sept 23, 2013 SDEIS Process controlled by Jail Industry Consultants	After several million $ paid to consultants, still ***No Needs Assessment*** delivered to the taxpayers prior to this last public meeting again hosted by jail industry consultants. Citizen concerns from Scoping Hearing were not included with the SDEIS. There was no feedback loop of accountability. At the end of their hearing it was announced that the 'Needs Assessment' was online. Taxpayers found it was an incomplete 6-page Jail Capacity Needs Document. ***The document was then discarded on page FS-7 in the FEIS, yet the Executive claims it is there; pushes forward*** with regional jail project planning.
FEIS Delivered Nov 8 with 10-day fast track "Buy the Land" recommendation	Taxpayers discover in the FEIS that virtually all public concerns were dismissed "outside the scope" by corporate decree. This biased process arbitrarily bypassed accountability, discarded citizens. ***The Council was told by the Executive Branch and the Jail Consultants to not hold public hearings*** before buying the land. The Council bought the land at approximately $150k/acre; with an estimated end basis of $400k/acre before build out.
Fast Track **Jail Tax Failed**	**With No Needs Assessment for taxpayers to justify the tax, with no plan approved by the County Council, and with concerns not addressed for the citizens and cities, the tax was voted down.**

Sheriff's Bias

Sheriff's Insider Groups Manage Power and Influence

In 2009, a policy making group of strategic insiders created a 501C3 foundation called the WCSO Support Foundation. The Foundation's special public relations blog - www.whatcomcountysheriff.org- says the mission is:

"to fund Sheriff's office project(s) not funded by the county budget."

This group then expanded into a Sheriff's Advisory Group, the Public Safety Now Group and more; all with the tacit and collaborative approval of the Prosecutor and the County Executive offices.

Documents show that policy makers, specifically the Whatcom County Council and other legislative bodies, have subsequently been isolated from the flow of critical information necessary for them to make fair, unbiased, and informed decisions. With the Council members' composition changing with each election, it seems that a lot of the policy-making, public relations and strategic work is being done through this Sheriff's Advisory Team. During the 2015 campaign this created an even stronger imbalance of power.

This leaves the taxpayers without any protection from the now embedded insider corporate control mechanisms. Without a strong, fully informed and empowered Council to protect the public's interests, the taxpayers are vulnerable to physical, economic and civic bias by the legal authorities. These authorities have exceptional control of the corporation of Whatcom County. They work with outside jail industry consultants in multiple contracts and inside the system with jail industry volunteers who are not in full view of the public. In this specific case, facts will show that these interests have been present and influential in the entire planning process from the first determination by the Blue Ribbon Panel to build a 750 bed facility through to recommending the expanded regional jail industry projects and this campaign.

In the 2015 election year this imbalance of power, or systems dysbiosis, became obvious when the "insiders" campaign strategies to pass the .2% jail tax - Proposition 2015-1 – showed up in the negotiations strategies of the County Executive. You can watch the process on the County Council and City of Bellingham Council recordings. Watch the interlocal agreements negotiations, and specifically when the mailer was released – October 27, 2015. The mailer was a true red flag – a visual 'symptom' that brought the systemic imbalance of power into public eye.

Fact is: Data shows that violent crime rates have dropped. Department of Justice research and statistics show that incarceration has yielded a bad return on investment to the taxpayers. Yet, this insider group continued to procure funding to support the Sheriff's initiatives – which included expansion of the jail industry and the "free venture" market. This is a violation of public trust. The investment returns for taxpayers on this tax is not transparent, and the sales tax campaign planning was conducted using taxpayers facilities and resources. The end result has been a waste of taxpayers' dollars, people being harmed inside the Whatcom County Jail, and still no emergency plan to stop the abuse of citizens. This is all being done in direct opposition to public will and contrary to public safety.

"Catch 22" Reality Check

Who Controls the Power to Enforce Law Controls Political and Economic Pressures

WA State Jail Industries Board
Est. in 1993 by RCW
Chair: Marvin Wolff –1999-2007 Board Term
Influences Vendors/Expands Market Reach

The Three Top Executive Enforcement Officials in County

Bill Elfo, Sheriff
- Sheriff since 2003
- Blaine Police Chief since 1996

Brief: Controls jail operations, rules, stats & administration of office and supervises arrests and investigations, the public relations part of the game, etc.

Jack Louws, County Executive
- County Executive since 2011
- Mayor of Lynden since 2002

Brief: Chief Executive Officer (CEO) of the taxpayers corporation is in charge of all money, due process, contracts, tax collection and administration of the taxpayers business, etc.

David McEachran, Prosecutor
– County Prosecutor since 1974

Brief: With prosecutorial discretion, he controls the flow of prosecutions, plea bargains, and people through the Courts and is also the legal counsel for the County Council and for protecting the County corporation, police investigations, oversees ethics violations, lawsuits, etc.

Use Jail Volunteers/ Insider's Groups to Lobby for Jail Expansion

Marvin Wolff *(Strategic Advisor)*
- **Heads the Sheriff's Advisory Group** – Works directly with Sheriff, Homeland Security, Jail Chief, key staff
- **County Vendor # 1458718**
- **WC Sheriff's Office Support Foundation** – Board
- Deputized/Conducts emergency trainings/fundraising
- Has two Whatcom County email addresses
- Provides strategic press, blog, data advice
- Writes tactical public pieces, testifies selectively
- **Coordinates with Ray Baribeau**
- **1996** Appointed to **Blue Ribbon Panel** by Pete Kremen

Ray Baribeau *(Coordinates Advocacy)*
- **Sheriff's Advisory Group** – Collaborates with Marvin
- **Co-chair Prison Ministries**
- **Jail Planning Task Force Member**
- Works closely with Wendy Jones, Chief of Corrections and with other jail staff directly
- **Public Safety Now** member coordinating and managing fair booths, campaign messages, parades
- Organized/hosted jail tours for press and select groups
- **Co-Chair Citizens for a Humane and Safe Jail Now PAC**

Taxpayers Concerns Ignored:

These two 'volunteers' inside the Sheriff's office are behind the scenes policymakers and influencers empowered by the Executive Branch to regulate the flow of information to the people. De facto lobbyists, these volunteers are not transparent, nor accountable to the public or to the PDC. They have a biased agenda and discredit the people.

Whatcom County Council is 'Target'

They didn't question the jail planners FEIS recommendations (although they also never approved them) and instead 10 days from the day the FEIS was delivered - without any public hearing or debate about any alternative economic options – bought the jail land.

They did not address the concerns of the public that the jail consultants dismissed. They simply took the advice of the corporate jail consultants, the Sheriff, the Prosecutor and the Executive. Then the Executive's fast track tactics in bringing forward the jail tax rendered them functionally powerless. With changing members, they are co-dependent on the Executive Branch for information and protection.

Politicized

Taxpayers are Polarized

When taxpayers have problems with due process or with the authorities, the complaint channels lead to the Prosecutors office. Even to bring a complaint to the Council, I found that functionally it had to go through the Prosecutor's office. This means that taxpayers are trapped by ***prejudiced authority and isolated from having any voice.*** There is no known **Accountability or Feedback Loop to protect** taxpayers from the Prosecutor, the Sheriff, or from corporate or authoritarian bias. All they get is 3 minute sound bites at random times and no conversation. Unless they sue to be heard. What taxpayer wants to sue the Prosecutor's office's full set of attorney's?

Citizens Trapped!

When Taxpayers trust is violated by those who control the process, the only recourse is litigation against/through the Prosecutor's Office! Catch 22.

Imagine bringing a taxpayer claim against the prosecutor and his staff. History shows that even when taxpayers have won cases, officials get off with nothing but a hand slap…for they are protected by insurance, authority, press and their own law enforcers.
It's a **NO WIN!**

Catch 22 Diagram Origin

Problem Explained to Council as a Matter of Public Record:

Below is a copy of an E-Mail Letter sent to the Whatcom County Council that predates the creating of the Catch 22 2 page chart above. This letter was sparked when the author realized that the taxpayer/the public was caught in a Catch 22 with the Council and the Prosecutor's Office controlled the proverbial "mousetrap". This author hit a wall where the realization hit that it was impossible to challenge, complain or investigate the three top elected authorities who are responsible for enforcing the law in Whatcom County without having to go through them to get their permission. The Catch 22 was real.

"How can a person question the law about abuse if the law *is* the abuser?"

It was as a result of circumstances that happened just prior to writing that letter, that it became clear to the author that the taxpayers and the Whatcom County Council were both 'shut out' of the political process by controllers from the Executive's office, the Sheriff's Office, and the Prosecutor's Office. Evidence showed that those professionals most skilled at catching and punishing criminals were also the ones most skilled at predatory civic tactics. By controlling the flow of official information between taxpayers and the Council, these three officials are 'in charge' of virtually all things related to the jail and tax game in Whatcom County.

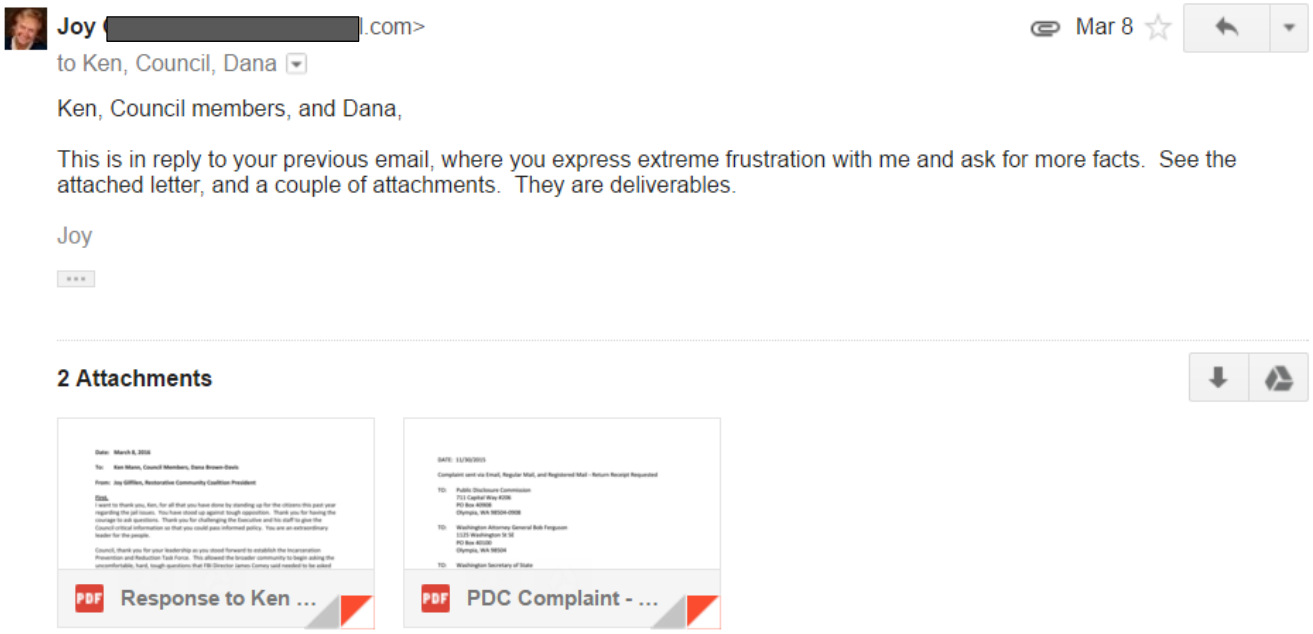
This taxpayer realized that the "elected" people who enforce the law also control the application of law, and they control the due process. They are the gatekeepers of the flow of information back and forward across the legislative process – and to the other small cities, tribes and legislative bodies in the County. In the real world of commerce in Whatcom County, the checks and balances process guaranteed by Whatcom County Charter has effectively been supplanted, gutted and displaced by these gatekeepers. These gatekeepers are a bevy of staff and officials who, for decades, have functionally controlled the administration of the County's corporate business. Technically this is the taxpayers business. In reality, in Whatcom County, the Council has become like a Board of Directors in name only – and they take the public battering from the citizens when things don't go right, and the citizens are continually paying the bill, not understanding the scam.

The loss is this: When this corporate administration operates outside the law, any whistleblower or complainer is shut out so the staff is compromised. Unwittingly, the Whatcom County Council has in effect been subject to and "held hostage" by the Executive Branch. They are co-dependent and simultaneously vulnerable to the Prosecutor for all things legal (he is their protector/accuser), on the Executive for all things factual (he is their fiscal advisor/controller) and the Sheriff for safety (he handles punishment/arrests). Whether this is legal or not doesn't seem to matter, when in operation (outside the law) these officials are in charge of it all. The Council is especially vulnerable if they will be blamed in case of catastrophe or violence breaks out inside the jail.

This explained why there are so many whistleblower and other lawsuits against the County, yet nothing changes. Ultimately, the entire process ends up going through the prosecutor's office…and the people lose.

Noble cause corruption is real, alive and working in Whatcom County. Taxpayers are vulnerable to the tax heist and to the tax scam being perpetrated upon them by jail industry insiders working with elected authorities.

Email Exposing the Catch 22: The letter below is a letter written to the Council by the author, informing them that investigative material was available and being sent to the Public Disclosure Commission and to other legal investigators in the State of Washington – and by default is now a matter of public record.



Date: **March 8, 2016**

To: **Ken Mann, Council Members, Dana Brown-Davis**

From: **Joy Gilfilen, Restorative Community Coalition President**

First,

I want to thank you, Ken, for all that you have done by standing up for the citizens this past year regarding the jail issues. You have stood up against tough opposition. Thank you for having the courage to ask questions. Thank you for challenging the Executive and his staff to give the Council critical information so that you could pass informed policy. You are an extraordinary leader for the people.

Council, thank you for your leadership as you stood forward to establish the Incarceration Prevention and Reduction Task Force. This allowed the broader community to begin asking the uncomfortable, hard, tough questions that FBI Director James Comey said needed to be asked in our communities regarding patterns of mass incarceration, racial and police bias, to address the issues of how we can locally turn the County's business around in this area.

I also support the original initiative that Ken Mann, Barry Buchanan and Carl Weimer proposed to bring all the official bodies together in the County to develop principles and address the bigger issues of criminal justice and behavioral health. I believe that it is exactly through this kind of open and fresh collaboration that we will find universal solutions that work for the people.

Second,
I wish to address the allegations you make directly, Ken, and to address the idea that I did not deliver results. I have a different point of view:

1. It was my observation this past year, as I watched the process play out in the Council Chambers, that many of the Whatcom County Executive branch elected and employed officials were not transparent and giving the Council adequate facts to support good policy.

   Instead, they were contrarian in their actions. While I knew they had the information you needed, rather than being forthcoming, it appeared that they were deliberately and actively manipulating, obstructing and obscuring information that misled this Council to take certain actions.

   I witnessed them doing the same thing to the City of Bellingham and other policy makers. Then I saw it happening with the taxpayers as these authorities worked their "fast tracking" of the sales tax to the market. What I witnessed was abuse of power. What I did not know was why, exactly who benefited by it, and how it could be proven.

2. As a result, I found myself standing up to run for Whatcom County Executive to stop what I saw were breaches in fiscal and fiduciary responsibility by elected officials. I had reason to believe they were scaring the Council, the taxpayers and the public into submission, not properly informing them of logical and more reasonable choices. I felt that this jail plan and jail tax issue had to be confronted straight on and exposed to the business people of Whatcom County. Taxpayers deserve transparency if they are going to be put in debt for ever – to build a huge alligator of a facility that would promote more mass incarceration.

3. Interestingly, two Council members called me immediately after I signed up to run for office. It was not to support me, the democratic process, nor to help the Coalition get their voices heard. It was not to help these Council Members understand why the tax or the jail plan was a bad policy. Both instead called to ask me to remove my name from the ballot. One met with me, and called me several times to convince me how it was a bad idea, and why I should do other things instead. The other had earlier attempted to convince us to embrace the jail plan. It did not work.

4. What I discovered during that 2015 political campaign was how political pressure in the form of shunning, polarizing, bullying, isolating, shaming, and marginalizing is done quite professionally in Whatcom County, and how it is hidden behind an illusion of civility.

5. I also discovered how completely this tax would have given excessive and virtually unlimited power to the Executive Branch (and to law enforcement) to control the Council. This would have hobbled and gutted taxpayers, handing over control of this County to the criminal justice and jail industry interests. My research continued.

6. What it showed me after a fair bit of time, is that when these shadow businesses control the law they (by default) 'own' the processes, the people, the resources, the economy and essentially the County.

   Along the way, I realized that the Taxpayers needed not just awareness of the problem, but they needed a whole new view about how restorative economics could empower people. They needed a way to intercept the systemic abuse cycle being run by the jail industry interests. They needed to have a whole new way to understand how implementing alternative and cooperative business models could help us reclaim our community equilibrium.

7. So I stopped my campaign, and our Coalition pulled together so that Irene and I could co-author the *"Stop Punishing Taxpayers, Start Rebuilding Community"* taxpayers report. If you have not read it, it is filled with citations and information that supports the IPR Task Force and the Council. It is information that can help us all change course to be supportive of a healthy democracy, a rich and vital citizenry and a diversified, vibrant economy.

Third,
The reason I called you last week, Ken, was that we have sensitive information to deliver to the Council, that we did not wish to have arbitrarily dismissed and filtered out by the Executive branch, the Sheriff and the Prosecutors office. We have tried numerous ways to get information to the Council, and at every turn it seems to have been obstructed one way or another.

I would like to invite you to consider, that I am simply a taxpayer, as are all the other members of our Coalition, and we are standing up for the taxpayers. I ask you, "What average taxpayer wants to ask for investigations? Who wants to bring forward lawsuits to fight the law and the enforcers of the law that control the power in any community?"

Frankly, taxpayers are typically dis-empowered. We are the silent majority that you say you want to get active in politics. Yet, when we did not embrace the jail plan, and called the authorities themselves into question...we realized that we are effectively outgunned by the authority figures that control the outcomes of those lawsuits. Think about that. The entire Executive Branch funding comes from taxpayer's dollars. They control everything, even what you guys can listen to. They are covered by insurance and have institutional support for all that they do. They have nothing to lose in a legal battle. In short, they can operate above the law.

The information that we have to share with you has been gathered from many sources. We believe that it deserves cross examination by your Council members. It may be useful to help this community navigate successfully through this transformation to a new way of doing public safety. You do have the power to investigate the Executive Branch. You have the constitutional responsibility to protect the taxpayers from abuse of power – to maintain balance between the different branches of our Charter government.

In Whatcom County, our Charter calls for a balanced system of government, but in fact it is not being operated in a balanced fashion. We have discovered that the officials rigidly control and contain the information that the Council receives. That in and of itself creates an automatic imbalance and vulnerability.

What other way can we get information to you in a fair and transparent or open manner that is not contentious? Perhaps a Restorative Justice Circle? As long as taxpayers are not allowed by the controlled administrative process to give you whole and complete information, we are all hamstrung. We are subject to the biases and prejudices of the administration in power, and in this case, our administration has been controlling information for decades.

Fourth,
The documents we have to share with you are directly related to the claims I wrote up in the Noble Cause Corruption letter I sent to the Public Disclosure Commission. I sent it to all the other state officials when I asked for an investigation. It is all a matter of public record.

When you asked me for clarification, I did not have a simple answer for you. In short, the documents answer some of the following questions:

1) How, why is the Council is being controlled, manipulated and from our perspective, gamed?

Our documents show that it started as early as the 90's when representatives of the Washington State Jail Industry first started to push an agenda of "jail industry expansion" and "free venture" business interests in Whatcom County at the expense of taxpayers. These are their phrases, not mine. The documents we have shows a pattern of who, when and why - showing a paper trail. Certain vendors are embedded inside our County politics using county email addresses and authority that has not been approved by this Council so far as I can tell.

2) Why are non-profits, political parties, small business people, common citizens being used against each other and emotionally manipulated to stand down from debates, and being encouraged to pass taxes that are not justified?

This continual badgering of the people is slowly eroding the strength of the local small businesses and organizations. The documents will show you the trends, patterns and certain key actions that accompanied the Executive Branch's drives to pass the sales taxes of 1999, 2004 and 2008 – and the taxes of 2015. This is in face of contrary evidence that crime rates have been dropping consistently in Whatcom County and across the nation, and even as our emergency services providers had to pass additional taxes this past year just to handle critical needs.

3) Why is the jail mailer not just an innocent mailer, but is instead a symptom of systemic failure, and how does it demonstrate the imbalance between the branches of government?

The documents show how the original imbalance of power between the branches, has led to what we believe is a systems failure, and ultimately to an abuse of power by the Executive branch. It is not about whether people intended to do this, but the pattern is there.

It is notable to me that three entirely different organizations – through 16 individual taxpayers - filed complaints with the PDC about that mailer, raising different perspectives. These organizations include the League of Women Voters, the Bellingham Racial Justice Coalition and the Restorative Community Coalition.

This is a lot of taxpayer protest, considering the size, scale and substance of their complaints. I recommend that if you have not done so, that you take the time to read them all, and read the response by your Prosecutor's office. And the followup information that caused a fresh investigation. Go back and refresh your memory and listen to the testimony given to this Council, and read the DLR minutes and look at the campaign strategies used to compel the voters to pass the tax. There are problems here that need to be examined.

Fifth,
Ken, I do not agree that I/we have had extraordinary access to Council Members. This implies some special privilege, when our experience is the opposite: the access we have had is contentious, has been challenging, and fractured.

Extraordinary access seems to be what other friendly non-profits, consultants and organizations seem to have with this Council. They often have opportunities to present their proposals and information to the committee meeting of the whole in a transparent and public fashion.

By contrast, in several years of striving to present our restorative justice and economic 'alternatives to building the jail' to the Council, we have been dismissed by the pre-conceived notion that our prevention based

"alternatives to building a jail" = "jail alternatives used afterwards inside the jail after it is built". These are not equal concepts, and are dramatically different things.

What we received after years of asking, is one 20 minute timeslot before the Public Works and Safety committee (invited by Barbara Brenner). At that time we were facing the fast-tracking of the sales tax, and found ourselves dealing with urgent matters - exposing the challenges in the streets of getting mental health, prevention and intervention services.

Our Coalition has had to fight through resistance and use every method at our disposal to get alternative viewpoints heard. Here is the history of the key issues we had to address and the exchanges with the Council since 2010. This is just since the new proposal to build a 2400 bed regional jail project was initiated.

Challenge # 1:
To expose a biased $3 Million dollar planning process.

Documents will show how this process was controlled by jail industry consultants and the Executive branch from the beginning, and this process was not based on solid business fundamentals.

We had to fully discover the problem and expose the plan as we taxpayers had to work all the way through the legally authorized due process.

1. We submitted comments, attended and testified before Jail Task Force meetings, the Scoping hearing, the SDEIS hearing.
2. We were uninvited from the Right Sized Jail meeting.
3. We were refused a seat on the Jail Task Force.
4. Our Coalition was cautioned to 'stand down' by two non-profit representatives for several reasons.
5. We were told by two other non-profits that they had been similarly cautioned in a meeting, and they were therefore afraid to stand up against the jail, and were afraid of associating with us for fear they would lose their funding.
6. We instead continued to stand up, and we objected to the presentation of the FEIS document when it was delivered to the Council.
7. We stood up and testified against the purchase of the land in Ferndale, calling for public hearings, review, etc. We were ignored.
8. At one point, we were even asked to leave a meeting we had been invited to by Barbara Brenner, when the Mayor of Lynden - after consultation with the County Executive and the Sheriff - chose to turn the meeting into an Executive Session.

Under review of the facts and the documents, it can be shown how the jail industry interests pre-dominated the process. If you read the taxpayers concerns (ours and others) expressed in the FEIS, you will discover that they were not addressed in the planning process. Instead they were substantially said to be "outside the scope" of planning to build the jail.

This Council, when confronted with a completed $100 Million dollar final plan – even though none of you had been present during the public meetings conducted by the jail industry consultants – were then told by the jail industry consultants and the County Executive that they did not need to have any public hearings. They were instead advised to immediately buy the land in 10 days – or the price would double. This was all done in the middle of multiple millions of dollars in land swaps and movements of road funds. Yet the sitting Council at that time had not even had time to read the FEIS. They had not had time to receive or read the summaries of the real estate transactions. They had not held any public hearings in the three prior years. What was the rush?

Challenge 2:
To stop the passage of the sales tax politically, we had to change tactics:

1. We testified publicly to educate the Council and the taxpayers about the reality and impacts of mass incarceration.
2. We stood up to oppose the unjustified tax.
3. We held panel discussions, sponsored conferences, hosted meetings.
4. In prior years, we had met with a few of you in random meetings to raise issues and awareness of the failures of in transparency and due process.
5. All of our concerns felt like they were landing on deaf ears.
6. We felt forced to send constant emails exposing the issues, expanding awareness.
7. We showed up and testified repeatedly in 3-minute sound bites against passing the plan, against buying the land, against the methods used to pass the tax.
8. We wrote letters showing how the Needs Assessment was not valid.
9. We wrote a 9 point alternative proposal.
10. We wrote letters and testified against the fast-tracking and the manipulation of the Councils, and eventually against the tax itself.

Challenge #3:
Since the jail plan was still moving forward, and no one was holding public hearings, or listening to taxpayer concerns, we eventually started calling for law and justice reviews, tax and fiscal accounting reviews, investigations.

Until we started unearthing certain documents, things had not been adding up for the taxpayers. Now they do.

Why was it that this Council would not stop to listen to the taxpayers who represented the inmates, the families of inmates, the silent silo of citizens who are negatively impacted by that jail plan? This Council has been unwilling to listen to a Coalition of people who in fact do have logical and reasonable alternatives to building that big jail. Why not? What is wrong with the process, with the system when this Council would not take one hour to listen to the people in a full and transparent fashion?

That is not extraordinary access. That is not fair and open public process. And, we know we must do this anyway…for we know it is difficult to address the legacy of over-criminalization, over-incarceration, and excessive taxation when there is no platform for giving solutions.

Lastly,
Ken, I am sorry I hung up on you from a very human level, and I publicly apologize right here and right now. Please forgive me, and please understand that this was not about you. It was about me feeling scared for the people. Frankly, it took great courage to call you. When I offered new information, new research and documents and you responded that you did not believe me, and followed that up with "even if I saw the documents, I would not believe them." I felt gutted and shut down one more time. It was hard to speak.

In closing,
Council, we have documents that have been gleaned from many different sources about how this jail business in Whatcom County has been conducted. They are documents that it is likely that most of you have never seen, and they contain information many of you probably don't know.

If any of you want to discuss this further, we are available, and the documents are available. We request a way to deliver it that works wherein we can show it to all of you at once ideally – so you can cross-examine the material freely and are able to ask us questions together and think together. Let us know how this can work.

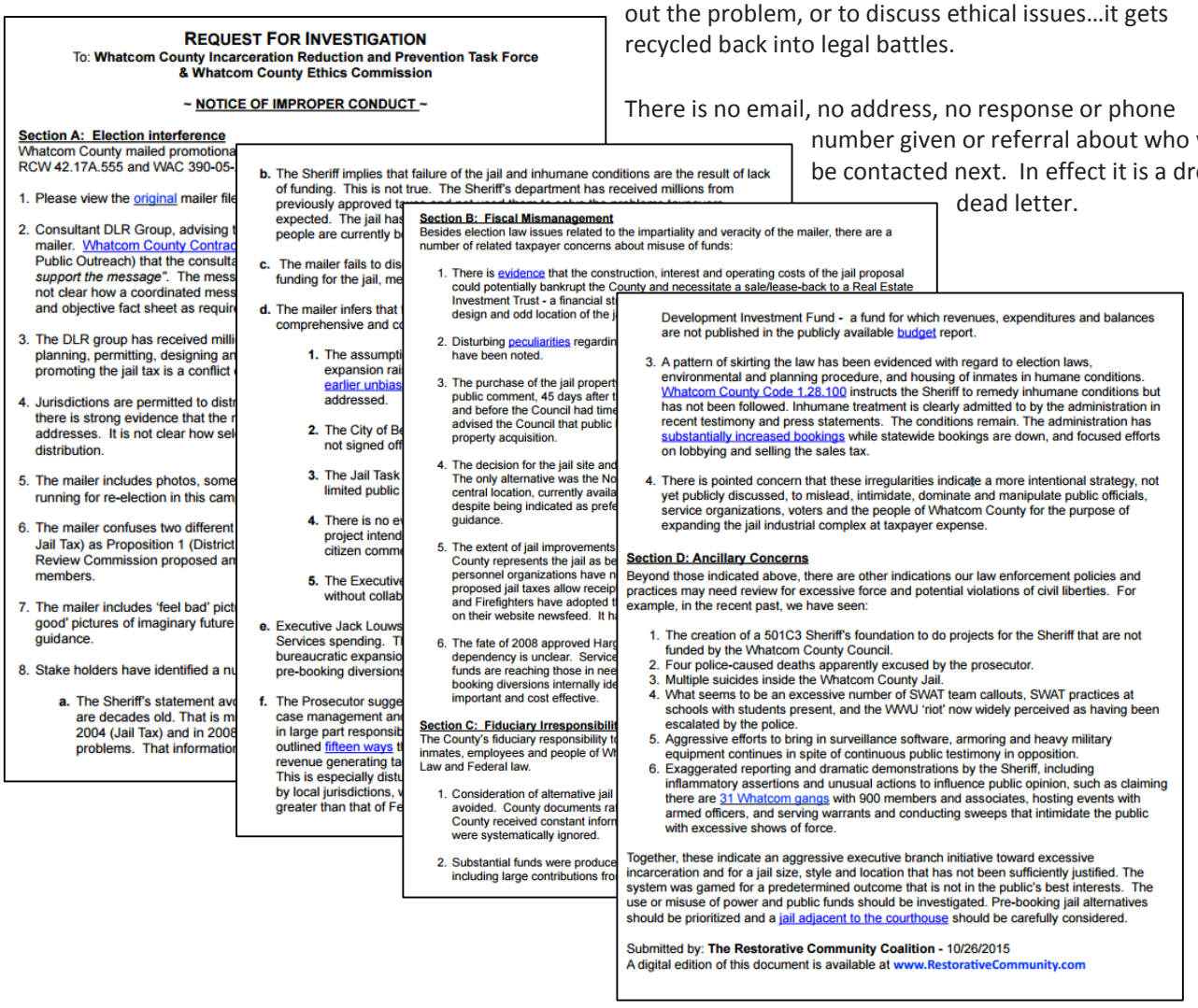
We have great hope for our future and we believe that 'truth will out'. We believe that by working together, the people of Whatcom County can implement change at an extraordinary level when we choose. Our Coalition is a non-profit 501C3 composed of all volunteers. We have been standing up for the silent silo of citizens who are opposed to mass incarceration and instead wish to implement the replacement economy – the restorative economy.

To that end, we are attaching our newest flyer inviting you to attend the March 19, 2016 ***Do-Overs – Restorative Solutions Conference: Changing the Game in Incarceration*** which will be moderated by a world-class professional facilitator. We would love to have you come.

The Letter of investigation, (shown below) has already been submitted to the PDC as evidence in this case. It is included here as a cross reference to show the response that this Coalition had received through the Executive's Office when the Coalition was asking for an Ethics Investigation. The letter of refusal follows on the next page, showing that the legal trap is for real. There was not one phone call or question from the Ethics commission asking how to support a taxpayers' organization that is concerned about ethics issues and wants to confront the problems for County taxpayers. This Commission simply dismissed it since it did not fit into certain legal rules.

The concerns were denied outright. Unless the taxpayer is an attorney, there is no consideration or curiosity to find out the problem, or to discuss ethical issues…it gets recycled back into legal battles.

There is no email, no address, no response or phone number given or referral about who would be contacted next. In effect it is a drop dead letter.



REQUEST FOR INVESTIGATION
To: **Whatcom County Incarceration Reduction and Prevention Task Force & Whatcom County Ethics Commission**

~ **NOTICE OF IMPROPER CONDUCT** ~

Section A: Election interference

Section B: Fiscal Mismanagement
Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds:

Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available budget report.

3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. Whatcom County Code 1.28.100 instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has substantially increased bookings while statewide bookings are down, and focused efforts on lobbying and selling the sales tax.

4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense.

Section D: Ancillary Concerns
Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen:

1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council.
2. Four police-caused deaths apparently excused by the prosecutor.
3. Multiple suicides inside the Whatcom County Jail.
4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police.
5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition.
6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are 31 Whatcom gangs with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force.

Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be investigated. Pre-booking jail alternatives should be prioritized and a jail adjacent to the courthouse should be carefully considered.

Submitted by: **The Restorative Community Coalition** - 10/26/2015
A digital edition of this document is available at **www.RestorativeCommunity.com**

BEFORE THE WHATCOM COUNTY
ETHICS COMMISSION

IN RE: Ethics Complaint "REQUEST FOR INVESTIGATION" Email dated 10/27/2015 Ethics Commission	No. 2015-02 DECISION AND ORDER

On October 27, 2015, a Complaint was filed via email with the Whatcom County Ethics Commission Clerk by The Restorative Community Coalition. The Code of Ethics for Elected Officials is contained in Whatcom County Code Chapter 2.104 (Code of Ethics).

Section 2.104.110(B) of the Code of Ethics requires the Chair of the Commission to review complaints for conformance with complaint procedures, as provided in subsection 2.104.110(A), and notify the complainant if the Complaint is deficient. The Chairperson in consultation with all other commission members, has completed the review, and has determined the Complaint is deficient in that the Complaint does not meet some required provisions of Section 2.104.110 (A) and (B) AND 2.104.120. The Chair and Commission makes the following Findings:

1. The Complaint does not conform to the procedural requirements of WCC 2.104.110 as follows:

   a. It is not drafted by a "natural person" as required. Instead it is submitted by an organization.
   b. It is not signed under oath by a complainant.
   c. It does not name a specific elected official alleged to have engaged in unethical behavior.
   d. It does not refer to a specific provision of the code of ethics alleged to have been violated.

2. The Complaint is submitted as a "Request for Investigation." This Ethics Commission is not an investigating body. The Commission is empowered only to receive, review, and rule on ethics complaints. It is not empowered to conduct investigations.

3. The Complaint does not, on its face, state facts which, if proven to be true, constitute a violation of the code of ethics.

The issues raised are primarily political ones that may be presented to voters for their consideration. To some extent, the issues may be legal (in that the Complaint alleges violations of RCW 42.17A.555 and WAC 390-05-273). Legal issues are for courts to rule on, and the Commission is not empowered to rule on matters of law such as this.

4. There are special guidelines that apply when a complaint is filed close to an election date. See WCC 2.104.120. The Complaint here does not provide specific dates that the allegations took place, and therefore does not meet the code limitation that "only those complaints may be filed which allege a violation of the code of ethics which occurred not more than one week prior to the date of filing the Complaint." WCC 2.104.120(A).

THEREFORE, THE COMMISSION HEREBY FINDS that the above Complaint is deficient for failure to comply with the provisions of Section 2.104.110(A), and subsections (2) and (3).

THE COMMISSION FURTHER HEREBY FINDS that the above Complaint is deficient pursuant to WCC 2.104.110 (B) (2), (3) and (4) and WCC 2.104.120, and as described above herein.

BASED ON THE ABOVE FOREGOING, IT IS HEREBY ORDERED THE COMPLAINT IS DISMISSED.

The complainant may appeal the findings of deficiency or dismissal of this Complaint under subsection 2.104.110(B), or as otherwise provided for under WCC 2.104.

DATED this 30th day of October, 2015.

Adrian Madrone, Chair

SUMMARY OF THE YELLOW FLAGGED "AUTHORITIES" SECTION

The above charts and pages provide insights into the systemic failures of the Whatcom County government as it has been operating. This author is a deeply concerned taxpayer whose family lives in this nation, in this state and in this County and is inheriting the legacy of us elders. Everyone's children are at risk to being the victim, the bully, or the enabler in the incarceration economy. In more, and ever deeper analysis, it is clear that eventually all players become consumed by this self-destructive economic spiral. It is a lose/lose/lose game in the end, for no on ultimately wins – unless it is the 1% top prison and war companies.

Inside the system, everyone loses: the inmates inside the jail lose on all fronts…for they also pay sales tax. The hired government staff and employees of the jail industry who work inside the jail system make short term salaries and benefits that are paid by taxes and they too end up in effect inside the jail controlled by rules. The underwriters – the taxpayers whose dollars are consumed in salaries and corporate contracts, are also the ones who end up with themselves or family members as inmates. Eventually the taxpayers at the base run out of money to fund the basics.

When those inside the system are completely unwilling to examine the problem to look for errors that could be corrected, the government has become consumed by the corporate predators and freedom on all fronts is lost. It is for the above reasons, that this author has taken extraordinary amounts of volunteer time to produce this documentation for the investigators.

It is not ok that hardworking taxpayers have had to go through all this extraordinary political, business and economic work to protect ourselves from those who we trust and hire to protect us. To protect ourselves, our economy and our children from those we hire to conduct our County's business affairs. We give them control of our tax money, our guns, our courts, our honor. And then we are vulnerable to their power. We should never have to defend ourselves from the predatory tactics of officials who are not accountable to the people.

Someone has to say NO and stand up to systemic violence against the taxpayers. Will investigators outside the County protect the taxpayers of this County? We will find out.

The Red Flagged Section is next. It is information that provides specific evidence about how jail industry insiders used facilities, funds and privilege given to them, to strategically operate and control the 2015 Campaign for their advantage.

Identifying the Sheriff's Hidden Insider Groups & Campaign Actions

Privileged Insider: Marvin Wolff

From Blue Ribbon Panel 1996 to
Washington State Jail Industries, 2000-2007 Chair

Background: Marvin Wolff was a Merchant Marine, and moved from San Diego where he was involved in the California tourism industry as the Executive Director of the Queen Mary Project. In 1982 Wolff was appointed as the Executive Director of the Bellingham-Whatcom County Visitor and Convention Bureau, and got involved statewide as the tourism industry was expanding in expectation of Expo 86. From the Bureau, Wolff moved into positions where he represented the Whatcom Historical Society, the Maritime Heritage Museum, and the Sparks Museum.

Statewide Jail Industries Board Influence

The Washington State Jail Industries Board (JIB) was established by RCW 36.110 in 1993. Marvin Wolff was appointed to the Board of Directors in 1999, and served as Chair from 2000-2007.

Key part of the JIB mission (from minutes): to provide statewide leadership and technical assistance "***to establish, develop, and maintain jail industries*** ***through partnerships with labor, business, victim's, community and government***…"

Something to notice is that as funding became more available to expand jail industry markets and prisons (they call it "free venture" and "jail industry expansion") the funding for the tourism industry and education industries have reversed and have been declining. This change in focus of state funds has been shown to be economically costly to taxpayers, and contrary to sustainable free-enterprise and a healthy local, community driven economy. Key observations:

- Wolff is appointed to the Washington State Jail Industries Board in 1999 by Governor Gary Locke.
- In Jail Industry Board minutes, we discover how the **Whatcom County Sheriff's office was connected to the Jail Industries Board** early on with various Deputies reporting to the JIB.
- Wolff is embedded directly inside the Sheriff's office as a "volunteer."
- Wolff writes the **'pro statement'** for the **2004 jail tax.**
- Documents show that Wolff is a **Whatcom County vendor by 2004.**
- Wolff wrote a **strategic, scathing letter to the editor in 2015** that raised questions about the ethics of Councilmen, and he testified at critical political junctures.
- Wolff, a Merchant Marine, seems to have expertise in CERT (Certified Emergency Management Training), in interoperability and homeland security issues, and **does trainings under the umbrella of the WCSO Support Foundation.**
- One document attached is a post that was exposed as part of the **Wiki-leaks** intelligence scandal (which has national implications).

1-Blue Ribbon Panel

Blue Ribbon Panel: Suddenly in 1996 Marvin Wolff makes an unprecedented lateral movement into the jail industry to become an insider. He is appointed by County Executive Pete Kremen in 1996 to the ***Criminal Justice Blue Ribbon Panel***, as per the 1997 Council minutes. Notice that in the Public Safety Now Timeline published in 2012 they call it the ***Blue Ribbon Panel on Criminal Justice and Public Safety.*** Notice that there is a sudden increase in the demand for jail space, as the Panel recommends a "barebones" 250% increase in the size of the jail together with the first sales tax increase.

1997 MAR 20	*Blue Ribbon Panel on Criminal Justice and Public Safety Needs* submits its recommendations to Executive Kremen that include the following for the Sheriff's Office Corrections Bureau: • Construct and operate a bare bones 750 bed minimum security facility • Add one Lieutenant and five Corrections Officers to the County Jail Staff • Combine the operations of Adult Probation, Juvenile Probation, Juvenile Detention, Attorney Assignment, and the County Jail into the Corrections Division of the Sheriff's Department • **Recommended that the County Council pass the 0.1% sales tax for Criminal Justice.**

WHATCOM COUNTY COUNCIL
Regular Council Meeting

May 6, 1997

The meeting was called to order at 7 p.m. by Council Chair Ward Nelson in the Council Chambers, 311 Grand Avenue.

Also Present:
Marlene Dawson
Barbara Brenner
Tom Brown
Alvin Starkenburg
Kathy Sutter
Robert Imhof

Deception: The size of the jail was pre-determined in 1997 by private selection then demanded by facilities. It is not the result of a valid needs analysis as claimed by the Executive Branch in 2015.

SPECIAL PRESENTATION

1. SPECIAL PRESENTATION BY WHATCOM COUNTY EXECUTIVE PETE KREMEN REGARDING THE CRIMINAL JUSTICE BLUE RIBBON PANEL (AB97-017)

County Executive Pete Kremen introduced the panel who were present: Art Anderson, chair; James Wilson; Ron Polinder; Marvin Wolff; Dick Beardsley; and Egbert Maas. Other members were: Cheryl Hershey; Pastor Len Ericksen; Debbie Anderson; Fielding Formway; Kathy Harvey; Gordon Dolman; and Ken Roberts.

2 **Wolff is a Whatcom County Vendor**

9217	547701	WL REPAIR	959 W LAUREL RD	FERNDALE	WA	98248
9218	33644	WOHLRAB, MARK	300 SOUTH 16TH ST	LYNDEN	WA	98264
9219	539381	WOLD, SHIRLEY	3680 N RED RIVER RD	FERNDALE	WA	98248
9220	230578	WOLF LUMPS & CURRICULA	PO BOX 1108	MONROE	WA	98272
9221	630002	WOLF, GREG	1603 E HEMMI RD	EVERSON	WA	98247
9222	2211231	WOLF, STEVEN D	285 ALDER DR	SEDRO WOOLLEY	WA	98284
9223	1157608	WOLFE TORY MEDICAL INC	79 W 4500 S #16	SALT LAKE CITY	UT	84107
9224	1E+06	WOLFF, MARVIN M	5413 BARR RD	FERNDALE	WA	98248
9225	32352	WOLFKILL FEED & FERTILIZER	PO BOX 406	LYNDEN	WA	98264
9226	2195711	WOLL CONSULTING	5925 RUTSATZ RD	DEMING	WA	98244
9227	271169	WOLLACK & ASSOCIATES INC	11416 SPINAKER LN	ANACORTES	WA	98221
9228	4672	WOLTENS TRUE VALUE HDWRE	862 PEACE PORTAL DR	BLAINE	WA	98230
9229	117706	WOLTMAN, RHEA	PROFESSIONAL PARLIAMENTARY	COLORADO SPRINGS	CO	80906
9230	161318	WOLVEN, AARON	1359 SUDDEN VALLEY	BELLINGHAM	WA	98229

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 04105 POSTED                          Voucher Entry          Prev Voucher:

Action Code . . . I Approved Account                  Voucher/Type/Co.   779879 PV 00167
Supplier Number .                1458718              WOLFF, MARVIN M
  voice Number. . 081804                              Cost Ctr . . . .         16735
   "    Amount. .                7,000.00             Payment Terms. .
   "    Date. . . 08/18/04                            Fund . . . . . . 00167
G/L     Date. . . 08/31/04                            P.O. Number. . .    50308 OP 00167



Remaining Amount.                                     Batch Number . .   265651
                 . . . . . . . . Payment Schedule . . . . . . . . .
Pay          Gross          Discount                  Warrant Remark          Disc Due P
Itm          Amount         Available                                          Date    S
001             7,000.00                    Contract #200407031               09/17/04 P



 F4=Details F9=Name Srch F11=Addr Book F13=J.E. Inq F16=Ledger Inq  F24=More
```

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 042003                          Vendor Ledger Inquiry
 Supplier Number. . .                  1458718  WOLFF, MARVIN M
 Parent Number. . . .
 Document Number. . .                                  Date From. .
   .O. Number/Doc Type          /                      Date Through
 Invoice Number . . .                                  Ledger Inq Sequence. 8
 Skip To Page . . . .                                  Paid . . . . . . . . Y
                                                       Fund . . . . . .

    Do Document Pay Invoice  Disc Due          Gross                 Open        P P
OP  Ty  Number  Itm  Date      Date             Amount                Amount      C S
    PV    809642 001 12/27/04 01/26/05           3,000.00                         D P
    PK    627216     01/18/05 01/26/05           3,000.00-                        D
    PV    779879 001 08/18/04 09/17/04           7,000.00                         D P
    PK    614534     09/07/04 09/17/04           7,000.00-                        D
                                                 ------------------ ----------------
                             TOTAL                10,000.00
```

3 **Chair of Jail Industries Board 2000-2007**

WASHINGTON STATE
JAIL INDUSTRIES BOARD

1999 JAIL WORK REPORT

JI BOARD

LEADERSHIP CHANGES AT THE JAIL INDUSTRIES BOARD

***Marvin Wolff**, Business Representative, Whatcom Historical Society*

***Howard Yarbrough**, Administrator, Correctional Industries*

Mission of the Jail Industries Board

Provide statewide leadership and technical assistance to establish, develop and maintain jail industries through partnerships with labor, business, victims, community, and government which promote:

- Victim compensation and restitution
- Reduced cost of incarceration
- Reduced victimization and recidivism
- Meaningful work experience and work ethics
- Public service through offender labor

WASHINGTON STATE
JAIL INDUSTRIES BOARD

2003 Offender Work Report

JI BOARD

Offenders Working in Jails
and for Communities

Marvin M. Wolff
Chair

Jill Will
Executive Director

WASHINGTON STATE
JAIL INDUSTRIES BOARD

2004 Offender Work Report

JI BOARD

Offenders Working in Jails
and for Communities

Marvin M. Wolff
Chair

Jill Will
Executive Director

Marvin M. Wolff
Chair

Marvin M. Wolff, CHAIR
Whatcom Maritime Association

MINUTES
WASHINGTON STATE JAIL INDUSTRIES BOARD MEETING
October 25, 2002

Criminal Justice Training Center
19010 1st Avenue South
Burien, Washington

ROOM E-154

Members Present: Mary Boehnke, Jeralita Costa, Ed Crawford, Ramona Dahl (acting), Kenneth Kunes, Debra Latimer, Andre Loh, Randy Loomans, Runette Mitchell-Marshall, Bruce Thompson, Julie Wilson, Marvin Wolff, Howard Yarbrough, Dennis Graham (staff), Krisztina Kovacs (staff), Jill Will (staff).

Proxies Presented: None.

Members Absent: Jane Johnson, David Johnson, Bill Lehning, Garry Lucas, Helen McGovern, Jim Powers.

Guests Present: Mark Holst, Whatcom County Sheriff's Office Programs Sergeant; Jeff West, Chelan County Regional Justice Center Corporal.

Note: Whatcom County Sheriff's Deputies begin showing up at the Jail Industry Board Meetings. These Deputies are now connected to Marvin through the Sheriff's Advisory Board.

MINUTES

WASHINGTON STATE JAIL INDUSTRIES BOARD
January 28, 2005

Criminal Justice Training Center
19010 1st Avenue South
Burien, Washington

Members Present: Jim Berrios, Ed Crawford, Kenneth Kunes, Debra Latimer, Andre Loh, Randy Loomans, Helen McGovern, Runette Mitchell, Marvin Wolff, Chandra Wrzesinski, Jill Will (staff)

Proxies Presented: Dan Plotner for Garry Lucas, Joe Koval for Howard Yarbrough

Members Absent: David Dillman, David Johnson, Jane Johnson, Sean Morrow, Jim Powers

Guest: Cary James, Undersheriff, Whatcom County

MINUTES
WASHINGTON STATE JAIL INDUSTRIES BOARD MEETING
November 21, 2003

Criminal Justice Training Center
19010 1st Avenue South
Burien, Washington

Members present: Jeralita Costa, Ed Crawford, David Johnson, Bill Lehning, Andre Loh, Runette Mitchell-Marshall, Bruce Thompson, Julie Wilson, Marvin Wolff, Jill Will (staff), Shanica McClintock (staff)

Members absent: Mary Boehnke, Kenneth Kunes, Debra Latimer, Randy Loomans, Garry Lucas, Helen McGovern, Jim Powers, Howard Yarbrough

Proxies Presented: Dan Plotner for Jane Johnson

Guests: Joe Hennessey, Cowlitz County Corrections; Mark Raymond, Whatcom County Sheriff's Office

H. Whatcom County Corrections Update
Lieutenant Mark Raymond of the Whatcom County Sheriffs Office provided an update on correctional issues in Whatcom County. The County's original plan of locating a facility on Port of Bellingham property fell through when County officials could not come to terms with Port officials on appropriate uses and restrictions for a facility. As an

interim measure, Whatcom County is seeking to establish a new facility that would co-locate a variety of functions including a 150 bed minimum security correctional facility, a new headquarters for the alternative corrections programs including space for seven existing offender work crews, space for jail industries, and a storage facility for elections equipment. Whatcom County has a long standing capacity problem at its main facility leaving it unable to house misdemeanant offenders who, consequently, are not being held accountable for their offenses. The interim facility would address this issue. Long term plans still call for siting a facility in the County that would house a new jail, courts, and county emergency management functions.

Notice:
Whatcom County Sheriff's deputies are directly linked to Marvin Wolff and the Jail Industries Board doing jail industries expansion and planning for over a decade.

Whatcom Watch Online

Story Display

4

October-November 2004

County Ballot Measure.

Proposition 1.

Whatcom County Special Election — Proposition No. 1
Submitted by Whatcom County Council
Jail Facilities Sale and Use Tax

The Whatcom County Council passed Resolution No. 2004-050 concerning a proposition to authorize a sales and use tax for jail and juvenile detention facilities. This ballot proposition would authorize the imposition of a sales and use tax, in addition to any other taxes authorized by law, of one tenth of one percent (0.1%—10 cents for every $100) to be used solely for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of jail facilities that house inmates being held, charged, or convicted of misdemeanor and felony acts, as authorized by RCW 82.14.350. Should this proposition be:

Statement For:

A car is weaving from side to side as it careens along the street in a school zone. A young school child in the crosswalk is frozen in place as she looks up in horror as the vehicle bears down on her. A moment later a young innocent life has been snuffed out by a man who is driving while intoxicated. Just one hour before he was stopped by a police officer for driving under the influence. The officer cited him, took away his car keys, and had to let him go because there was no room in the county jail. This could be a real incident and could happen to your family.

Drivers like this drunk driver can never be stopped and the community protected unless they are taken off the streets and put behind bars. In order for it to be effective, punishment should be swift and sure.

A young man on Railroad Avenue snatches a lady's purse and knocks her over as he flees. A few blocks away alerted police officers apprehend him. He smiles as he is given a citation and then released. He smiles as he walks away because he knows that he will not be arrested because there is no room in the county jail. He also knows that

he will never go to court to answer the citation unless he is arrested and booked into the jail. The next unsuspecting victim may suffer worse harm. Real incidents like this happen in the cities and rural areas of out county every day.

The Whatcom County jail, originally designed for 110 inmates now regularly holds over 250 offenders. This endangers both the inmates and the corrections officers who are there to maintain security and order.

Increasing numbers of criminals are moving into Whatcom County because the word has spread about the jail "booking restrictions" and they know they won't go to jail. Each time someone is booked into the jail someone else has to be given "early" release to make room for the new offender. Offenders who should be confined and punished by the orders of the court are walking around in our community because there is nor room in the county jail. When someone commits a crime and is not punished that person is emboldened to commit increasingly severe crimes.

The Whatcom County Council has wisely placed a measure on the November ballot, County Proposition No. 1, that would increase the sales tax by one tenth of 1 percent, just 10 cents on a $100 purchase. If a person made $20,000 of purchases a year that would amount to $20. That's a small price to pay for making Whatcom County a safer place in which to live.

It is important to remember that the money generated by the one tenth of one percent sales tax can by state law only be used for the construction and operation of a jail. It cannot be diverted to the general fund or for any other purpose. In addition, those people who do not live in the county but shop here pay one fourth of the sales taxes.

County Proposition No. 1 is being supported by the business community, judges, law enforcement and citizens who want a safer community in which to work and raise their families. The only people I can envision who would oppose this proposition are members of the criminal community.

Please vote yes on Cou Proposition No. 1.

Statement prepared by
Marvin Wolff, People for a Safer Community

5

MINUTES

WASHINGTON STATE JAIL INDUSTRIES BOARD
May 26, 2006

Criminal Justice Training Center
19010 1st Avenue South
Burien, Washington

Members Present: Dean Mason (staff), Christina Cruz (staff), James Huffman, David Johnson, Andre Loh, Runette Mitchell, Sean Morrow, Marvin Wolff and Chandra Wrzesinski.

From Minutes:

3.3 Best Practice Reports – Dean informed the Board on his site visits for information gathering: On April 19, 2006 he visited and toured the Whatcom County Jail. He toured the facility and the new jail industries expansion facility. Contacts were Sheriff Bill Elfo, Undersheriff Carey James, Chief of Corrections Wendy Jones, and a number of other county staff. Facilitated by JIB Chair Marvin Wolff. Dean added that he visited the Thurston County Jail on May 10, 2006. He toured the facility and was given an overview of plans for the new jail expansion that could include expanded or new industries opportunities. Contacts were Karen Daniels, Chief of Corrections, and Lieutenant George Eaton. On May 15, 2006 Dean visited the Lewis County Jail. He toured the Work Ethic and Restitution Center incarcerated offenders. Contacts were Chandra Wrzensinski, Jail Administrator and Administrative Sergeant Kevin Hanson.

- Dean had a scheduled visit to the Spokane County Corrections (Geiger) on May 22, 2006. Dean mentioned due to lack of communication the visit did not take place and advised he is going to reschedule the visit.

FOR IMMEDIATE RELEASE

April 27, 2006 JIB-06-001

6

Dean Mason, Executive Director, 360-486-2432
WASHINGTON STATE JAIL INDUSTRIES BOARD
3060 Willamette Dr. NE, Suite 100
Lacey, WA 98516

Jail Industries Board Chair, Marvin Wolff, wrote to Governor Gregoire that, "Mr. Mason will continue the Board's programs that assist the local communities with Jail Industries. Due to your continuing support, [a number of] municipalities, counties, and not for profit organizations were able to utilize offender labor valued at more than twenty-four million dollars last year."

RCW 36.110 establishes the Jail Industries Board. The Executive Director is a member of the Governor's small agency cabinet.

Mission of the Jail Industries Board

Provide statewide leadership and technical assistance to establish, develop, and maintain jail industries through partnerships with labor, business, victims, community, and government that promote:

JI BOARD

2004 Offender Work Report

Whatcom County Jail Average Daily Population: 298

☐ If checked, data estimated.

LABOR HOURS	Work in Jails		Work for Government		Work for Not-for-Profit Organizations	
	Average Workers	Total Hours	Average Workers	Total Hours	Average Workers	Total Hours
Inmate Labor	29	108,334	29	11,760		
Community Service Labor						
Subtotal	29	108,334	29	11,760		

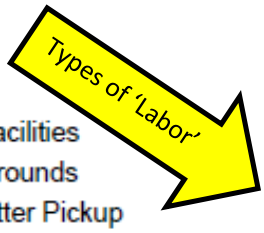
VALUE OF HOURS @ $7.16 per hour	Offsetting Costs of Incarceration	Reducing Tax Burden	Contributing to Community
	$775,671	$84,202	$0

TOTAL HOURS	120,094	TOTAL VALUE	$859,873

WORK DETAIL (IN=Inmate; CS= Offender Sentenced to Community Service)

Category	By	Work	Customer
Community		Maintenance/Setup—Fairgrounds	Northwest WA Fair
		Maintenance/Setup—Playing Field	Boys and Girls Club
Government		Building Refurbishment	Whatcom Co Facilities
		General Labor	Whatcom Co
		Landscaping	Whatcom Co Facilities
		Maintenance—Building	Whatcom Co Facilities
		Maintenance—Courthouse	Whatcom Co Facilities

PDC-Addendu



Maintenance—Facilities	Whatcom Co Facilities
Maintenance—Grounds	Whatcom Co Facilities
Maintenance—Litter Pickup	City of Bellingham, State of WA, Whatcom Co
Maintenance—Outdoor	United States Forest Service
Maintenance—Parks	United States Forest Service, City of Bellingham, Whatcom Co
Maintenance—Pistol Range	Whatcom Co Sheriff's Office
Maintenance—Records/archives	Whatcom Co
Maintenance—Trail	United States Forest Service, City of Bellingham, Whatcom Co
Natural Resources—Brush Removal	United States Forest Service, Whatcom Co River and Flood
Natural Resources—Conservation	United States Forest Service, Whatcom Co River and Flood
Natural Resources—Weed Control	United States Forest Service, Whatcom Co River and Flood
Natural Resources-Erosion/Flood Control	United States Forest Service, Whatcom Co River and Flood
Services—Canal Cleaning	Whatcom Co River and Flood
Services—Fire Department Assistance	Whatcom Co
Services—Graffiti Removal	City of Bellingham
Services—Snow Removal	Whatcom Co
Staffing—Event	Whatcom Co Parks
Food Service	Whatcom Co Jail
Janitorial	Whatcom Co Jail
	Whatcom Co Jail
s—Vehicle Washing/Detailing	Whatcom Co Jail
Sewing—Inmate Property Bags	Whatcom Co Jail
Sewing—Inmate Uniform Repair	Whatcom Co Jail, Skagit Co Jail

Hidden Economic Engines Need Further Auditing & Investigation:

On the surface, the idea looks logical: to cut costs by using inmates, to train people with skills. However, this is a contrarian industry. People coming out do not feel trained or better prepared to get jobs, and the formal reentry trainings are weak. Meanwhile, inside the economic world taxpayers funds fuel the capital and operating costs. And the expanding jail industries are middlemen profiting off the churn of people through the system. This does not mean that justice is served. It does not mean that taxpayers are getting a good return on investment when all factors are considered. It does not mean that there is a drop in crime rate, or that the public's needs are being met. In fact, it is the opposite. Statistics show that incarceration leads to more poverty, and jails lead to more trauma, which leads to more addiction and into a self-destructive cycle of more violence.

When the Taxpayers voted to tax themselves to buy a new jail in 2004 based on the commitments made…the real question is: Why has the money been used to expand jail industries and arrest more people…and NOT to build the new jail as promised?

7

WHATCOM COUNTY
SHERIFF'S OFFICE
SHERIFF BILL ELFO
DIRECTOR

PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4078

DIVISION OF
EMERGENCY MANAGEMENT
DON BOYD, C.E.M.
DEPUTY DIRECTOR

COUNTY COURTHOUSE
311 Grand Avenue
Bellingham, WA 98225-4049

July 2007

CERT NEWS

Volume 9, Issue 7

COMMUNITY EMERGENCY RESPONSE TEAM (CERT)
Whatcom County, Washington

The Newsletter
FOR CERT, BY CERT and BECAUSE of CERT

YOU MISSED IT!

What has terrorism to do with Whatcom County? Are there terrorist cells in Whatcom County? Were you there for the continuing education session with **Marvin Wolff**, special projects volunteer for Whatcom County on Monday, June 11 at 6:30 PM? If you weren't, you missed a very informative meeting and a great speaker.

Question: Who really is Marvin Wolff?
Why is he privileged? Why is he doing work like this and imbedded in our government – yet relatively unknown and not accountable to the Council or the taxpayers?

8

Washington Statewide Communications Interoperability Plan

Prepared by:
Washington State Interoperability Executive Committee (SIEC)
1110 Jefferson Street SE
PO Box 42445
Olympia, WA 98504-2445

April 4, 2008

Statewide Communications Interoperability Plan
Work Shop Attendees, August 22, 2007

Name	Title	Agency/ Business	Phone Number	Email
		Dept General		
Bob Wentworth	Communications Systems Manager	City of Spokane	509-625-7703	bwentworth@spokanecity.org
Jon (Wiz) Wiswell	Manager Radio Communications	City of Seattle	206-386-1215	jon.wiswell@seattle.gov
Marvin Wolff	Deputy Sheriff	Whatcom County Sheriff's Office	360-676-6650	mwolff@co.whatcom.wa.us

The GiFiles,

(//wikileaks.org/the-gifiles.html)

THE GLOBAL INTELLIGENCE FILES

Files released: 5543061

The GiFiles (https://www.wikileaks.org/the-gifiles.html)
Specified Search (https://search.wikileaks.org/gifiles/)

On Monday February 27th, 2012, WikiLeaks began publishing *The Global Intelligence Files*, over five million e-mails from the Texas headquartered "global intelligence" company Stratfor. The e-mails date between July 2004 and late December 2011. They reveal the inner workings of a company that fronts as an intelligence publisher, but provides confidential intelligence services to large corporations, such as Bhopal's Dow Chemical Co., Lockheed Martin, Northrop Grumman, Raytheon and government agencies, including the US Department of Homeland Security, the US Marines and the US Defence Intelligence Agency. The emails show Stratfor's web of informers, pay-off structure, payment laundering techniques and psychological methods.

[Analytical & Intelligence Comments] RE: Above the Tearline: Osama bin Laden's Safe-House

Released on 2013-02-20 00:00 GMT

Email-ID	1374552
Date	2011-05-04 19:39:00
From	mnmwolff@comcast.net
To	responses@stratfor.com

[Analytical & Intelligence Comments] RE: Above the Tearline: Osama bin Laden's Safe-House

Marvin M. Wolff sent a message using the contact form at https://www.stratfor.com/contact.

Marvin M. Wolff
<mwolff@nwintel.org>

A â€œsafe houseâ€ is a secure facility that may be used by law enforcement or criminals to ensure the safety of one or more people. The location and use of the â€œsafe houseâ€ should be restricted to those who have an absolute need to know. The facility must have certain characteristics if it is to function as intended.
The location of a â€œsafe houseâ€ in an urban environment must be close to a wide variety of means of transportation. It should be situated in a private building in a busy neighborhood where there is less notice taken of the movement of people and vehicles. Ideally the buildings or structures on either side should be owned or controlled by the organization operating the â€œsafe houseâ€. The operators of the â€œsafe houseâ€ should have the

https://wikileaks.org/gifiles/docs/13/1374552_-analytical-and-intelligence-comments-re-above-the-tearline.html V2-276

2/10/2016 The Global Intelligence Files - [Analytical & Intelligence Comments] RE: Above the Tearline: Osama bin Laden's Safe-House

ability to surveil the surrounding area both by electronic and personal means.
The rural environment requires that the â€œsafe houseâ€ be located as far away as possible from neighbors. The further back the facility is from the road the better it will be concealed from casual observation. There should be no mail box and no other deliveries scheduled to that location. The barn and other outbuildings should be physically secured to prevent their use as surveillance positions. Shrubs, small trees and other growth that can be used for concealment should be removed from areas adjacent to the facility. Detection sensors may be placed in trees or buried in the grounds near the facility.
The facility should be equipped with a functioning detection system that actuates by proximity to the structure and by attempts at intrusion. The facility should have secondary means of egress into adjoining structures or areas. In apartment type buildings the use of adjacent organization controlled apartments lends itself to this purpose. Stand-alone buildings should be equipped with a secure tunnel leading to an adjacent building or a secure exterior location such as a shed or garage.

The interior of the â€œsafe houseâ€ should contain a secure â€œsafe roomâ€ to which the occupants can flee if escape to the outside is impossible. The â€œsafe roomâ€ should not be readily visible to intruders and constructed in a manner as to not appear to be part of the facility. The entrance door should be no less resistant to entry than the door to the facility itself. If possible, it should have a second means of egress. This room should be constructed of materials that can withstand attempts at penetration.

The room should contain all the necessary components to support the occupants. These include food, water, medications, first aid materials, sealable waste containers, floor mats, sleeping bags, communications equipment, eye and ear protection, self-contained breathing apparatus, body armor, defensive and offensive weapons, lighting sources, backup power supplies and portable halon fire extinguishers.

A backpack containing maps of the local area, schedules for trains, buses, ferries, and planes, currency, identification documents, a concealable firearm with spare ammunition, capsicum spray canister, eyeglasses and other material for disguises, a Swiss Army type knife, a small monocular, and a miniaturized AM/FM radio should be kept near the means of egress.

The operators of a â€œsafe houseâ€ should constantly be involved with situational awareness. Special attention should be paid to buildings or structures from which the safe house may be surveilled. Close attention must be paid to street repair, building maintenance, utility workers, delivery services and other personnel operating near the facility. Unusual pedestrian or vehicle traffic or he absence of those should be cause for alarm. The operators of the â€œsafe houseâ€ must always keep in mind that the safety of the occupants relies on their ability to execute the security plan. Complacency is the enemy of security.

Source:
http://sz0007.ev.mail.comcast.net/zimbra/h/search?si=0&so=0&sc=571616&sfi=2&st=message&id=390960&xim=1&action=view

10

the Courthouse Journal

WWW.WACOUNTIES.ORG

September 29, 2005
Issue No. 28

Washington Association of County Officials
Washington State Association of Counties

Training and Upcoming Events

Investigating and Prosecuting Animal Cruelty Cases.

The Whatcom County Sheriff's Office has detected an increase in the frequency and complexity of criminal cases involving the torture and abuse of domestic animals. To help develop the skills of law enforcement officers and prosecutors in addressing these issues, the Sheriff's Office is sponsoring a seminar "Investigating and Prosecuting Animal Cruelty Cases." Experts will cover topics such as the link between animal and human abuse, the dynamics of animal abuse in domestic violence cases, a review of Washington's Anti-Cruelty statutes, as well as investigative techniques and the collection and preservation of evidence. The seminar is directed towards detectives and criminal investigators who investigate these matters, line level patrol officers, animal control officers and prosecutors.

The seminar will be held at the Best Western Lakeway Inn in Bellingham on October 17 and 18, 2005. The attached brochure lists the speakers and describes the program in further detail. The fee for the two-day workshop is $50.00. Please contact the Best Western Lakeway Inn at 360-676-1011 at for special room rates if you wish to stay at the Inn.

Please see attachment to this *Journal* (Attachment PG14) and for further information/registration please contact Marvin Wolff, 360-676-6650 or mailto:MWolff@co.whatcom.wa.us

Whatcom County Sheriff's Office Support Foundation

Insider Position: Marvin Wolff, Board of Directors

Founding member and elected Secretary since 2009

UBI #602948721

Mission: "…to fund Sheriff's Office project not funded by the county budget."

- Blog: http://whatcomcountysheriff.org
- Address: 3901 Airport Way, Bellingham,WA

- Mark Shintaffer has a Whatcom County Email address at: Shintaf@co.whatcom.wa.us

- **Marvin Wolff** has two Whatcom County Email address at: mwolff@co.whatcom.wa.us and at mwolff@whatcom.onmicrosoft.com

What is this?
Why is it that the Sheriff has a fundraising foundation?
Who oversees the public interest to hold this foundation accountable to the people?

Is this really a political foundation, a police foundation, a campaign or marketing foundation? With Whatcom County email addresses…?

Policy Maker: Online documents show that prior to founding the Whatcom County Sheriff's Support Foundation, Wolff goes to statewide Association of Counties meetings, and lists himself as a Deputy Sheriff with a Whatcom County email address at the statewide Washington State Interoperability conference – an event related to national security communications.

Working from inside Whatcom County's administration as the head of the Sheriff's Advisory Group, and doubling as the secretary of this non-profit, Wolff is a strong inside supporter of the jail industries expansion projects. Wolff's emails indicate he advises the Sheriff on things from tactics lists and strategic management, to data analysis, technical writing and public relations. Wolff advises on who to appoint to the Sheriff's Advisory Group, how to do fundraising.

Wolff coordinates efforts with the Sheriff, Wendy Jones, other deputies and Ray Baribeau. Wolff oversees press releases and posts that go on the Whatcom County Sheriff's Office Support Foundation blog, and shares information with the Public Safety Now Group through Ray Baribeau.

SOS Corporations
Office of the Secretary of State

SEARCH

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All documents filed with the Corporations Division are considered public record.

WHATCOM COUNTY SHERIFF'S OFFICE SUPPORT FOUNDATION

UBI Number	602948721
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	08/20/2009
Expiration Date	08/31/2013
Inactive Date	
Duration	Perpetual
Registered Agent Information	
Agent Name	Mark Shintaffer
Address	3901 Airport Way
City	BELLINGHAM

V2-216

Governing Persons

Title	Name	Address
Director	WOLFF, MARVIN	5413 BARR RD FERNDALE, WA 98248
Director	CHAMBERS, CODY	7960 E GULF COURSE DR BLAINE, WA 98230
Director	KENT, MICHAEL	5631 NAKAT COURT BLAINE, WA 98230
Treasurer	Shintaffer, Mark	3901 Airport Way BELLINGHAM, WA 98226
President	Chambers, Cody	7960 E Gulf Course Drive BLAINE, WA 98230
Vice President	Kent, Michael	5631 Nakat Court BLAINE, WA 98230
Secretary	Wolff, Marvin	5413 Barr Road FERNDALE, WA 98248

V2-217

Special Blog

Whatcom County Sheriff's Office Support Foundation – a Special Blog

MARCH 23, 2016

You are here: Home / About / About the WCSO Foundation

About the WCSO Foundation

March 21, 2011 by admin Leave a Comment

Like Sign Up to see what your friends like.

WCSO Foundation: Promoting Excellence in Public Safety

In 2009, a group of concerned citizens approached Sheriff Elfo with the idea of helping the Sheriffs Office provide excellence in public safety by creating a non-profit 501(3)(c) charitable corporation to fund Sheriffs Office project that were not funded in the county budget.

A board of directors was elected consisting of Mr. Cody J. Chamber, President, Michael Kent, Vice President, Robert C. Pittman, Counsel, Perry T. Sikes, Treasurer, and Marvin M. Wolff, Secretary. The Board established a bank account so that donations could be made for general purposes or for specific functions such as the Sheriffs Office Honor Guard, Emergency Management, Deputy Sheriff Reserve program, Operations and other activities. The Foundation has been the beneficiary of funds and equipment from individuals, corporations and other non-profits.

The financial activities of the Foundation are conducted in a business-like manner and reviewed by a Certified Public Accountant. All disbursements require the signatures of at least two Board members.

Anyone wishing to help with this worthwhile program can contact the Board President Cody Chambers at cchambers@jerrychambers.com or Perry Sikes at perrytsikes@msn.com . Communications may also be addressed to Marvin Wolff at mnmwolff@comcast.net. Donations may be made by sending a check to the Whatcom County Sheriffs Support Foundation c/o Cody Chambers Chambers Chevrolet

3891 Northwest Avenue

Bellingham, WA 98226

Donors will receive a receipt and may designate as to any specific program they wish for their donation to apply.

JANUARY 29, 2016

WCSO LATEST NEWS AND FEATURES

Citizens, experts developed plan for new Whatcom County Jail

http://www.bellinghamherald.com/opinion/article23893555.html Guest Editorial, Civic Agenda, Bellingham Herald, June 14, 2015 by Sheriff Bill Elfo The need to replace the overcrowded and unsafe Whatcom County Jail has persisted for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees … [Read More...]

Sheriff's Office Issues Awards to Employees and Citizens for Significant Actions and Contributions

NEWS RELEASE 05/15/2015 3:40:32 PM WHATCOM COUNTY SHERIFF'S OFFICE (360) 676-6650 (360) 384-5360 Recorded Press Line (360) 676-6707 ext. 56397 Bill Elfo, Sheriff The month of May marks National Police Week and National Corrections Officer and Employees' Week. On May 8th, Deputy James Chatfield was honored at the Washington State Police Memorial in Olympia. Deputy Chatfield died on July 29, 1921 after being shot by suspected smugglers near Blaine. His death had been lost to the … [Read More...]

Sheriff Elfo's Letter to Whatcom County Council for April 14th 2015 Hearing on New Jail

April 9, 2015 Dear Members of the Whatcom County Council: The purpose of this communication is to provide you with information I wish you to consider in conjunction with the public hearing entitled on the agenda as "comment on the proposal for a new Whatcom County Jail and offer specific ideas for jail diversion programs" scheduled for April 14th, 2015. I previously testified before Council and provided written information regarding the conditions within the Whatcom County Jail and … [Read More...]

Whatcom County plans funding and construction of new jail

Civic Agenda: Whatcom County plans funding and construction of new jail By Jack Louws Courtesy to The Bellingham HeraldJanuary 11, 2015 ABOUT THE AUTHOR This is one of a series of monthly Civic Agenda reports The Bellingham Herald invited Whatcom County Executive Jack Louws to provide to share updates about Whatcom County issues and projects. He invites citizens to contact him at 360-676-6717 or jlouws@co.whatcom.wa.us. During its 160-year history Whatcom County has been charged by … [Read More...]

PLEASE VISIT US AT
WWW.WHATCOMCOUNTY.US/SHERIFF

LATEST UPDATES

- Citizens, experts developed plan for new Whatcom County Jail
- Sheriff's Office Issues Awards to Employees and Citizens for Significant Actions and Contributions
- Sheriff Elfo's Letter to Whatcom County Council for April 14th 2015 Hearing on New Jail
- Whatcom County plans funding and construction of new jail
- Northwest Regional Gang-Drug task Force Arrests Narcotics Dealers
- The Use Of Surplus Military Equipment by WCSO
- Jail Time for defenda in Bogus Report of Home Invasion
- Babysitter and acco arrested for false report invasion robbery.

VISIT T FACEBOOK

When you read through this blog, which you can do online, you will see the amount of information that is included that is promoting the big jail…and the militarization of our communities, the stories of violent crimes, etc.

Yet when you read their own real statistics with a fresh eye, the reader will discover that violent crime has dropped 25% since 2009 according to the Prosecutor, and juvenile crime is down 80%. So the claim we need a bigger jail is not justified with valid statistics.

Insider Emails regarding Blog Content

Reply | Reply All | Forward | More

From Bill Elfo <belfo@co.whatcom.wa.us>
Subject **Blog Site** 3/20/2011 4:46 PM
To Doug Dahl <DDahl@co.whatcom.wa.us>, Jeff Parks <JParks@co.whatcom.wa.us>, Marvin Wolff <MWolff@co.whatcom.wa.us>, Steven Gatterman <SGatterm@co.whatcom.wa.us>, mmwolff@comcast.net, dsonnen@ispatial.com
Bcc Bill Elfo <BElfo@co.whatcom.wa.us>

We should add some information to the Blog both "about the site" and "about the Foundation" that operates and supports it. I have taken a rough first cut.

We can discuss at our Tuesday meeting. It would be helpful if Marvin could vet with the Foundation Board members and receive their comments.

About this Site

This site is owned and maintained by the Whatcom Sheriff's Support Foundation. The Foundation was formed as a charitable 501(3)(c) corporation by a group of citizens concerned about public safety and budgetary challenges faced by the Sheriff's Office.

As resources and technical support become scarcer, the Foundation recognized the value of taking advantage of social media and blogs as a means of keeping citizens informed. Other law enforcement agencies and public entities have enjoyed success with these communication mediums.

By ordinance, the Whatcom County web-site is the official site of all county government. However, the Foundation site has extended capabilities and will enhance the quality and quantity of information the Sheriff's Office is able to disseminate to the citizens of Whatcom County.

This site will provide our citizens and the press with news releases, information about crime trends and wanted criminals and will do short features on various units of the Sheriff's Office.

The site will also contain a weekly blog in which the Sheriff Elfo, another Sheriff's Office official or an invitee from another will publish a short essay on an important public safety issue.

We hope you find the site useful and invite your comments.

About the Foundation

In 2009, a group of concerned citizens approached Sheriff Elfo with the idea of helping the Sheriff's Office provide excellence in public safety by creating a non-profit 501(3)(c) charitable corporation to fund Sheriff's Office project that were not funded in the county budget.

A board of directors was elected consisting of Mr. Cody J. Chamber, President, Michael Kent, Vice President, Robert C. Pittman, Counsel, Perry T. Sikes, Treasurer, and Marvin M. Wolff, Secretary. The Board established a bank account so that donations could be made for general purposes or for specific functions such as the Sheriff's Office Honor Guard, Emergency Management, Deputy Sheriff Reserve program, Operations and other activities. The Foundation has been the beneficiary of funds and equipment from individuals, corporations and other non-profits.

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Reply | Reply All | Forward | More

From Ray Banbeau <Ray_Banbeau@q.com>
Subject **Re: Deputy Sheriffs' Guild** 2/25/2012 3:03 PM
To Bill Elfo <BElfo@co.whatcom.wa.us>, Bruce Ayers <bruce@ayersconsulting.com>, Isaac Colgan <info@iosac.com>, Terry Terry <tterry1835@aol.com>, Bruce Ayers <bruce@bruceayers.com>, Wendy Jones <WJones@co.whatcom.wa. **7 more**

Team,
Having these experienced law enforcement and then Caleb Ericksen from the corrections side join our team is going to round out the credibility of our efforts.

Well done, Boll.

Ray

On Feb 25, 2012, at 2:07 PM, Bill Elfo wrote:

> Thank you Isaac and Terry!
>
> On another note, I met with the new leadership of the Deputy Sheriffs' Guild (law enforcement deputies Sgt. Kevin Mede and Detective Steve Roff) this morning - among other things, they are eager to assist the Committee to help move forward the jail project. Sgt. Caleb Ericksen from the Corrections Deputy side of the house is also eager to assist.
>
> Is there any objection to my inviting them to the next Committee meeting? They are anxious to help and will help build credibility as a major stakeholders.
>
> Bill
>
> Sheriff Bill Elfo
> Whatcom County Sheriff's Office
> 311 Grand Avenue
> Bellingham, Washington 98225
> (360) 676-6650
> (360) 676-7728 (fax)
> <info@iosac.com> 02/25/12 1:05 PM >>>

Sheriff's Advisory Group
Marvin Wolff – Strategist

This hand-picked group was recommended by Marvin Wolff to the Sheriff in emails. In different documents, this group seems to be also loosely referred to as the Sheriff's Advisory Board, the Sheriff's Support Group, the Citizen's Advisory Group, or other variations. *It has not been confirmed if these groups are also standalone groups.*

Marvin Wolff works directly from the Sheriff's office and in emails it shows that he serves as a key strategic advisor using the following email addresses:

mnmwolff@comcast.net – seems to be for more personal communications
mwolff@co.whatcom.wa.us – seems to be used selectively for the Advisory Group
mwolff@whatcom.onmicrosoft.com – seems to be for higher level communication (with Wendy Jones, Sheriff Elfo for example)

Members of this Sheriff's Advisory Group,
as per different communications, seems to include:

- Marvin Wolff
- Ray Baribeau
- Mark Shintaffer
- Paul Harris
- Doralee Booth
- Terry Terry
- Constantine Papadakis
- Bill Newman (more recently)

- and then communications expand from there.

Who authorized this advisory group imbedded in our government? Is it legal? This group is unknown to the public, and not accountable to Council or transparent to the voters. They get briefings and meet for different reasons inside the Sheriff's office and include staff.

Special Privilege

Example of an Email from Marvin Wolff to members of the Advisory Group - including Baribeau:

- ➔ Some of whom are the original Founding Board members of the WCSO Support Foundation 501C3
- ➔ Who then became the Public Safety Now Members
- ➔ Who then became the Citizens for a Humane & Safe Jail Now PAC
- ➔ And, who operate out of the Sheriff's Office, working directly with the Sheriff

…and WHO MEET IN THE SHERIFF'S OFFICE CONFERENCE ROOM!

From: mnmwolff@comcast.net [mailto:mnmwolff@comcast.net]
Sent: Monday, August 03, 2015 9:54 AM
To: Booth, Doralee; Elfo, Sheriff; Friske, Bob; Harris, Paul; Kent, Mike; Meyers, Paul; Newmon, Bill; Papadakis, Constantine; Sano, David; Shintaffer, Mark; Wolff, Marvin; Wolff, Marvin; baribeau, ray
Subject: Advisory Group Meeting Reminder

Hi, Just a reminder that the Sheriff's Advisory Group will meet on Tuesday, August 4,2015 at 7:30 AM at the Sheriff's Office conference room. The Sheriff will provide an update on several matters. Thank you, Marvin

Bullying

Example of Marvin Wolff Publicly Disparaging and Undermining Council Members

This is a Letter to the Editor that was published in the Bellingham Herald, where Wolff discredits Council Members in 2015 (during the campaign) for doing their jobs, for exercising due diligence and questioning the sales tax initiative in 2015. He does it while promoting the County Executive who is running for election. He does it while he avoids responsibility, then blames, shames, incites speculation and instills fear in others. This letter, while published was eliminated from the Bellingham Herald's search history but is still saved.

If there are problems with how this message is displayed, click here to view it in a web browser.

From: mnmwolff@comcast.net Sent: Tue 7/14/2015 1:55 PM
To: Al Cheesman
Cc:
Subject: Fwd: Herald Jail Letter

From: mnmwolff@comcast.net
To: "Cheryl Cardinal" <maxx171@comcast.net>
Sent: Monday, July 6, 2015 2:41:35 AM
Subject: Herald Jail Letter

Letters to the Editor

June 23, 2015

Questions delay of new jail construction

Eleven years ago I stood next to the then-county executive, Pete Kremen, when he told the citizens of Whatcom County that if they voted for the one-tenth of one percent increase in the sales tax that he would build a new safe jail. He did not do it.
He kicked the can down the road for 11 long years. Now, I believe Ken Mann has picked up the can and is preparing to kick it down the road for another 10 years.
Meanwhile, the county employees, correction deputies and staff are laboring in an unsafe workplace trying to manage an over-capacity inmate population with failed control systems and inmates forcibly housed in inhumane conditions.
The current county executive has had the courage and will to correct the existing problems. His actions will lead to the prevention of exposure of horrendous liability for the citizens of Whatcom County should an event occur in the jail.
I do not know why Mr. Kremen and Mr. Mann have continuously tried to obstruct the process leading to the construction of a new, safe jail. They need to put their self-interests aside and start working for the safety of the corrections staff and the inmates and on behalf of the citizens of Whatcom County.
Marvin M. Wolff

Read more here: http://www.bellinghamherald.com/opinion/letters-to-the-editor/article25042558.html#storylink=cpy

Ray Baribeau - Co-Chair
Prison Fellowship Whatcom County

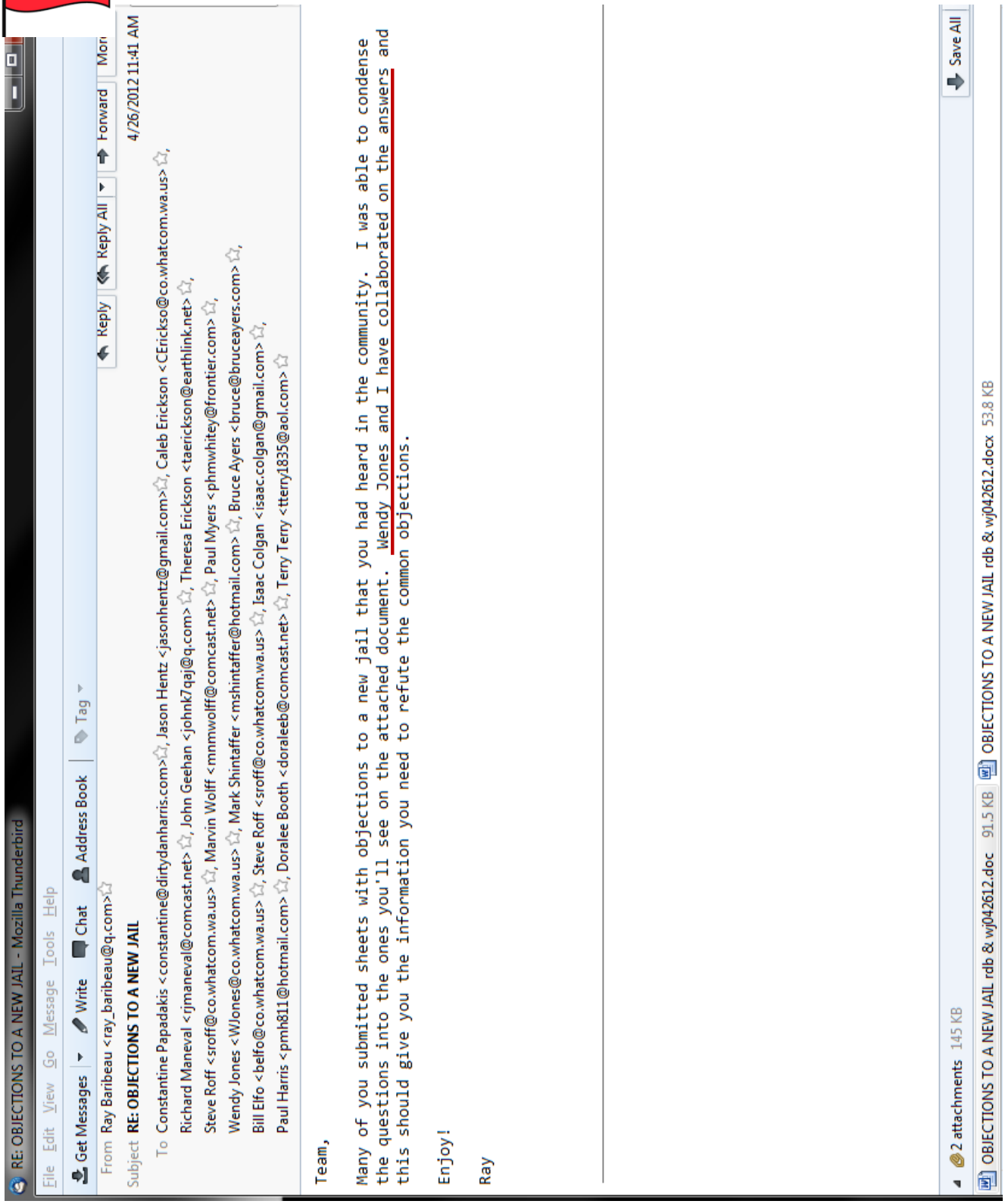
Ray Baribeau is a privileged jail operations type of insider. He volunteers in plain sight and testifies repeatedly while the real undercurrent of his influence is hidden from the public.

One video shows this title above, although he is also referred to as the 'head' of Jail Ministries. Baribeau works tactically with Sheriff Elfo and Chief of Corrections Wendy Jones and other staff. Baribeau has written timelines, created publicity campaigns, organized testimony, does tours, gathers and dispenses information for the Sheriff through several different positions of privilege and influence:

- Appointed as a Member of the **Jail Planning Task Force in 2011**
- Key member of **Public Safety Now** advocacy group from 2012.
- Actively promoted the jail plan in 2015 while collaborating directly with the Sheriff, Corrections Chief Wendy Jones and Marvin Wolff on projects.
- Strong proponent of the jail expansion project. Baribeau testifies as a member of the Jail Planning Task Force, and does public radio interviews advocating the jail expansion project. Baribeau has organized people, testimony, and galvanized political support for the jail expansion and jail tax. Baribeau did voice-overs, both group and press tours of the jail as he helped create the media promotional material promoting the jail tax.
- Videos used to promote the jail expansion and the tax started as Public Safety Now Group videos, then became WhatcomJail.com political action committee videos produced by the Citizens for a Humane & Safe Jail Now PAC when he became the Chair in 2015.
- Co-Chaired the Citizens for a Humane & Safe Jail Now PAC with Terry Terry, the wife of the other Co-Chair of the Prison Fellowship. This political action committee was established in 2015 to promote the Whatcom County Proposition 2015-1 Jail Facility Sales and Use Tax campaign. Bob Friske was listed as Coach of the PAC.
- This PAC received and actively campaigned to pass the jail tax by raising and spending $9,757.27 on radio spots, website, social media, producing videos, marketing tools. Contributors to this PAC included elected officials Whatcom County Executive Jack Louws and Chief of Corrections, Wendy Jones, and PSN members such as Ray Baribeau, Robert Friske, Joan Dow and Dorathey Booth.
- E-mails from the campaign period show Baribeau was instrumental in creating the marketing messages claiming that the officials were being "held hostage" by the opponents of the jail tax.

1

Policy and public relations advocate for Sheriff's Office & Jail



RE: OBJECTIONS TO A NEW JAIL - Mozilla Thunderbird

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Reply | Reply All | Forward | Mor

From Ray Baribeau <ray_baribeau@q.com>

Subject **RE: OBJECTIONS TO A NEW JAIL**

4/26/2012 11:41 AM

To Constantine Papadakis <constantine@dirtydanharris.com>, Jason Hentz <jasonhentz@gmail.com>, Caleb Erickson <CErickso@co.whatcom.wa.us>,
Richard Maneval <rjmaneval@comcast.net>, John Geehan <johnk7qaj@q.com>, Theresa Erickson <taerickson@earthlink.net>,
Steve Roff <sroff@co.whatcom.wa.us>, Marvin Wolff <mnmwolff@comcast.net>, Paul Myers <phmwhitey@frontier.com>,
Wendy Jones <WJones@co.whatcom.wa.us>, Mark Shintaffer <mshintaffer@hotmail.com>, Bruce Ayers <bruce@bruceayers.com>,
Bill Elfo <belfo@co.whatcom.wa.us>, Steve Roff <sroff@co.whatcom.wa.us>, Isaac Colgan <isaac.colgan@gmail.com>,
Paul Harris <pmh811@hotmail.com>, Doralee Booth <doraleeb@comcast.net>, Terry Terry <tterry1835@aol.com>

Team,

Many of you submitted sheets with objections to a new jail that you had heard in the community. I was able to condense the questions into the ones you'll see on the attached document. Wendy Jones and I have collaborated on the answers and this should give you the information you need to refute the common objections.

Enjoy!

Ray

2 attachments 145 KB

Save All

OBJECTIONS TO A NEW JAIL rdb & wj042612.doc 91.5 KB

OBJECTIONS TO A NEW JAIL rdb & wj042612.docx 53.8 KB

'Hostage Holding' – Action to Discredit Taxpayers

This email from Ray Baribeau shows that he launched the propaganda campaign to disparage and discredit the taxpayers and Council members who were standing up in opposition to the jail tax. It can be verified in the testimony before the Whatcom County Council that several members of Baribeau's insider lobby group then used this tactic to undermine the taxpayers.

How is it ok that an insider jail operations volunteer becomes an official member of the Jail Planning Task Force, then a strategic advisor and campaign lobbyist operating under the Sheriff's authority and with the support of the Prosecutor and County Executive?

-----Original Message-----
From: Ray Baribeau [mailto:ray_baribeau@q.com]
Sent: Friday, April 10, 2015 8:29 AM
To: Theresa Erickson; Terry Terry; Bob Friske; Doralee Booth; Max & Carole Perry; Marvin Wolff
Cc: Jack Louws; Bill Elfo
Subject: Re: HOSTAGE HOLDING

Team,

While giving a jail tour to Max & Carole Perry yesterday, I came to the realization that the anti-incarceration advocates and their pawns on the council are holding the SAFE new jail process HOSTAGE for their political agenda. If one or more of you who plan to speak at the open session at Tuesday's council meeting would like to use the phrase "holding hostage" it might be picked up by the media.

When I talked to Superior Court Judge Ira Uhrig this morning and mentioned the holding hostage observation, he paused, then said I was right.

Peace,

Ray

Summary: Privileged 'Insiders' Wolff and Baribeau Strategically Imbedded within the Sheriff's Office

Key Issue: Documents show that the Sheriff's Foundation Board and the Sheriff's Advisory Group insiders clearly were working with conflicts of interest, influencing the original facilities demand, then strategically setting up and influencing policy and tactical actions. This raises legal, ethics and campaign questions.

Top Influencers Chart

(Not fully transparent / Not accountable to Public)

Top Influencers Chart	JIB - WA State Jail Industries Board	Blue Ribbon Panel	Vendor	Works in Sheriff's Office	WC Sheriff Office Support Foundation	Sheriff's Advisory Group	Jail Planning Task Force	Public Safety Now SafeJail Now.com	PAC- Humane & Safe Jail Now - WhatcomJail.com	Testifies/Letters/Debates Fair/Parades/Videos
Marvin Wolff	x	x	x	x	x	x				x
Ray Baribeau				x		x	x	x	x	x

Documents gathered show how Wolff and Baribeau - as key strategic and tactical volunteers – have been coordinating efforts through the Sheriff's office to expand the original jail industries plan; then organized a pre-meditated and orchestrated support campaign in 2015.

Since the original cooperation and connections are hidden behind volunteerism, the insider interrelationships and influence is not transparently disclosed to the public. This created a situation where privileged, biased and compromised views were promoted through inside channels. This provides the illusion that what they were producing was true, when the basis for their facts has still not yet fully been established with a valid needs assessment and fiscal analysis. They worked to discredit the public opposition and even County Council members. Ultimately they controlled the press, public relations, social media and news reporting under the auspices and presumed authority of the Sheriff.

Eventually all the paper trails merge into the influencers promoting the political campaign to pass Proposition 2015-1 – Jail Facilities Sales and Use Tax

BOTTOMLINE: How is this not a Con Game & Tax Scam?

The public was never informed about this growing contrarian market. In fact, when questioned, voters were assured by Wendy Jones, Corrections Chief, there were "no private prisons here" – which is a sleight of hand answer. Voters were not aware that a concerted plan was in action since the '90's to expand the jail industries market reach into Whatcom county using insider marketing and lobbying efforts orchestrated by the Executive Branch. None of the Executive branch publications revealed this, and in various testimonies of the jail tax advocates it was not disclosed.

The mailer did not Fairly and Honestly Disclose:

Had this tax passed that taxpayers would have been footing the bill for ***the largest and most expensive capital expansion project in Whatcom County's history.***

- At one time during the campaign the "regional jail project" was estimated to be an ***epic $132 ,000,000 dollar capital project – that would dramatically increase hard costs of operations, as well as soft costs of bureaucracy.***
- The effect of this tax: It would have been to underwrite ***and fund jail industries expansion forever.*** Half of this tax was to be a forever tax – which would guarantee cash flow to expand the growth of the market for generations – with no limits on jail expansion as the economy expanded.
- ***All done with no valid needs assessment, no cost comparisons to alternative options, no full disclosure of prior taxes passed, no agreed upon or approved jail plan…this sales tax was presumptive and open-ended.***

This earmarked tax was not going to be controlled by the Council and taxpayers, instead it was to be under the control of administration through the Executive Branch.

THE LONG-TERM FINANCIAL RISKS TO TAXPAYERS in terms of forever debt, forever hard costs and operating overhead was not disclosed. The fact that overbuilding had caused bankruptcies to Counties in other states was not disclosed. The result that Counties then sold their facilities to private prison companies, and then leased back to the County was not disclosed.

The risk to FREEDOM was not exposed. This was a special tax. Had the taxpayers passed it, the jail plan was approved de facto and the Executive Branch would have effectively been able to build their jail to whatever size they determined it was needed to improve business for the corporations.

This was a deliberate takeover of the people's right to freedom a fundamental basis of our Constitutional Rights. It was a takeover of voters' rights to information…to self-determination.

Public Safety Now

Insiders Advocacy Group

with Ray Baribeau

At some point, Ray Baribeau and Marvin Wolff expand their influence. Ray Baribeau teams up with another member of the Sheriff's Advisory Group, Doralee Booth. They both were members of the official Jail Planning Task Force, and now they merge together into the new ***Public Safety Now*** advocacy group. This group is a bit amorphous, although it seems to be composed largely of vendors and Sheriff's office staff, past campaign chairs or contributors, or like Marvin Wolff, they represent certain groups or non-profits in the community who are strategically selected from certain areas of the County.

This Public Safety Now group seems to be a specially selected group, mostly coordinated through Ray Baribeau with Marvin Wolff's cooperation and support. Others work in tandem, in collaboration with the Sheriff and other Sheriff's Office staff.

This group now serves as a type of bridge to the community. It is like an inside lobby group…a "hidden" or "shadow" advocacy group that is not accountable to taxpayers or to policymakers. It created a method for communication and public relations efforts to move information smoothly from the Executive Branch through to a privileged group of community non-profit leaders and organizations without impediment.

Documents show that Baribeau and Wolff control the flow of messaging and information by strategic planning, marketing and outreach. Baribeau is a key organizer of public events such as fairs, debates, launch events, social media campaigns, video production and websites with well-planned campaigns. These efforts seem to have been funded through vendor donations as well as by individuals.

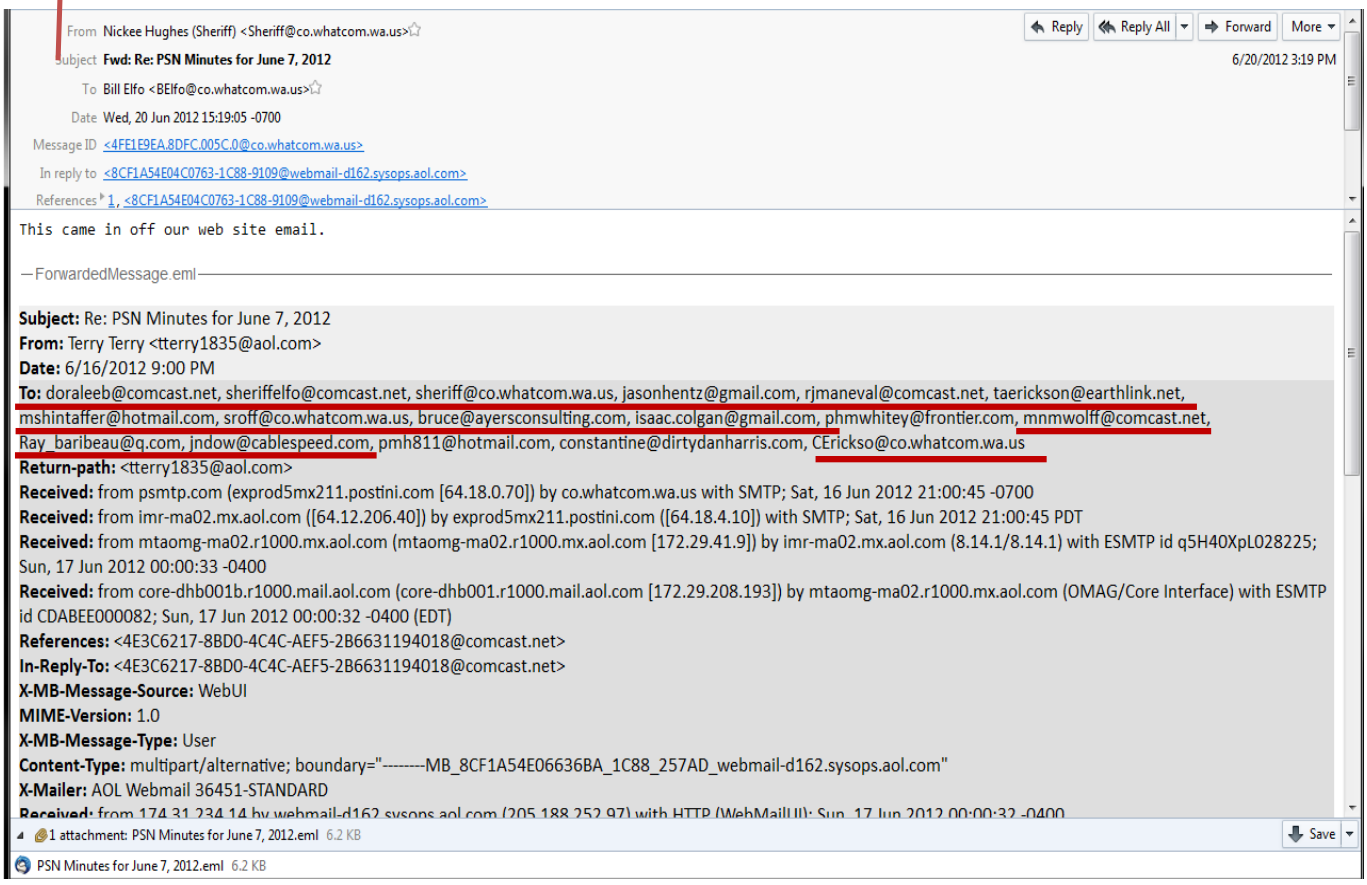
PSN Group Influencers

The "Public Safety Now" (PSN) Insiders Create Tangled Webs

Sample e-mails and minutes show the membership string, connections and marketing strategies employed from 2012 forward into 2015 campaign.

Shows that the **Sheriff**, his staff, Ray Baribeau and the Public Safety Now advocacy group are collaborating together with jail vendors to expand jail industries, working together to build the campaign and enroll the public and candidates in building the big jail outside the County – while the Jail Planning process was still in development, and outside of full public disclosure.

- Doralee Booth – Member of Jail Planning Task Force, Sheriff's Advisory Group
- Mark Shintaffer – WCSO Support Foundation Board Member
- **Ray Baribeau** – Jail Planning Task Force, Co-Chair Prison Fellowship of Whatcom County, Sheriff's Advisory Group, Co-Chair of 2015 PAC – Citizens for a Humane & Safe Jail Now
- Bruce Ayers – Whatcom County Council Candidate, Sheriff Elfo Campaign Chair
- **Marvin Wolff** – Sheriff's Advisory Group and WCSO Support Foundation Board, Vendor
- Richard Maneval - Law & Justice Council
- Isaac Colgan – video, social media, web
- Several Deputies and Staff at Whatcom County email address



From Nickee Hughes (Sheriff) <Sheriff@co.whatcom.wa.us>
Subject **Fwd: Re: PSN Minutes for June 7, 2012**
To Bill Elfo <BElfo@co.whatcom.wa.us>
Date Wed, 20 Jun 2012 15:19:05 -0700
Message ID <4FE1E9EA.8DFC.005C.0@co.whatcom.wa.us>
In reply to <8CF1A54E04C0763-1C88-9109@webmail-d162.sysops.aol.com>
References 1, <8CF1A54E04C0763-1C88-9109@webmail-d162.sysops.aol.com>

Reply | Reply All | Forward | More
6/20/2012 3:19 PM

This came in off our web site email.

—ForwardedMessage.eml

Subject: Re: PSN Minutes for June 7, 2012
From: Terry Terry <tterry1835@aol.com>
Date: 6/16/2012 9:00 PM
To: doraleeb@comcast.net, sheriffelfo@comcast.net, sheriff@co.whatcom.wa.us, jasonhentz@gmail.com, rjmaneval@comcast.net, taerickson@earthlink.net, mshintaffer@hotmail.com, sroff@co.whatcom.wa.us, bruce@ayersconsulting.com, isaac.colgan@gmail.com, phmwhitey@frontier.com, mnmwolff@comcast.net, Ray_baribeau@q.com, jndow@cablespeed.com, pmh811@hotmail.com, constantine@dirtydanharris.com, CErickso@co.whatcom.wa.us
Return-path: <tterry1835@aol.com>
Received: from psmtp.com (exprod5mx211.postini.com [64.18.0.70]) by co.whatcom.wa.us with SMTP; Sat, 16 Jun 2012 21:00:45 -0700
Received: from imr-ma02.mx.aol.com ([64.12.206.40]) by exprod5mx211.postini.com ([64.18.4.10]) with SMTP; Sat, 16 Jun 2012 21:00:45 PDT
Received: from mtaomg-ma02.r1000.mx.aol.com (mtaomg-ma02.r1000.mx.aol.com [172.29.41.9]) by imr-ma02.mx.aol.com (8.14.1/8.14.1) with ESMTP id q5H40XpL028225; Sun, 17 Jun 2012 00:00:33 -0400
Received: from core-dhb001b.r1000.mail.aol.com (core-dhb001.r1000.mail.aol.com [172.29.208.193]) by mtaomg-ma02.r1000.mx.aol.com (OMAG/Core Interface) with ESMTP id CDABEE000082; Sun, 17 Jun 2012 00:00:32 -0400 (EDT)
References: <4E3C6217-8BD0-4C4C-AEF5-2B6631194018@comcast.net>
In-Reply-To: <4E3C6217-8BD0-4C4C-AEF5-2B6631194018@comcast.net>
X-MB-Message-Source: WebUI
MIME-Version: 1.0
X-MB-Message-Type: User
Content-Type: multipart/alternative; boundary="--------MB_8CF1A54E06636BA_1C88_257AD_webmail-d162.sysops.aol.com"
X-Mailer: AOL Webmail 36451-STANDARD
Received: from 174.31.234.14 by webmail-d162.sysops.aol.com (205.188.252.97) with HTTP (WebMail UI); Sun, 17 Jun 2012 00:00:32 -0400

1 attachment: PSN Minutes for June 7, 2012.eml 6.2 KB
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PSN Minutes for June 7, 2012.eml 6.2 KB

Public Safety NOW…Build a Safe Jail (PSN) Minutes…Thursday, June 7, 2012
7:00 am @ Arlis's Restaurant Meeting Room
1525 Cornwall Avenue, Bellingham

The meeting was called to order by Bruce @ 7:10 am.

Members present: Joan Dow, Bruce, Paul H. Richard, Wendy, Mark, Constantine, Ray, Doralee, Teresa, and Isaac.

The Minutes for May 17, 2012 were accepted as written.

Old Business:

Re-cap of activities: Update by Bruce for Sheriff Elfo…The Executive is committed to moving things forward regarding the new jail.

- RFP for land acquisition went out last Tuesday
- RFQ to hire a jail planner went out on Friday for 6 weeks
- Jack Louws, Sheriff, Jeff Parks and Bruce toured SCORE…the Executive was engaged throughout the entire tour.

Council members contacted – PSN members spoke to Ken Mann and Kathy Kurshner since our last meeting. The County has moved forward faster in the last 45 days than in the past 10 years. Our facilitation and support is helping.

Thank you to Isaac and Terry for the excellent production of the "Penny video." Isaac noted that any referrals will help pay for future work.

Bruce and Constantine met with John Servais (Political activist - Fairhaven) and answered questions regarding the new jail.

Speaking opportunities:

- North Sound Democrats – June 8
- Republican Women (Joan Dow) – July 24

It was noted that speakers need to pitch the buildasafejail.com website at these events and encourage donations.

Hmm… With all this hyper-activity with the vendors and public relations…who is taking care of the inmates, the overcrowding, the maintenance and emergency conditions and civil rights issues for the taxpayers?

Videos

Media Committee Report – Constantine

- Teresa Erickson accepted the position of Letters to the Editor Coordinator and will work with Constantine.
- Isaac is willing to edit all letters if sent to him.
- Immediate letters in support of the Executive and County Council in their efforts to move the new jail forward should be written.
- Next Video: We have made the case for a new safe jail. It was agreed upon that the next video should focus on the theme of "Endless Possibilities." The new jail should reflect the culture and values of our community. The video should educate the public regarding the law and justice system….why people go to jail. We discussed having a judge to help speak to these issues in the video. A message to educate the public regarding Whatcom County's alternative programs and the need for more space to offer alternative programs might be part of this video as well. Whatcom County is second only to King County in Washington State for offering alternative programs.

PSN Minutes 6-7-12.doc

- Facebook: It was agreed upon that it is premature to have a facebook administrator. Thank you Terry for offering the skills of Tara and for your willingness to pay for this support. We anticipate we will need this help in the future.

$10K Budget

Vendors

Fund raising: Our budget is $10K

- We discussed asking for corporate donations. It was suggested that we send a letter to correction vendors. Bruce will immediately send a letter to Wendy asking for a vendors list. Public interest groups should also be solicited.
- Volunteers are funding this effort so far.

Business cards and promotion:

- Our new business cards were handed out. Paul H. reminded us that they would do no good if left in our pockets!
- We need to pace ourselves and keep focused. Always keep looking for new weekly info for the website. Ray offered the big PSN signs for speaking events.
  Check with Sheriff about information/participation in the Sheriff's booth at the Lynden Fair.
- Consider info promotion at community events…parades.
- The need for Sheriff Elfo to be at all speaking events was discussed. No definite conclusion was reached but some felt that with the "Penny video" several PSN speakers could handle the job unless the presence of Sheriff Elfo was requested.

The meeting was adjourned at 8:45. The next meeting will be Thursday, June 21st at the Arlis Restaurant at 7:00 am.

Respectfully submitted,

Doralee Booth, Secretary

PSN Marketing Strategy to Birch Bay Chamber of Commerce Regarding Effectiveness of Fire Video & Alternatives Video

From Doralee Booth <doraleeb@comcast.net>
Subject **Re: Public Safety Now video: Alternatives PREVIEW**
8/31/2012 9:27 AM
To Isaac Colgan <isaac.colgan@gmail.com>
Cc rjmaneval@comcast.net, Bill Elfo <belfo@co.whatcom.wa.us>, Bruce Ayers <bruce@bruceayers.com>, Caleb Erickson <cerickson@co.whatcom.wa.us>, Constantine Papadakis <costa7810@gmail.com>, Jason Hentz <jasonh@haggen.com>, Joan Dow <jndow@cablespeed.com>, John Geehan <johnk7qaj@q.com>, Mark Shintaffer <mark@shintaffer.com>, Marvin Wolff <mnmwolff@comcast.net>, Paul Harris <pmh811@hotmail.com>, Paul Myers <phmwhitey@frontier.com>, Ray Baribeau <ray_baribeau@q.com>, Steve Roff <sroff@co.whatcom.wa.us>, Terry Terry <tterry1835@aol.com>, Theresa Erickson <taerickson@earthlink.net>, Wendy Jones <wjones@co.whatcom.wa.us>

Hi Isaac and all...

Isaac, thanks so much for the excellent new video. These are powerful little snippets as we witnessed with the fire video at the Birch bay Chamber meeting this week. People were saying..."I had no idea that our jail was like this! A wonderful way to get our message out to Whatcom County!

Doralee

On Aug 30, 2012, at 11:17 AM, Isaac Colgan wrote:

> Hi Public Safety Now,
>
> The video *Alternatives* is now available for you to preview. I welcome your comments. Please do not share this video with the public at this time, there may be some final adjustments.
>
> Watch video here: http://youtu.be/DkIGNMoEdR0
>
> Isaac Colgan

More PSN Emails Showing Patterns of Campaign Development since 2013

File name: PSN notes 6-20-13.doc
Author: Bill
Last changed: Wednesday, June 26, 2013

Message | PSN notes 6-20-13.doc

Public Safety NOW…Build a Safe Jail (PSN) Minutes…Thursday, June 20, 2013
7:00 am @ Atlis's Restaurant Meeting Room
1525 Cornwall Avenue, Bellingham

Meeting began at 7:05 AM

Attending: Wendy Jones; Bruce Ayers; Andrew Lamb; Richard Maneval; Paul Harris; Mark Shintaffer; Caleb Erickson; Theresa Erickson; Guest Clayton Peetre who is running for Bellingham City Council seat from Ward 4 against Pinky Vargas

Wendy Jones gave us an update on the recent events at the public meetings. At the June 12 Ferndale Planning Commission Meeting no members of the public showed up. At the June 17 City Council Meeting a proposal to put the proposed new jail site in Ferndale to an advisory vote of the citizens got nowhere. Police Chief Knapp made an excellent presentation to the council explaining the value to Ferndale residents of having the new jail in Ferndale. She also said that a new contract was given to DLR to determine what to do with the old jail and how/where to stage 50 to 60 offenders close to the court rooms.

Theresa asked about the report of hazardous waste on the adjacent parcel of land. Wendy said that as part of the EIS update a geotech company has been hired to drill into the soils and test the samples to determine that no contamination is/can leech into the proposed jail site.

Bruce stated that during the June 4th DLR interim progress report to county council that he was disappointed that DLR didn't have detailed supporting analysis for their bed projection chart. He said that it seems like a number of beds had been predetermined and the chart was shown to validate that number. Wendy stated that the council had asked DLR to shorten their planned presentation to 45 minutes and much of the supporting information had to be left out. He then said that Sheriff Elfo had been asked to make a presentation about the new jail process to the Central Democratic meeting in July. Ray suggested that Bill ask to postpone his presentation until after the scheduled August 6th update to county council.

Bruce asked what if a funding proposal goes on the ballot in February, Ma[illegible] April of next year. How can we deal with that?

Mark was asked to tell why he brought Clayton Peetre to the meeting. It seems that candidates running for office do not feel that they have the information to be conversant about the new jail process. Either Mark or Clayton said that the process has to show that the proposed bed number was not a "top down" number that became justified by statistical analysis. A discussion ensued and it became apparent that a Candidate Educational Event needed to be held to give all candidates, regardless of their political leanings, information about the process and the on line resources so they can become comfortable talking about the new replacement jail issue at public forums. Bruce suggested that we (PSN) organize this meeting. Ray stated that Jack Louws should explain the process since it is his process. Ray said that he would contact Jack and explain the need and ask him and his working group to be available to explain the process and answer questions from the candidates. It was stated that we should select a facility where the websites with information about the new jail can be accessed and shown to those in attendance. It was decided that an August date after the Lynden Fair would be the best time and Bruce suggested that the church on Bakerview where we held our launch event would be a good venue.

4 **Fair Activity & Campaign**

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From Bill Elfo <BElfo@co.whatcom.wa.us>

Subject **Fwd: RE: FINAL REQUEST- PSN Info Table at Lynden Fair 12 to 17 August** 8/6/2013 7:21 AM

To BELFO@whatcom.onmicrosoft.com

—RE: FINAL REQUEST- PSN Info Table at Lynden Fair 12 to 17 August.eml—

Subject: RE: FINAL REQUEST- PSN Info Table at Lynden Fair 12 to 17 August
From: Ray Baribeau <ray_baribeau@q.com>
Date: 8/6/2013 7:20 AM
To: Constantine Papadakis <constantine@dirtydanharris.com>, Jason Hentz <jasonhentz@gmail.com>, Caleb Erickson <CErickso@co.whatcom.wa.us>, John Geehan <johnk7qaj@q.com>, Theresa Erickson <taerickson@earthlink.net>, Andrew Lamb <andrew.lamb00@gmail.com>, Terry Terry <tterry1835@aol.com>, Marvin Wolff <mnmwolff@comcast.net>, Paul Myers <phmwhitey@frontier.com>, Wendy Jones <WJones@co.whatcom.wa.us>, Bill Elfo <belfo@co.whatcom.wa.us>, Joan Dow <China@oo.net>, Richard Maneval <richardmaneval@gmail.com>, Bruce Ayers <bruce@bruceayers.com>, Mark Shintaffer <mshintaffer@hotmail.com>, Isaac Colgan <isaac.colgan@gmail.com>, Don Hansey <DonHansey@comcast.net>, Paul Harris <pmh811@hotmail.com>, Doralee Booth <doraleeb@comcast.net>

Team,

We still need one more volunteer to cover our PSN info table for a week from Friday (the 16th) from 5:00 to 9:00 PM. Thank you Theresa for covering the Wednesday evening shift. Ray

MON 12 AUG	
1:00 TO 5:00 PM	RAY BARIBEAU
5:00 TO 9:00 PM	RICHARD MANEVAL
TUES 13 AUG	
1:00 TO 5:00 PM	THERESA ERICKSON
5:00 TO 9:00 PM	BRUCE AYERS
WED 14 AUG	
1:00 TO 5:00 PM	RICHARD MANEVAL
5:00 TO 9:00 PM	THERESA ERICKSON

5

Buildasafejail.com

2016 Google search shows prior history of marketing actions

buildasafejail Whatcom County

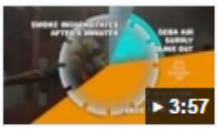
All Maps News Shopping Images More Search tools

About 56,100 results (0.69 seconds)

Did you mean: ***buildsafe jail*** Whatcom County

Whatcom County citizens will get a... - Public Safety Now ...
https://www.facebook.com/PublicSafetyNow/posts/357119004338116
Public Safety Now- **Build A Safe Jail** · May 11, 2012 ·. **Whatcom County** citizens will get a glimpse during this video of one of the liabilities we face the longer we ...

Whatcom County, WA - Official Website | Official Website
www.**whatcomcounty**.us/ Whatcom County, Washington
Official site, with information and links to elected officials, and departments.
You've visited this page many times. Last visit: 2/14/16

Fire: Public Safety Now - Build a Safe Jail - YouTube


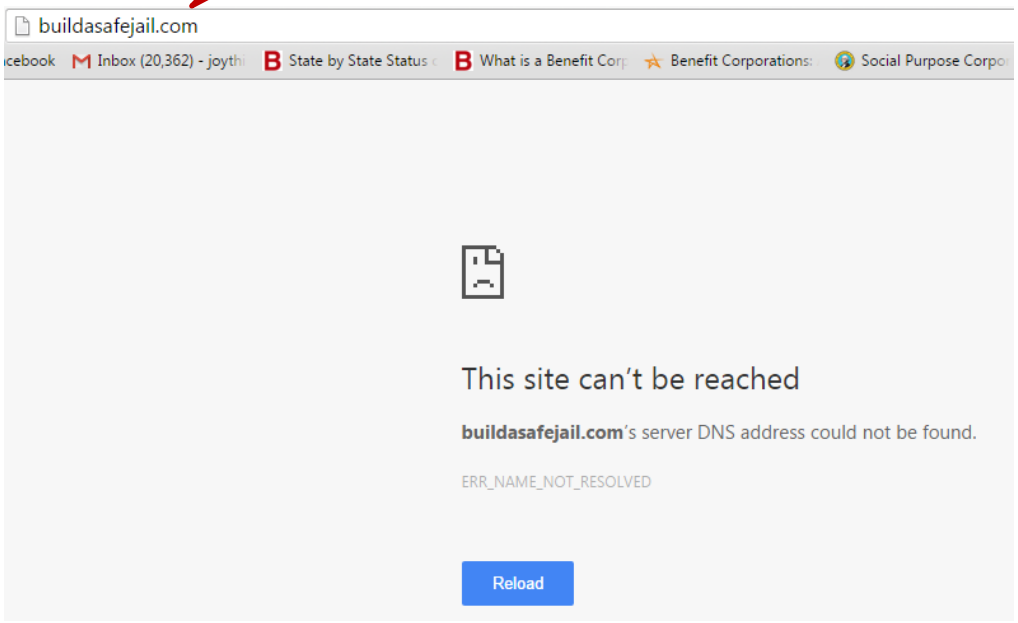
https://www.youtube.com/watch?v=64fA18Xb47A
May 10, 2012 - Uploaded by PublicSafetyNow
http://www.**buildasafejail**.com The **Whatcom County** Jail i
Bellingham, Washington has serious fire safety ...

Build a Safe Jail presentation | Whatcom Democrats
www.whatcomdemocrats.com › Events › 2012 › May
May 10, 2012 - 414 W. Bakerview Road Suite 105 (Church at Bakerview) **Bellingham**, WA. **Whatcom County** Sheriff presents his vision for a new jail. More info: ...

This 2016 Google search shows that videos as planned in the PSN group were being developed, promoted and aired.

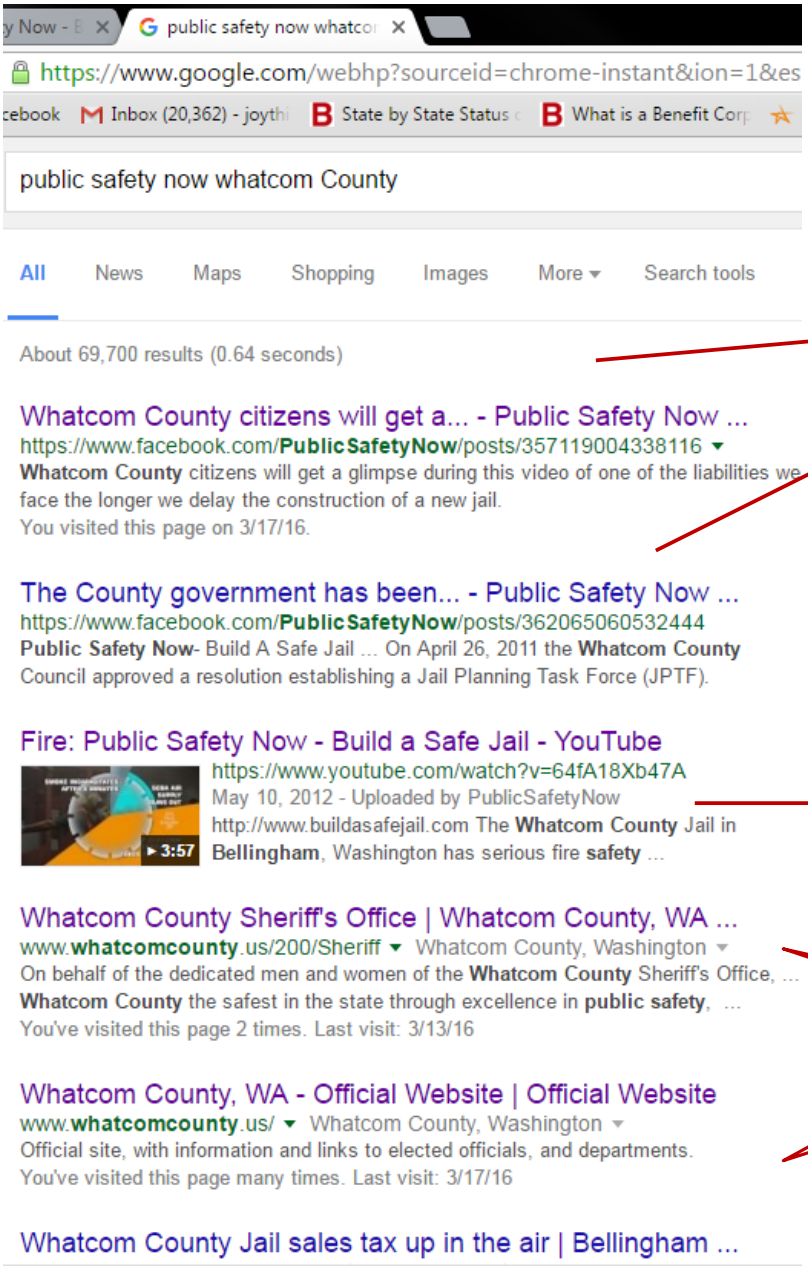
It also shows that the Sheriff was out promoting the Jail to political groups meetings.

Some of these links to PSN Facebook and Websites are defunct as of 2016 – and most links are broken except some YouTube videos used in the 2015 Campaign.



6 *"Public Safety Now Whatcom County"* Google Search

03-17-2016 - Yields the following 1st Page Results



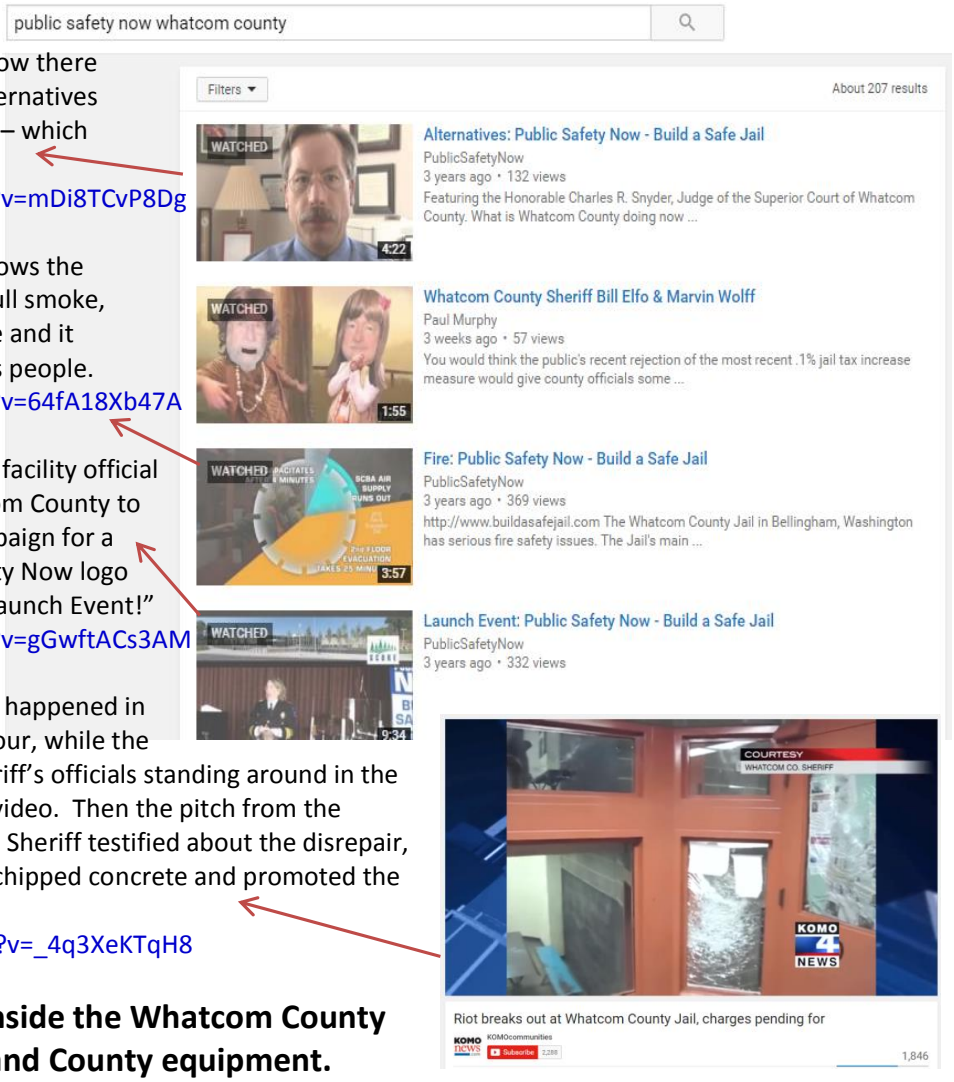
YOU TUBE SEARCH

These go to the official Whatcom County Website.

7 You Tube Search for: *Public Safety Now Whatcom County*

Provides a list of videos produced mostly by **Iosac Services, some by Bellingham Herald.** When you listen to them, you discover that the PSN videos are using Ray Baribeau's voiceover, and there is a cohesive link from PSN to the PAC created videos. The videos include interviews of many Whatcom County elected officials, staff along with members of the Public Safety Now advocacy group.

Synopsis of videos:



Alternatives: Top one was about how there was not enough room for more alternatives and jail industry Reentry Programs – which included Ray Baribeau in the film.
https://www.youtube.com/watch?v=mDi8TCvP8Dg

Fire: This staged demonstration shows the risk of a potential fire – including full smoke, photos of dead or wounded people and it highlighted risk, liabilities. It scares people.
https://www.youtube.com/watch?v=64fA18Xb47A

Launch: One included a SCORE jail facility official as keynote speaker here in Whatcom County to help promote and launch the campaign for a new jail. They used the Public Safety Now logo as part of the staging during the "Launch Event!"
https://www.youtube.com/watch?v=gGwftACs3AM

Riot: This video about a "riot" that happened in the jail that apparently lasted an hour, while the news film shows reflections of Sheriff's officials standing around in the background filming the hand held video. Then the pitch from the Sheriff was aired on KOMO TV. The Sheriff testified about the disrepair, danger and showed photos of the chipped concrete and promoted the need to build a new facility.
https://www.youtube.com/watch?v=_4q3XeKTqH8

Most videos were produced inside the Whatcom County facilities using inmates, staff and County equipment.

They were coordinated with graphics, photos and then urgent sales and marketing messages were delivered by the Sheriff, Chief of Corrections, and other officials and Whatcom County staff. Most were originally designed for the BuildASafeJail.com website, using the Public Safety Now logo and banner.

In 2015 these videos became part of the 2015 Citizens for a Humane & Safe Jail Now PAC campaign.

Hyperlinked on their Facebook Pages for the **WhatcomJail.com** and **Safe Jail** initiatives, this same video producer – Iosac Services - provided social media, marketing and other services to the PAC. People in the videos are part of the **Sheriff's Advisory Group**, the **Public Safety Now** group, and some donated money to the PAC.

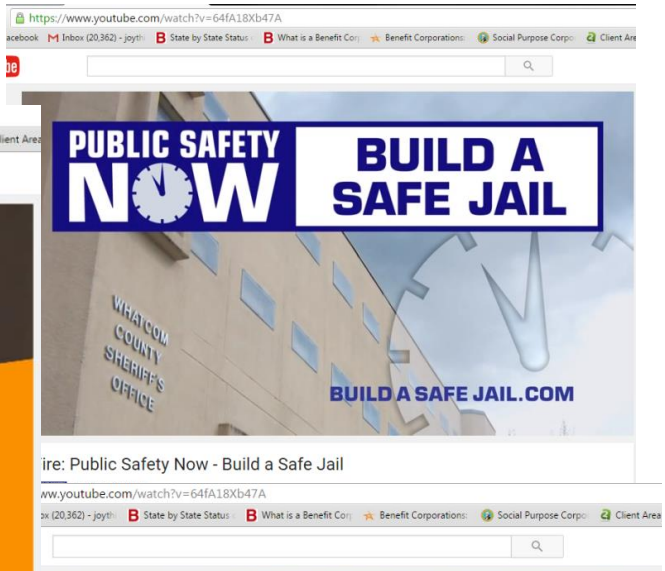
The following pages show excerpts from many of these videos…and it shows how staff and marketing intermingled. Links are provided so they can be looked up online and be watched. The pattern of professional and persuasive marketing and story crafting is throughout.

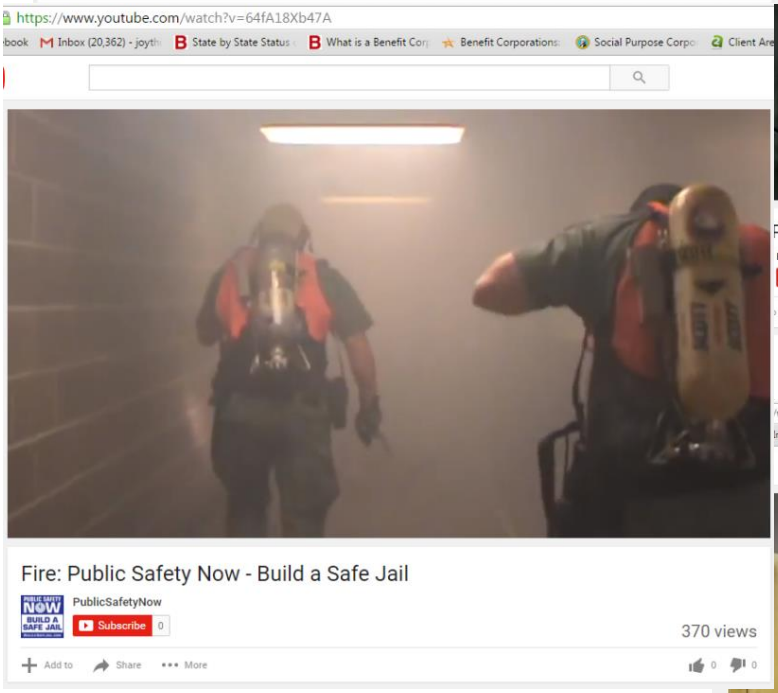
Video 1

Alternatives: Public Safety Now – Build a Safe Jail Video

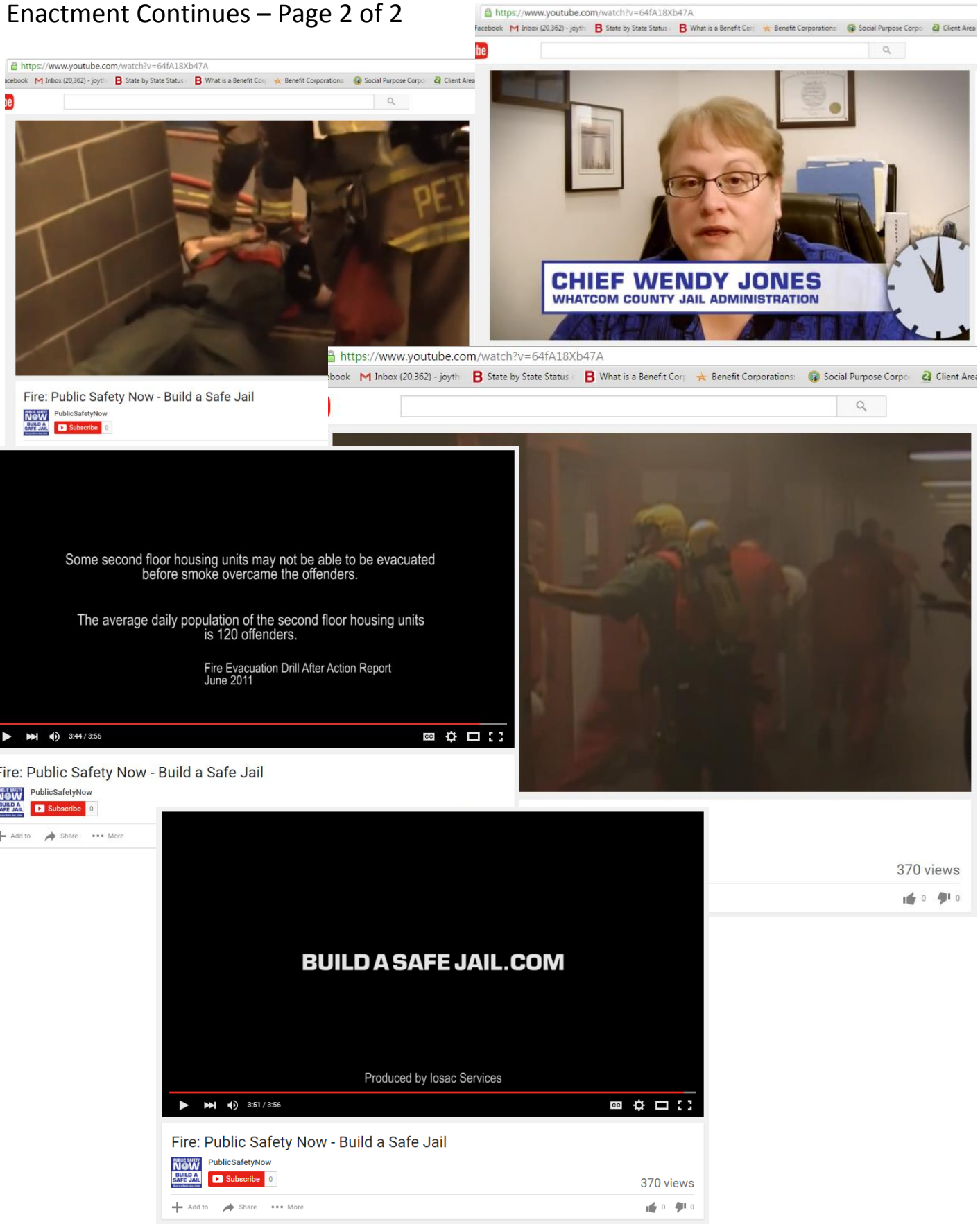
Video 2

Fire: Public Safety Now – Build a Safe Jail Video (Enactment – Page 1 of 2)





Enactment Continues – Page 2 of 2



Video 3

Build a Safe Jail Video

Statistics show this is not a fact, and that some of the information given is not in context. This "Launch Event" was for marketing and promoting the jail expansion project. Speaker was the Director of another jail which is now in 2016 having financial challenges. Some information is misleading, confusing and incomplete.

2015 Campaign

- Facilities, Staff & Resources Used

How much of taxpayers' funds, facilities, staff and resources were used by the County Executive officials to conduct the 2015 sales tax campaign in Whatcom County? How much was really used to produce the Whatcom County Jail Report mailer? It has accumulated over time. Listening to the testimony given to the Whatcom County Council in front of the public on October 27, 2015 it sounds like the entire strategy was pre-meditated and planned by the County Executive and Prosecutor McEachran working with his attorneys (for days).

This indicates they knew they were walking the lines of being illegal and were tactically figuring out exactly how to skirt the law.

DLR and Executive Branch coordinated direct 'jail industry insider' strategies for several years before the campaign of 2015. In 2015 the minutes specifically shows that the DLR Group (a jail industry contractor) was paid to organize, craft and produce the mailer - using taxpayers funds, facilities and staff in its development and campaign recommendations.

- In two exclusive meetings ***with only the critical three departments in attendance…the Sheriff's office, the Prosecutor's office, and the Executive's Office***…the minutes show that there was an overt plan to select a campaign and marketing team, to work with the press, and to implement a campaign plan.
- Then collaboration goes online, so there were no more written minutes provided even after a public records request. It appears that these records are missing – at least to the public.

In this summary, there is evidence to show how the Executive Branch supported the campaign strategy using members of the pre-established *WSCO Sheriff's Support Foundation* and its blog, the *Sheriff's Advisory Team*, the *Public Safety Now* group and the insiders Wolff and Baribeau, who then worked together with the newly formed *Citizens for a Humane and Safe Jail Now* PAC. Documents indicate some of these activities were conducted using County taxpayers facilities and resources.

Documented examples include:

1) **DLR Group Minutes/ Calendar/Campaign Actions/Costs**
2) **Odd Press Behavior**
3) **Commercialized Press Tours**
4) **Northern Light Newspaper Tour**
5) **Kiwanis Group Tour and Newsletter Reports**
6) **Citizens for a Humane & Safe Jail Now PAC**
7) **Birch Bay "Community" Debate**

How was this NOT a political campaign run by the Sheriff, the Prosecutor and the Executive working together? Which actions did NOT Use Taxpayers Resources, Facilities?

Evidence shows the campaign was conducted under the umbrella of and with the active approval of the County Executive and Prosecutor. The Sheriff's office used facilities and resources to further the initiatives of the Sheriff's office that were not publicly known or approved by the Whatcom County Council. Using insider bias and extraordinary privileges they bent rules to coordinate, fund, conduct and promote the Proposition 2015-1 Sales Tax campaign without full disclosure to the Council and without transparency to the voters.

DLR Minutes/Calendar

Campaign Actions/Costs

In the following excerpts of two sets of minutes from the DLR Group records, the evidence is congruent with the prior verbal testimony given by the Prosecutor and the County Executive right after the mailer was delivered and just prior to election day. The mailer content and style was pre-meditated – the Prosecutor clearly said that he had studied and worked with his staff for days to approve the design and content. What they excluded in their testimony is that the rest of the campaign strategies were being carried out as they were testifying to their innocence. In the following pages it shows that the strategic plans were executed, even if the records of the subsequent DLR and Executive branch meetings are missing.

Meeting Notes

Meeting Date	6/3/2015
To	Tyler Schroeder
From	Erica Loynd
Location	Whatcom County Executive's Conference Room
Project	Whatcom County Adult Corrections Facilities and Sheriffs HQ
Project No.	73-15102-01
Attendees	Jack Louws, Whatcom County Executive Tyler Schroeder, Whatcom County Special Projects Manager Sheriff Bill Elfo, Whatcom County Sheriff Office Jeff Parks, Whatcom County Sheriff Office Dan Gibson, Whatcom County Prosecuting Attorney Erica Loynd, DLR Group Justin Stranzl, DLR Group Bill Valdez, DLR Group Lori Coppenrath, DLR Group
Purpose	Public Outreach Kick Off

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

Exclusive: Notice all attendees were from the Executive Branch – specifically the Sheriff's office, Prosecutor's office and the Executive Branch or from the jail industry contractor, the DLR Group.

Notes		Action
	There are added benefits to a sales tax vs. property tax such as tourist and commuter taxes included in paying for the measure and the taxes are not centered on property tax payees only. The logistics of the technical working of the sales tax measure such as expiration dates, etc. are important to confirm and communicate to the people.	
	Messaging needs to include information on the consequences if the measure does not pass. The outreach shall provide a clear idea of what will occur if the jail does not get built, but not use fear or threat approaches. Items include the financial impact, overcrowding limitations, raised cost/inmate (higher capital costs), and ongoing facilities maintenance of an aging building. These impacts cannot be "bluffed."	Bill Elfo shall describe consequences and provide full description for literature and message.
	Sheriff Elfo has been determining a Plan B approach that would be required if the measure does not pass. • The County jail is required to meet regulated life safety conditions for the County needs. • Cities may be required to find alternative solutions at their own cost if this measure does not pass. • Population cap may be required to ensure the building is able to be maintained and not over-stressed by overpopulation.	
	Bellingham Herald offered the opportunity for OpEd pieces over the next few months. Sheriff Elfo shall prepare a document for next issue on Friday 6/12.	Sheriff Elfo to write OpEd.

There is no discussion about what happens if it does pass to meet the needs of the community, or the immediate needs of the jail inmates. No discussion of discussing the jail taxes already paid.

Justin Stranzl detailed the "20-60-20 approach" where typical populations have approximately 20% of votes that say yes, and 20% that say no regardless of the literature or information provided. Sixty % may be predisposed but are willing to listen to each stance. These are the people who need to be talked to.

Upcoming Schedule Topics:
19 weeks until October 16 (ballots are released) – Public Outreach work shall be complete.

Bi-weekly leadership team meeting – Review with staff and County administration
- Work to create a mailer and make the unified voice.

Tyler Schroeder shall identify potential local communication companies to help with the outreach to be a sub-consultant to DLR Group. — Tyler Schroeder

Obvious planning was to create and then coordinate with the PAC. Note: The Citizens for a Humane and Safe Jail Now pack filed with the PDC shortly thereafter. There in never any discussion of meeting with any adversaries or striving to solve citizen concerns.

Whatcom County shall confirm the appropriate communication the team may have with the PAC following the issue being confirmed on the ballot based on voter outreach regulations.

Sheriff Elfo is the lead decision-maker from the County team for the campaign. He will identify the key players that shall create the PAC. Tyler shall remain the point of contact to DLR Group. Tyler shall address responses to taxes questions, and Sheriff Elfo will address responses to operations.

Justin Stranzl

Items that may be used to get the message out include direct mailer or trifold (similar to mailer for Skagit County), direct meetings with local organizations such as Rotary and Chamber of Commerce. DLR Group shall provide information and arrange a scientific survey of topics and messages to be called to likely voters with a varied demographic. Calls shall be made by survey callers (not automated messages).

Meeting Notes

Meeting Date	July 2, 2015
To	Tyler Schroeder
From	Erica Loynd
Location	Whatcom County Executive's Conference Room
Project	Whatcom County Adult Corrections Facilities and Sheriffs HQ
Project No.	73-15102-01
Attendees	Jack Louws, Whatcom County Executive Tyler Schroeder, Whatcom County Special Projects Manager Jeff Parks, Whatcom County Sheriff Office Erica Loynd, DLR Group Justin Stranzl, DLR Group
Purpose	Public Outreach Progress Meeting
Notes	

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

Action

Calendar of events was reviewed. Sheriff and County Executive have been attending community meetings as they come up to share the information. Community organizations shall be updated for all months of the calendar as a resource to anyone that intends to attend meetings. Updated calendar with deadlines for measure are added to calendar attached to these minutes to reflect new information. City groups shall also be included (approximately 6-8 per month).

Physical mailers will be provided to voters in two mailers. Mailers will be similar in appearance. Mailers will use information from survey as to the topics most relevant to the voters. Layout from Skagit County mailer is acceptable format.

Initial message for the mailer may be "Safe Home. Safe Community. Vote Yes for the Jail."

Whatcom County executive team will continue collaboration with Bellingham Herald.

Scope of work for additional community consultant shall not be pursued at this time.

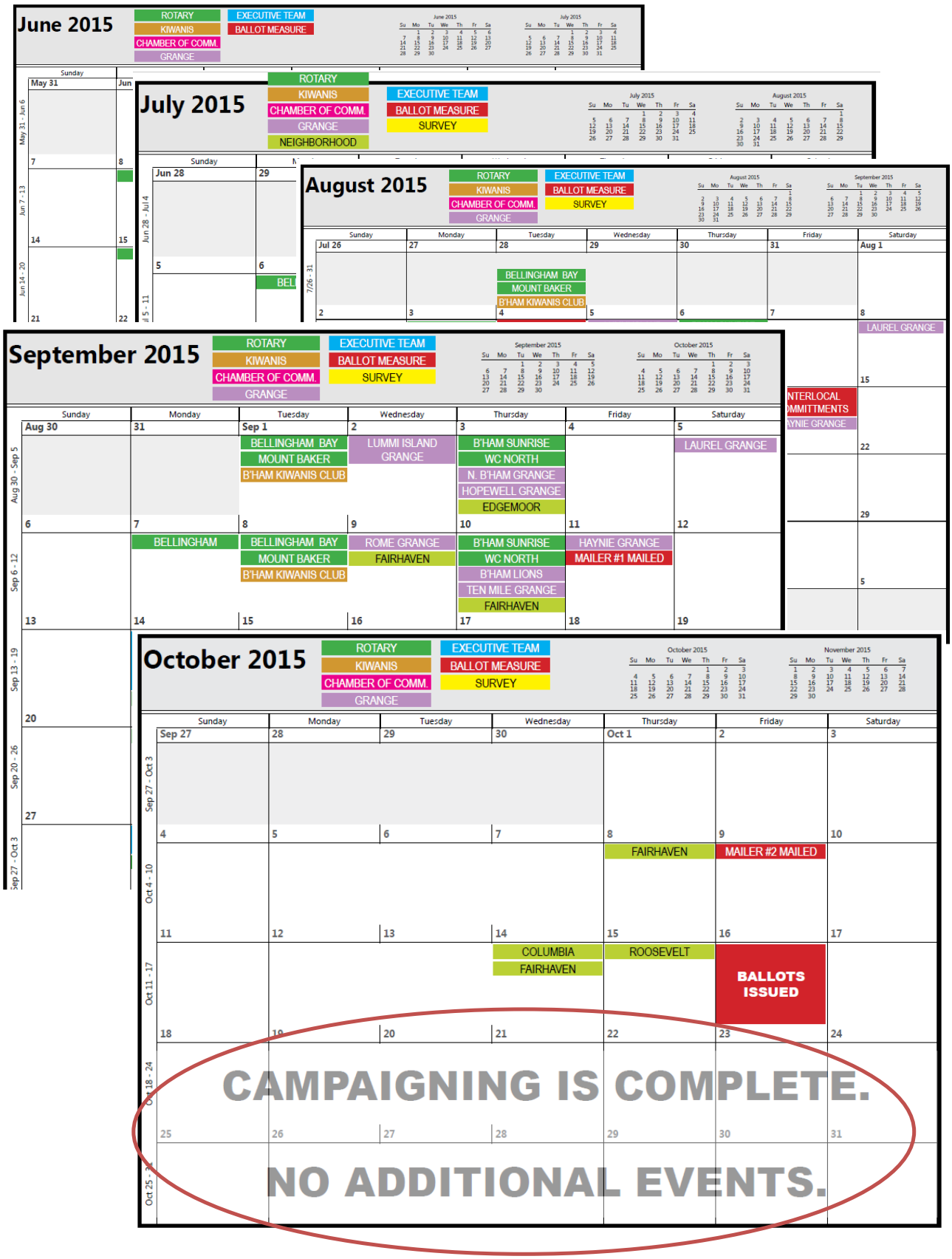
Survey questions shall be revised to respond to Whatcom County issues. Questions shall have a maximum of 4-5 options to choose between. Information that is requested in particular:

- Are you a resident of Bellingham or not?
- Prioritize the issues of programs & services (essential treatment, mental health, chemical health, diversion), Safety for staff and inmates, space/capacity, and modern/efficient design.
- Are you supportive of the measure if Bellingham doesn't fully participate in the jail?

- Discuss property tax vs. sales tax.

Survey will take 3-6 weeks to complete and provide final report. Design and message of mailer will occur immediately following. Questions shall be confirmed by July 10 to start survey on July 14.

Action Items	Next phone call meeting is scheduled for July 20. Biweekly meetings will be confirmed if necessary.	
	Survey Questions to WC by July 10.	Justin Stranzl


June 2015
ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
July 2015
ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
NEIGHBORHOOD
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY
August 2015
ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY
BELLINGHAM BAY
MOUNT BAKER
B'HAM KIWANIS CLUB
LAUREL GRANGE
September 2015
ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY
BELLINGHAM BAY
MOUNT BAKER
B'HAM KIWANIS CLUB
LUMMI ISLAND GRANGE
B'HAM SUNRISE
WC NORTH
N. B'HAM GRANGE
HOPEWELL GRANGE
EDGEMOOR
LAUREL GRANGE
BELLINGHAM
BELLINGHAM BAY
MOUNT BAKER
B'HAM KIWANIS CLUB
ROME GRANGE
FAIRHAVEN
B'HAM SUNRISE
WC NORTH
B'HAM LIONS
TEN MILE GRANGE
FAIRHAVEN
HAYNIE GRANGE
MAILER #1 MAILED
October 2015
ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY
FAIRHAVEN
MAILER #2 MAILED
COLUMBIA
FAIRHAVEN
ROOSEVELT
BALLOTS ISSUED
CAMPAIGNING IS COMPLETE.
NO ADDITIONAL EVENTS.

These minutes and calendar clearly show the deliberate and exclusive collaboration between the DLR Group, the Sheriff, the County Executive, and the Prosecutor's office:

- The minutes show they are developing a full press marketing, production, and speaking campaign to pass the jail tax.
- The Citizens for a Humane and Safe Jail Now was created shortly thereafter this team assigned that task to Bill Elfo.
- The PAC's Co-Chairs and Coaches and many of the contributors were already working behind the scenes through the Sheriff's office, the Sheriff's Advisory Group, the Public Safety Now group and the WCSO Support Foundation to promote the jail.
- The campaign then was conducted through the auspices of Marvin Wolff, the insider from the jail industry together with Ray Baribeau the insider from within the Sheriff's staff.
- Blog posts, websites and e-mails show that press releases were produced from the Sheriff's office, written and/or edited by Marvin Wolff, and in cooperation with the Bellingham Herald, the Northern Lights, the Sheriff's Foundation Blog and also normally.

The mailer was not a fair and unbiased fact sheet.

Information has already been submitted to the PDC from this author and others regarding the mailer. This additional documentation shows how:

- This Executive Branch and jail industry group deliberated for hours and days about what to include in the mailer – incurring both hard and soft costs of facilities, staff time and resources.

- They chose specifically what financial information to include or exclude; and only included that which would compel people to vote for the jail tax (or else they would suffer dire consequences or be shamed for irresponsibility).

- They chose to withhold or obscure critical financial information for the taxpayers regarding the facts that the taxpayers has already passed prior taxes to solve these problems – the taxes of 1999, 2004, and 2008! These taxes were for criminal justice, to build a jail, and for mental health – and these taxes reportedly bring in at least over $7 million a year above the normal revenue! The misdirection of that money has been questioned by taxpayers.

- In the mailer when they claim the jail problems are decades old - they do not discuss the mismanagement. They do not balance that information with an explanation of why the prior taxes did not yield a new jail, and they do not explain how they are planning to manage the inhumane conditions for the next four years until the jail is built. Fair and balanced reporting should provide some reasonable information about this.

- In a balanced report, taxpayers deserve to know this new tax created earmarked forever taxes for a high overhead jail industry expansion facility that is spawning a whole new economy. They deserved to know there were fiscally smart restorative economic options that had not been discussed in any public forums, and that the trends in incarceration and in crimes rates had been dropping for years.

Odd 'Press' Behavior – Bellingham Herald

The DLR Minutes say they will 'continue collaboration with Bellingham Herald'. Thereafter, the following things happened:

- The Sheriff and the Executive received multiple opportunities to write Public Opinion pieces
- The jail tax got quality coverage from the press in news articles, in council debates
- The Herald writers produced special pieces where they were inside the jail, showing the disrepair, the inmates, graffiti and more in photographs
- Not once did they interview the Restorative Community Coalition – the one non-profit organization that had been consistently and repeatedly standing up against the jail expansion, and against the jail tax. They effectively shunned and gave no press to that organization during the campaign.
- The Herald ultimately gave endorsements for their campaigns and then for the sales tax, and scathingly criticized the County Executive opposition candidate who was opposing the jail.

Most dramatically: The Bellingham Herald shut down its popular Politics Blog on August 5, 2015 – just before the political season!

Immediately after the primary election; and before the General Election the Politics Blog was suddenly shut down, immediately deleting the stored and valuable comments in the Herald that had to do with the Jail Initiative, the Charter Initiatives, the coal and other political issues that would all be coming up in the General Election.

Is it coincidental? The Bellingham Herald also chose to not accept any letters to the editor after Oct 27, eight days prior to the General Election. This means that:

1) the ballot mailing went out
2) The Jail Tax mailer was sent
….and then…
3) Letters to the editor could not be submitted and special election rules apply.

3 Commercialized Group & Press Tours inside Jail

Organized and hosted by PAC Co-Chair, Ray Baribeau

In this case, the PAC Campaign Co-Chair Ray Baribeau set up tours of the jail with special press and with organizations; gaining the campaign extra leverage and publicity to help promote the jail tax.

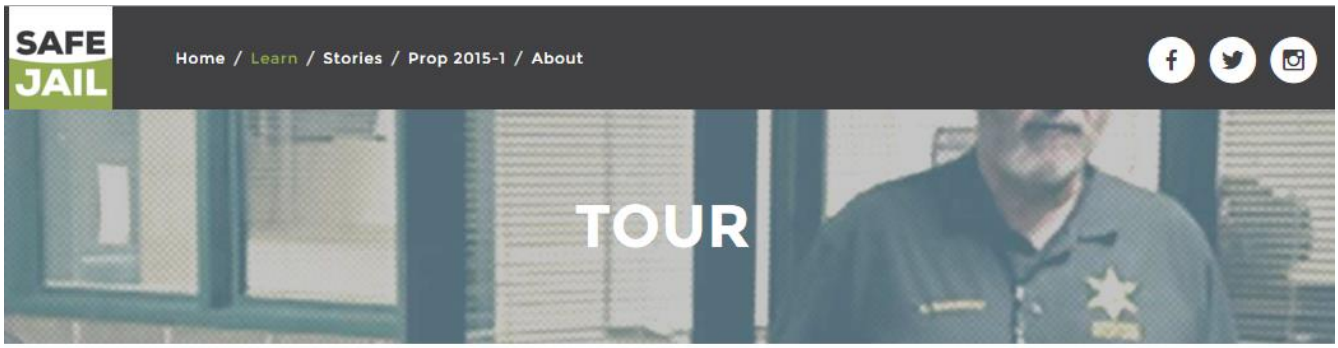
Used Facilities / Photo / Staff to Promote the Jail Sales Tax:

This post on the Safe Jail Website shows a photo taken inside Whatcom County Jail, advertising the jail tours given by the Co-Chair of the Citizens for a Humane Jail Now PAC. Baribeau is the 'insider' talked about in Evidence Summary 1 and 2. Baribeau is wearing a Sheriff's shirt with the insignia on it. This is the same photo given to the Northern Light news reporter who toured the jail.

This post in Facebook, then crosslinks right back to **Whatcomjail.com**/tours page (the PAC official website), where a Northern Lights article on the jail shows how Baribeau invited him and others to participate in a press and group tour where the staff were present to promote the jail tax.

4 Northern Light Newspaper Tour
featured on WhatcomJail.com special Tab called Tours

As evident in the Website posting and in the article published, the tour was orchestrated by Ray Baribeau. The campaign used facilities, photos and messaging to promote the jail. Then, the article and photos are in turn used on the WhatcomJail.com website to promote the jail tax/plan:



See Whatcom County Jail for yourself.

Find out why there will be a catastrophic loss of life in the event of a fire. You will see the one little room used for jail programs and the place where inmates tore an air vent out of the crumbling walls during a 2013 riot. Meet some of the deputies and volunteers that have to work in these conditions.

TO TOUR JAIL
email Ray Baribeau
or call (360) 752-1712

STEVE GUNTLI, SHELI MOORE, AND REBECCA BOONSTRA (LEFT TO RIGHT) ON A JAIL TOUR AUGUST 12, 2015

TOUR THE JAIL YOURSELF

Search

Official Whatcom County information about new jail

Whatcom County Sheriff Office Blog & News

Prop 2015-1 to fund a new jail has failed

Read more here...

Steve Guntli

The Northern Light Assistant Editor

Sheli Moore

Blaine-Birch Bay Park and Recreation District 2 Commissioner

Rebecca Boonstra

Opportunity Council Board Member

"most of the solitary cells, which by design are meant to keep antisocial or violent offenders away from the population, have been modified to house two or more."

READ STEVE'S ARTICLE IN THE NORTHERN LIGHT

Our tour guide was Ray Baribeau. Baribeau is an associate chaplain at the jail. He's been working with inmates for most of his adult life. He's pleasant and unassuming, but beneath the genial surface is genuine frustration at the poor quality of the facility.

"There are two things you pray for when you enter this building," Baribeau said. "No earthquakes and no fires."

"It provided the information I needed to decide to vote in favor of the jail."

It was really helpful to hear about the root causes for the incarceration of a majority of the inmate population and how those issues are being addressed or the best way to address them and the appropriate facilities needed to help with that process. Ray was an amazing fountain of information.

Thank you for suggesting I take the jail tour. It was very informative and definitely an eye opener to see the physical condition of the building. It provided the information I needed to decide to vote in favor of the jail.

"While I wish we never needed jails, I know that we do."

I found the jail tour very enlightening and can clearly see the need for expanded facilities.

If kitchen and laundry facilities matched the actual number of inmates, more inmates would have the opportunity to work while they are in jail. This would be very beneficial.

While I wish we never needed jails, I know that we do. Ours isn't safe or adequate for the purpose in which it is being used.

See the Print article below that is filled with media approval to pass the jail tax.

In the article, the tour operator seems to stress the disrepair and violence. It is obvious in the kind of language used by the officers and then repeated by the author: the obvious focus on the disrepair and tattered conditions seems false, for what does it really cost the County to do a paint job on the door, to get rid of graffiti, or get a better couch in the break room? This is normal maintenance.

Question: Since it will take at least another four years to build a new jail even if the sales tax passes – was this a deliberately staged tour? It makes it appear that the County is broke (which it is not). Does the County really not have the money in operations to replace critical floor mats? Or is this a deception to guilt the taxpayers into believing they have not paid enough…that we need to pass a sales tax just to get new floor mats? Example phrase:

> We come across a stack of thin mattresses resting in long plastic trays. These trays are called "boats," and they're used when the jail is over capacity and inmates need to sleep on the floor. The mattresses are thin, and most are torn at the seams and spewing wads of cotton.

http://www.thenorthernlight.com/2015/09/02/a-tour-of-whatcom-county-jail/

The Northern Light
Blaine and Birch Bay's Community Newspaper

A tour of Whatcom County Jail

0 Home Page News, News September 2, 2015

Story and photos by Steve Guntli

While finding funding for the new Whatcom County Jail facility has been a contentious point amongst county legislators, the one thing county officials agree on is that a new jail is necessary.

The current jail was born out of date: built in 1983, it complied with state standards in place since the 1960s. The facility was originally built to hold 148 inmates, but remodels and retrofits over the last three decades have raised the bed count to 280. And that's still not enough: on average, the building holds about 350 inmates, according to a report by Whatcom County Sheriff Bill Elfo. In 2013, a county jail planning task force determined the need for a new jail was "critical" due to overcrowding and unsafe conditions.

I was part of a small group of media delegates and local government officials invited to tour the facility in downtown Bellingham. A new county jail facility is in the planning stages, and voters will have a chance to approve the county's jail plan during this November's general election. That plan looks increasingly likely to proceed without Bellingham's help, as the city council balked at a financing plan that proposed a 0.2 percent sales tax increase. The county has developed plan B, reducing the proposed size of the facility from 521 beds to 400, at a cost of about $75 million.

Our tour guide was Ray Baribeau. Baribeau is an associate chaplain at the jail. He's been working with inmates for most of his adult life. He's pleasant and unassuming, but beneath the genial surface is genuine frustration at the poor quality of the facility.

Before the tour began, Terry shared a pamphlet showing the SCORE (South Correctional Entity) regional jail in Des Moines, Washington. Whatcom County is consulting with that facility's designers on its new facility in Ferndale. The pictures depict well-lit, wide-open spaces, top quality medical facilities and floor-to-ceiling windows in the lobbies and employee break rooms that flood the rooms with natural light. It was a stark contrast to the facility we were to walk through.

The employee break room sets the tone. Three small tables and two ratty couches are haphazardly crammed together around a small flat screen TV, jammed between a row of banged-up lockers and an oversized vending machine filled with energy drinks. The only glimpse of natural light comes through a row of tiny, opaque windows that line three of the walls near the ceiling. An officer jokes that they have the second-best view in the building, after a cell in the third floor solitary confinement. The only difference is you can see out the windows in the solitary cell.

The rest of the jail makes a similarly ignominious impression. The elevators lurch and judder uncomfortably as they slowly change floors. The fluorescent fixtures are cracked and flickering. Paint is chipped, concrete cracking; the lettering on some of the doors has worn away, and in some places was hastily redrawn with magic marker.

We visit one of the first-floor dormitories, called "tanks." This tank has about 10 bunks and an open floor space. Inside, men gather close to the window and start making zoo animal noises.

"Y'all here to see some criminals?" one shouts. "Take a good look."

This tank was originally designed for men's work release, but was converted to house overflow. Up to 30 people can live in each of the dorms at a time. Baribeau is critical of the dormitory system.

"Dorms like this are a recipe for trouble," he said. "You put a bunch of guys together, and even if they're normally well-behaved, they'll start needling each other, and that's when things get violent."

The problem is especially acute when sex offenders are brought in amongst the general population. Baribeau said sex offenders tend to be well-behaved when kept on their own, but are targeted when put in large groups. Now, most sex offenders are kept under heavier security on the second or third floor, as much for their protection as anything else, but sometimes there just isn't space to segregate them.

The better method, Baribeau said, is "pod" cells, two people per room united by a large common area. The SCORE facility from the pamphlet used this design.

The kitchen is a long, narrow space on the first floor. The floor, a rust-colored rubber surface, is only about three months old. The county paid to put it in after the health department found the cracked, worn tiles too much of a slipping hazard. About a dozen inmates are working in the kitchen, music blaring. They politely turn the music down as Baribeau leads the tour through, and proceed to mug for the cameras and joke with us. These are minimum risk inmates, what would once have been known as "trustees," and they're given a lot of leeway for their good behavior.

The kitchen facility was designed to serve 145 prisoners three meals a day. The kitchen manager tells us they now make 370 meals three times a day, including the 135 meals they send to off-site work groups. A spare room had to be converted into bulk food storage to deal with the demand. That room is located on the third floor, on the opposite end of the facility, so crews haul carts there and back a few times a day.

The food storage isn't the only space that's been repurposed. Baribeau is constantly pointing out rooms that used to be this or were converted from that. The first-appearance courtroom on the second floor was once the commissary, where inmates could buy snacks or decks of cards. A room once designated solely for GED classes is now the multi-purpose room, hosting Alcoholics Anonymous, Narcotics Anonymous and Bible study groups in addition to GED classes.

We come across a stack of thin mattresses resting in long plastic trays. These trays are called "boats," and they're used when the jail is over capacity and inmates need to sleep on the floor. The mattresses are thin, and most are torn at the seams and spewing wads of cotton.

"If you have two people in a cell and need to add a third, that third person is called the 'rug,'" Baribeau said.

Medium- and maximum-security cells are located on the second floor. It's after 5 p.m. when we take our tour, so most of the inmates are on lockdown, but some are left to roam the racks, if only to

collect their medication from nurse Brady, a cheerful man in his 20s.

Baribeau is well liked amongst guards and inmates alike. He teaches Bible study a few times a week, and knows most of the inmates by name. He chats with some of them on our tour, his tone shifting from amiable to disappointed when he sees a familiar face back behind bars.

One inmate, secluded in the sex offender's block, kneels close to the ground to chat with Baribeau through the food tray slot. He explains to Baribeau that he's on his way to prison.

"For the same thing?" Baribeau asks. The inmate nods.

Inmates on the second and third floors have most of their conversations with the outside world through those food slots, unless they're using the visitation cells located on each floor. Baribeau jokes that old guys like him have learned to bring a stool to spare their knees.

Officer Tim Kiele pauses the tour and invites us to come into the control room. He's enthusiastic and friendly, and the few times he interacts with inmates over the intercom, it seems he's well respected by the population. The county spent $3.5 million to update the control center five years ago. Kiele said the new system is a huge improvement over the last, but he still has concerns over some of the antiquated wiring.

"As far as I'm concerned, this new system is a band-aid," he said. "We still have to address the wiring and the floor plan. If there were ever a fire, all of these guys would be gone."

Baribeau echoes this sentiment later in the tour.

"There are two things you pray for when you enter this building," Baribeau said. "No earthquakes and no fires."

The fire escape routes, which are far too narrow to easily accommodate the population, are located at the far end of the hallway. Each floor has several cracks along the surface. In one section, a small gauge used to monitor seismic activity and structural integrity has been placed over a crack like a band-aid.

While Baribeau was critical of the facility, he had nothing but praise for the jail's employees.

"These people work so hard every day, and believe me, this is not an easy job," he said.

We arrive on the third floor, which houses female inmates and the solitary confinement wing. "Solitary" proves to be a bit of a misnomer: most of the solitary cells, which by design are meant to keep antisocial or violent offenders away from the population, have been modified to house two or more. Only the most extreme cases are actually isolated. One room, the one the officer described as having the best view in the building, is meant as a shower facility for solitary inmates. When we visited, four men were sleeping on bunks in the room. Baribeau seemed perturbed by this, since beds were available elsewhere.

Near the solitary wing were two tanks used to house inmates with severe mental or physical health requirements, or those in protective custody. The medical facilities are located on the second floor.

"It's criminal that we have people with medical needs on a different floor from the medical facility," Baribeau said.

The medical facilities have two examination rooms and a small staff of nurses. A psychologist visits the facility a few times a week. Whatcom County Council has promised more money for mental health and prevention programs in the new county jail, with 8,000 square feet earmarked for mental health facilities.

Baribeau leads us back downstairs, joking with guards on our way. Squinting at the sunlight outside, we depart, grateful to be out and that we all have better views to look forward to than the guards at the Whatcom County Jail.

POSTED BY STEVE GUNTLI

Kiwanis Group Tour & Newsletter Reports

This email from a taxpayer highlights how the Executive Branch worked with the Insiders groups to do tours, arranging continual presentations over time. The significance of this comes in the attached newsletters, the continual and ongoing use of facilities and elected officials to condition the public to buy the "story" that the taxpayers need to buy a new jail, and they do not provide any alternatives to meet the demand. They do not take input, offer any choices to the public other than to get them prepared to 'buy' the sales tax.

From: Sandra Robson <sjrer2@yahoo.com>
Date: December 16, 2015 at 1:35:27 PM PST
To: tip@skookum.us
Subject: Bellingham Kiwanis info. relating to the new jail

Tip,
I tried to dig up some information per your Facebook post in which you asked people for information about the Kiwanis Club, etc., that were listed on Jack Louws' calendar, in terms of the new jail issue. I included screenshot photos of the Kiwanis' newsletter pages which pertained to what I outlived below. I will have to send an additional email in order to get all the photos included as I can only send (photos at a time with my iPhone).

I don't know if this helps, but here is what I could find out in terms of the Bellingham Kiwanis meetings relating to the proposed new jail:

The Kiwanis announced in their June 2, 2015 newsletter that there would be a tour of the jail on June 30.

They held their meeting that week at the County Courthouse, had a brown bag lunch during the meeting, and then toured the jail.

Kiwanis President Doug Bestle hosted the tour, and Nancy Larsen and Alyson Batchelder-Bestle arranged the tour.

According to the June 30 newsletter, "the tour was to give some insights for the needs of what has become the 10+ year saga of the proposed new Whatcom County Jail."

The club's August 4 newsletter reported that Mayor Kelli Linville came and presented on the proposed new jail and the waterfront re-development.

The club's April 21 newsletter reported that Sheriff Bill Elfo came to the club and gave a presentation on April 21, 2015. Mostly he spoke about was the new jail.

In a phone call yesterday with Kiwanis member Nancy Larsen, I understood her to say that Jack Louws gave a presentation to the club during this past summer, but she did not remember the date. She said the proposed new jail was one of the subjects he spoke about.

Hope something here might help you.

Sandy Robson

Sent from my iPhone

THE BELLINGHAMSTER WHEEL

Kiwanis
Club of Bellingham

Elizabeth Bennett was happy for the wonderful job done by all at Theatre Night.

Russ Weston razzed **Dick Zagelow** for all his marketing support for the Mushroon Compost Sale this past Saturday, apparently Dick arrived after half the bags had been filled.

Jan Armstrong texted Lisa on Compost day to ask if she could arrange some radio announcements and viola it happened and business picked up.

Split the Pot

Jan Armstrong won the draw but couldn't find the joker. We play again next week.

Program

Bill Elfo is our Whatcom County Sherriff. Bill comes almost every year even knowing that Russ Weston will be here.

When asked how he liked Rich's jokes, he said he thought they were great – it's an election year after all.

Bill wanted to talk about the need for mental health services in the county and how many with these issues end up incarcerated without proper treatment. Bill suggested that the better way to treat mental illness issues, as well as substance abuse issues, is outside the jail system. Provide services before considering jail time. This does

6 of 7 THE BELLINGHA

require an increase in services available.

The new jail, subject to voter approval, will have facilities and additional practitioners to provide these services.

Last year 8,500 were booked into our local jail. This includes border fugitives and hose convicted who would previously been housed in state facilities.

Our jail's capacity of 148 is currently being stretched to accommodate 320. Over 60% of those inmates have mental health or substance abuse issues.

Another issue that the sheriff's office is helping with is once an inmate enters the jail system, their Medicaid benefits are cancelled. Upon release re-enlisting is an onerous process that not all are willing to navigate. The sheriff's office provides assistance with this.

Kiwanis
Club of Bellingham

TOUR:

Indianapolis to celebrate 100 years of Kiwanis!
June 30th – Our club's tour of the Whatcom County jail. Lunch orders for a brown bag lunch will be taken at our meetings on the 16th and 23rd.

The 30 minute tour was long enough to make you realize how precious freedom is, and should be cherished.

This photo was found in one of the jail's archives.

More Tour Photos:

to follow their dream. What a testament to the human spirit. Tim is famous for giving hugs to all his customers in the restaurant, and elsewhere.

The jail tour was about 30 minutes, and consisted of 3 different floor levels in the complex, designed to address the specific needs of those incarcerated: separation of men and women, attitudes, mental health issues, juvenile section, etc.

All levels from a security standpoint are about the same and the professionalism of staff was very impressive.

The facility has a medical area with an on-site staff; a small courtroom to provide timely process guaranteed by law and seems to cover the immediate needs of those under arrest.

There isn't too much to say about the place except that is a lot of cinder block hallways, locked doors, and is depressive.

"Citizens for a Humane & Safe Jail Now" PAC

– Filed July, 2015

Co-Chairs Ray Baribeau and Terry Terry and Coach Bob

This political action committee was originally filed only by Ray Baribeau just before the Primary and General Campaigns, and was later modified to include these other members. Notably, this PAC was filed after the DLR Group, the Sheriff, the Prosecutor's office and the Executive met in June. It seems that the filing members were an extension of the Public Safety Now (PSN) and Sheriff's Advisory Group. Ray Baribeau and Terry Terry are now listed as the final Co-Chairs, with Bob Friske listed as the Coach. E-mails, minutes and videos show these collaborators worked closely with Sheriff Elfo, Wendy Jones and other officials the past few years.

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
Toll Free 1-877-601-2828

Political Committee Registration

C1PC (1/12)

100668294
AMENDS
10018932028

Committee Name (Include sponsor in committee name. See next page for definition of "sponsor." Show entire official name. Do not use abbreviations or acronyms in this box.)
CITIZENS FOR A HUMANE & SAFE JAIL NOW

Acronym:

Telephone: 360-752-1712

Mailing Address
P.O.BOX 30991

Fax: 360-752-1712

City: BELLINGHAM | County: WHATCOM | Zip + 4: 98228-2991

E-mail: RAY_BARIBEAU@Q.COM

NEW OR AMENDED REGISTRATION?
☐ NEW. Complete entire form.
☒ AMENDS previous report. Complete entire form.

COMMITTEE STATUS
☐ Continuing (On-going; not established in anticipation of any particular campaign election.)
☒ 2015 (Year) election year only. Date of general or special election: 11/03/2015

1. What is the purpose or description of the committee?

☐ **Bona Fide Political Party Committee** - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.

☒ **Ballot Committee** - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure:
WC PROPOSITION 2015-1 JAIL FACILITY SALE

Ballot Number: 2015 | FOR ☒ | AGAINST ☐

☐ **Other Political Committee** - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:

For single election-year only committees (not continuing committees): Is the committee supporting or opposing
(a) one or more candidates? ☐ Yes ☐ No If yes, attach a list of each candidate's name, office sought and political party affiliation.
(b) the entire ticket of a political party? ☐ Yes ☐ No If yes, identify the party:

2. Related or affiliated committees. List name, address and relationship.
☐ Continued on attached sheet.

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)
If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

☐ **MINI REPORTING**
Mini Reporting is selected. No more than $5,000 will be raised or spent and no more than $500 in the aggregate will be accepted from any one contributor.

☒ **FULL REPORTING**
Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address
TERRY TERRY
2882 NUGENT RD., LUMMI ISLAND WA 98262

Telephone Number:
360-510-9880

5. Treasurer's Name and Address. Does treasurer perform only ministerial functions? Yes ___ No X See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet. ☐ Continued on attached sheet.
RAY BARIBEAU
4511 GLEN MEADOWS PL., BELLINGHAM WA 98226

Daytime Telephone Number:
360-752-1712

6. Persons who perform only ministerial functions on behalf of this committee and on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. ☐ Continued on attached sheet.

7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." ☐ Continued on attached sheet.
RAY BARIBEAU, CO-CHAIR, 4511 GLEN MEADOWS PL., BELLINGHAM WA 98226
TERRY TERRY, CO-CHAIR, 2882 NUGEBT RD. N, LUMMI ISLAND WA 98262
BOB FRISKE, COACH, 3411 BRANDYWINE WAY, BELLINGHAM WA 98226

8. Campaign Bank or Depository: HERITAGE BANK | Branch: BAKERVIEW #61 | City: BELLINGHAM, WA 98226

9. Campaign books must be open to the public by appointment between 8 a.m. and 6 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.
Street Address, Room Number, City where campaign books will be available for inspection
4511 GLEN MEADOWS PL., BELLINGHAM
In order to make an appointment, contact the campaign at (telephone, fax, e-mail): (360)752-1712 (360)752-1712 RAY_BARIBEAU@Q.COM

10. **Eligibility to Give to Political Committees and State Office Candidates:** A committee must receive $10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of $10 or more each from at least ten Washington State registered voters.
☒ A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

11. **Signature and Certification.** I certify that this statement is true, complete and correct to the best of my knowledge.
Committee Treasurer's Signature: RAY BARIBEAU | **Date**: 11-10-2015

Specific Campaign Contributors Include:

- Ray and Phyllis Baribeau - $1,500
- Teamsters Local 231 - $1000
- Ryan Tyler (Multop Financial) - $1700
- Vigoren Lettie $900 (Multop Financial)
- Joe T. Wilson $900 (Pearson Brothers Construction)
- Associated General Contractors - $500
- Frank Chmelik - $500 (Attorney)
- Jack and Cindy Louws - $500 (Whatcom County Executive)
- Dorathey L. Booth - $250 (retired)
- Wendy Jones - $150 (Whatcom Co Jail Chief)
- Susan B. Kaplan $200 (retired)
- Linda Kolody - $100
- Taylor Sears $100
- Anne and Richard Van Kolken $100
- Karen Bellingar - $50
- Joan Dow - $50
- Glenn Shinn - $50
- In-kind contributions came from: Robert Friske $257 (Church at Bakerview, Pastor) for designing, printing and folding the new jail info fact flyer.

Citizens for a Humane & Safe Jail Now PAC expenses include:

- Cascade Radio Group $5, 065 for radio ads with KGMI, KISM, KPUG, and KAFE.
- **IOSAC Services** - $1205.07 for webpage layout, registration, hosting, additional social media services
- **IOSAC Services** - $820 – for final bill social media services
- Grandview Sign and Awning - $800 – campaign signs
- **IOSAC Services** - $525 – Social media services and boosted posts
- Cascade Radio Group - $260 – Additional radio ads at KAFE and KGMI
- Ray Baribeau $215.19 Reimbursement for fundraising envelopes
- Cascade Radio Group - $190 – Additional radio ads - KGMI and KPUG
- Jalapenos Restaurant -- $157.29 – Food for Campaign Wrap Up Meeting
- Grandview Sign and Awning -- $98.47 – Additional Graphics for second side
- Expenses of $50 or less - $77.27 and $34.76
- Ray Baribeau - $41 – Post Office Box Rental for 6 months
- Ray Baribeau - $ 13.00 Whatcom County Precinct Map and Voter Info.

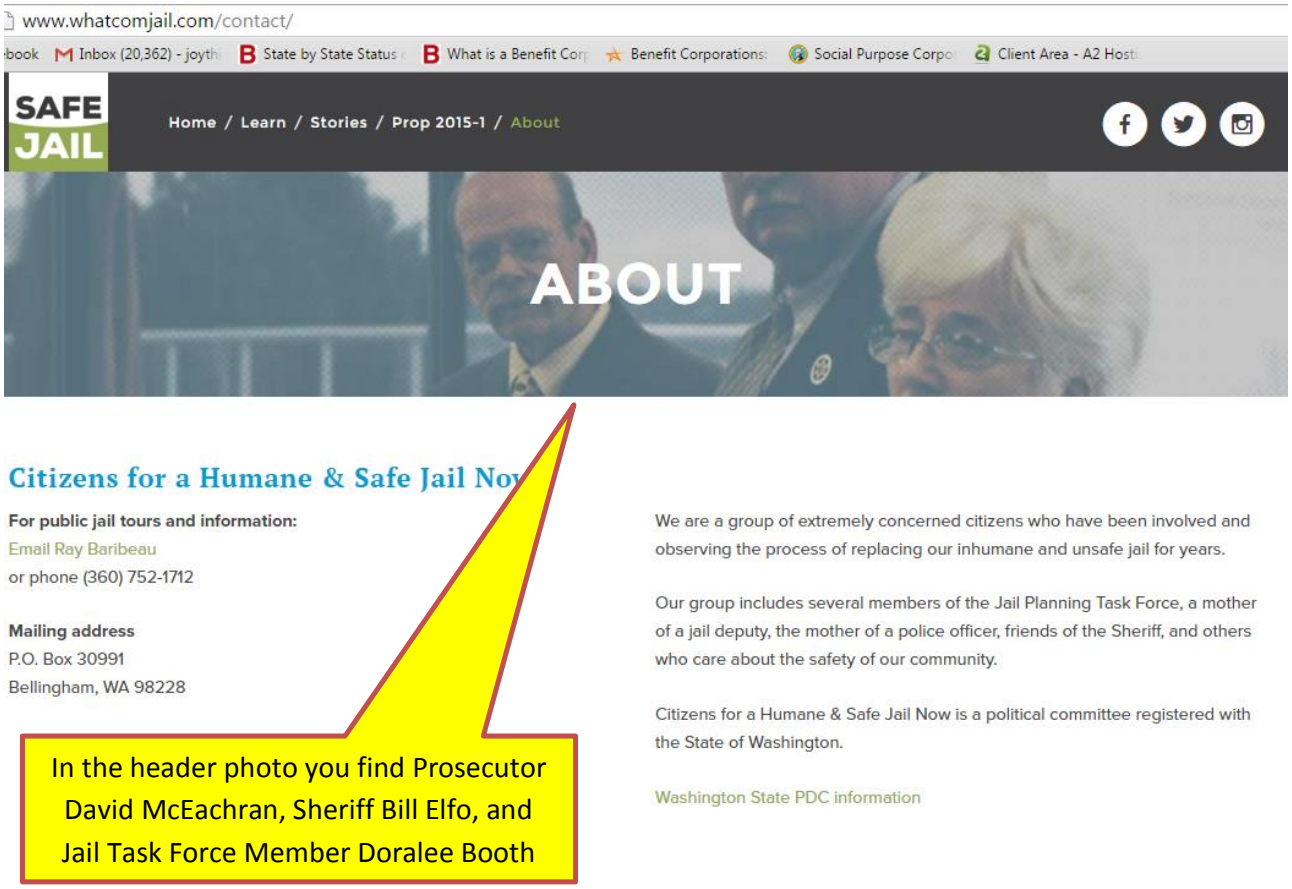
PAC Website

WhatcomJail.com website / Marketing

The PAC ran a fairly aggressive social media and video marketing campaign, which seems to be coordinated and developed mostly with Terry Terry and ISOAC productions. This site and Facebook page is still up and functional after the campaign season.

- This PAC had a strong Facebook Page presence and invested a lot into creating a strong ad campaign and strong marketing videos.
- Baribeau was the spokesperson on multiple radio interviews as a proponent of the tax.
- Baribeau and other members testified repeatedly to the Council, wrote letters to the editor and did grassroots campaigning.
- This PAC used the Build a Safe Jail Now Campaign materials and videos created by the Public Safety Now group earlier on their WhatcomJail.com and with their Safe Jail Now campaign.
- This PAC also used materials produced by the Bellingham Herald and Northern Lights, after giving them tours of the jail and photos.

Workers: Baribeau appears to run the ground campaign, getting people out to testify. Baribeau organizes jail tours, fair events and parades, etc.



Staff in Videos

Staff and PSN Members in Videos: These are all different videos produced by someone for the Citizens for a Humane & Safe Jail Now PAC. Some were filmed and produced by the Herald, some from the Public Safety Now group, some by IOSAC Productions and it appears paid for by the PAC. Some of the people interviewed are employees or elected officials of the County.

Bill Elfo Responds to Misleading Information

Bill Elfo corrects misleading and inaccurate information disseminated by two city labor organizations.

Act now or pay later

Some argue we cannot afford to build a new jail. But can we afford to wait?

County Community Report on the Jail

Whatcom County published the mailer about Prop 2015-1 to fund a replacement jail. Opponents are outraged, but facts are still facts.

How to break the jail

Everyone knows the jail is a broken liability. Voting "no" on new jail funding may also break the BANK.

County responds to Bellingham's offer

Executive Louws has responded to Bellingham's proposal. Reality check: Mayor Linville won't get a special deal.

Jail talk at Birch Bay Forum Oct 1

Funding a new jail was a hot topic at the forum, watch the highlight video.

Birch Bay "Community" Debate

Was an Undisclosed Jail Marketing/Filming Event for PAC

Not disclosed in advance to the candidates, this author figured out after the fact that this event was staged, and was a setup by the PAC for campaign purposes. It was publicly promoted as an open community forum supposedly sponsored by the Birch Bay community and the Chamber of Commerce. It turns out that this event was moderated and supported by the Co-Chairs of the Citizens for a Humane & Safe Jail Now PAC with the help of members of the Public Safety Now Group, and the Sheriff's Advisory Group who are also part of the Chamber. (Note the earlier cross reference in the PSN minutes how they had tested the fire video on the Chamber members?)

- Terry Terry, Doralee Booth, and Ray Baribeau seem to have been in charge of the setup, filming, question control, and the timing of the whole event – together with IOSAC productions.

- Terry moderated the event. She is also the Co-Chair of the PAC that was filming the event for production into a WhatcomJail.now video.

- Here is the link to the video that was produced by ISOAC and the Citizens for a Humane & Safe Jail PAC after the debate happened. It was a full campaign piece that was produced from the night's questioning. Viewers can see that the opening is clearly in favor of the jail, it is framed as a community debate, but it is credited to ISOAC Productions, and then closed with the WhatcomJail.com website.

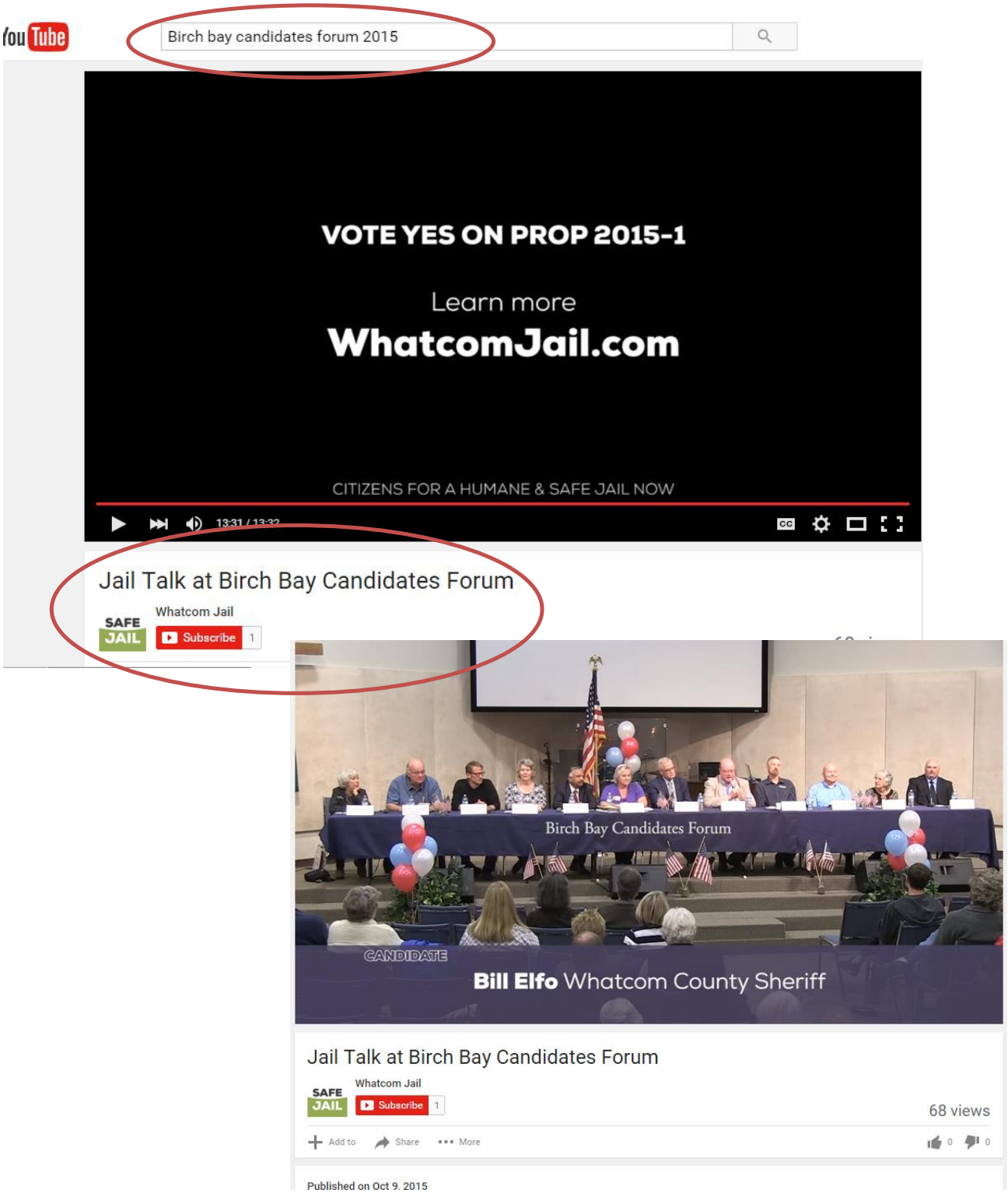
In hindsight, the debate questions and answers seem to have been partially scripted and organized for a film presentation. The author noticed during the debate that virtually all the candidates seemed to have been coached and fully prepared to intentionally and clearly support the jail and the tax.

There was one oppositional candidate, Joy Gilfilen, who was a Candidate for Whatcom County Executive. During the debate Gilfilen found she had to literally challenge the moderator at certain points, to stop her from making presumptive statements. One example was where Terry Terry, the moderator, said that "everyone agrees" that we need a new jail – and Joy had to be rude to interrupt her and disagree, or that statement would have stood as a presumptive fact.

Some screen shots follow that illustrate how the debate film was then used for promotional purposes on the WhatcomJail.com site and on Facebook. To watch the videos go online. Whoever edited the debate tapes was able to turn individual testimonies into additional promotional videos. These videos included at least two more people who were running for election – Barbara Brenner and Bruce Ayers. The video taken was edited down into small You Tube videos that could easily be posted to Facebook as well. So the PAC video team used the debate as a whole to film and promote the jail tax, and used it in segments to promote candidates.

Videos produced by this PAC and connected to the campaign should be investigated for deeper violations of misuse of facilities, inmates rights and staff time.

The following are screenshots from the promotional videos produced and posted online.


YouTube
Birch bay candidates forum 2015
VOTE YES ON PROP 2015-1
Learn more
WhatcomJail.com
CITIZENS FOR A HUMANE & SAFE JAIL NOW
13:31 / 13:32
Jail Talk at Birch Bay Candidates Forum
Whatcom Jail
SAFE JAIL
Subscribe 1
Birch Bay Candidates Forum
CANDIDATE
Bill Elfo Whatcom County Sheriff
Jail Talk at Birch Bay Candidates Forum
Whatcom Jail
SAFE JAIL
Subscribe 1
68 views
Add to
Share
More
Published on Oct 9, 2015

Jail Talk at Birch Bay Candidates Forum

Whatcom Jail
SAFE JAIL
Subscribe 1
Add to Share More

Barbara Brenner's perspective on jail funding in Whatcom County
by Whatcom Jail
16 views

Bruce Ayers: Whatcom County Jail and alternative programs
by Whatcom Jail
14 views

Whatcom County Jail: don't kick the can again
by Whatcom Jail
27 views

These short videos were put together by the PAC or by the Bellingham Herald and they have photos from inside the County facilities, and they include inmates, staff and parents of staff.

As a mother of a corrections deputy in Whatcom County Jail
by Whatcom Jail
61 views

Whatcom County Jail: don't kick the can again
by Whatcom Jail
27 views

Help through a hatch: women in Whatcom County Jail
by Whatcom Jail
24 views

Tupac Claiming Oakland
by Xirix Seven
14,095 views

Hole discovered in fence at prison
by kuamnews
1,088 views

Inside Whatcom County Jail: Why they want a new one
by bellinghamherald
1,559 views

Concerns of Taxpayers

Violations Ongoing for Years

(Yet the prior taxes have been diverted from their original purpose)

Taxpayers Question 1:

Why is it that three Whatcom County officials – the County Executive, the Sheriff and the Prosecutor – who are responsible for enforcing laws are allowed to violate the law by choice? Why can they continue to overcrowd the facilities and operate the jail in such inhumane conditions by their own admission for decades? Voters have allocated money from the 1999, 2004 and 2008 taxes. Why did it not solve the problems? Voters intended that money to be used to buy a new jail to relieve the jail overcrowding, and to resolve mental health crises. Instead, it appears that some money was used for the work release and jail industry expansion – which increased arrests. It did not build the new jail as taxpayers expected. And the problems remain. For example, there was an email sent to the Whatcom County Council in 2015 by the Restorative Community Coalition showing fifteen ways that they've discovered the Executive Branch is over-criminalizing people. They asked for review – it was ignored. No one investigated from the Council or the Executive Branch when civil rights violations are reported. Where is the legal accountability?

Action Step 1:

To Cut Costs / Save Taxes: Review current administrative practices

In Whatcom County, we can choose to review arrest, jailing and court practices to see where the County could improve its processes. The purpose would be to look for ways to reduce excessive jailing that could be causing unnecessary over-crowding and increased demand for beds. Since 2006, the Coalition has identified fifteen troublesome areas in Whatcom County administrative, judicial and police practices that indicate possible over-incarceration patterns that could be adjusted. Estimated reduction of jail population: 15-20% of non-violent and legally innocent people.

1. **Arresting the homeless and poor** in sweeps, and for being unable to pay fines
2. **Stacking of charges** where people are arrested on 1 charge, then extra charges are added
3. **Excessive continuances** caused by Prosecutors not signing papers or doing their work
4. **Prosecutors** change the nature and terms of plea bargains already negotiated prior to court
5. **Excessively high plea bargain rates** (and low dismissal rates) for the Prosecutor
6. **Excessively high bail amounts** that make it next to impossible for people to release on bail
7. **Reduced use of Blue Ribbon Drug Court** – administration, rules and policies were changed
8. **No facilities for Substance Abuse Treatment** that allow self-admission, so arrests increase
9. **Automatic jailing, prosecution** of at least one person on any callout for Domestic Violence
10. **High percentage of arrests** for driving with suspended license (1st violation = jail time) vs. non-violent misdemeanor named No Valid Operating License (no jail time)
11. **Witnesses not being interviewed** in a timely manner (sometimes not until a year later) which increases number of court appearances, harassment and punishment
12. **Decreased 'good time' by 50%** (by administrative decision) that increased jail bed stays
13. **Inadequate/ineffective de-escalation techniques** (where law enforcement was called to improve safety, instead escalation occurred)
14. **Excessive problems with mental health patients** with people taken off legal meds cold turkey, causing trauma and additional problems with stress, abuse, exacerbated detention
15. **Minimal social services available** that would downsize the jail occupancy load for those who are non-violent, have had trauma from an accident, or other reasons to not be jailed when they pose no flight or public safety risk

This letter shows that the Good Time was reduced from the prior years. It sounds nice, unless you realize this is actually a cut and it increased the amount of time people had to stay in jail, and increased the overcrowding in the jail. Notice this was done during the time that the 2008 jail tax issues were surfacing; another critical campaign period. This letter changed time and it changed qualifications. Why?

From: Wendy Jones
To: David McEachran; Jon Komorowski
Date: Thu, May 1, 2008 1:18 PM
Subject: Good time rate change for offenders

Gentlemen:
Could you please forward this on your staffs? It is information they may need as they are considering dispositions of charges.

Effective May 1, 2008, the Whatcom County Jail will resume using a differential good time rate for offenders. Offenders who serve their time with no disciplinary issues will received 1/6th off of sentences served in the Whatcom County Jail. Offenders who perform work as an inmate worker (such as laundry/kitchen or tank trusty or are on one of the inmate work crews) will be given 1/3rd off of sentences served in the Whatcom County Jail.

All offenders who had been sentenced and are serving that sentence in the jail or work center as of May 1, 2008, will be "grandfathered" in and will maintain their existing release dates. Offenders sentenced and/or serving their sentence after May 1, 2008 will have their release dates calculated at the new rates.

This is being done to encourage offenders to participate in the offender worker program by granting them additional time off of their sentences in return for the work that they perform.

Offenders who are sentenced to the Washington State Department of Corrections will continue to received the good time rates as established by statue and/or case law.

Please let me know if you have any questions or concerns. Thank you.

Wendy Jones, Chief
Whatcom County Sheriff's Office, Corrections Bureau
311 Grand Ave.
Bellingham, WA 98225
360-676-6787 ext. #50470 Fax 360-676-6833
wjones@co.whatcom.wa.us
Office of Sheriff: Dedicated to making Whatcom County the safest in the State through excellence in Public Safety

CC: Bill Elfo; Carey James; Mark Raymond; sgts plus actings

* prior to this it was ⅓ off for general population + trusties

This is a Comparison Chart to other cities that accompanied the above letter.

GOOD TIME CREDIT

Counties	General Population	Trustees
Adams	1/3 rd	1/3 rd
Astield	1/6 th	1/3 rd
Benton	1/3 rd	1/3 rd
Chalen	1/3 rd	1/3 rd
Clallam	7/30 th	1/3 rd
Clark	see below	see below
Columbia	waiting for a call back	
Cowlitz	1/6 th	1/3 rd
Ferry	1/3 rd	1/3 rd
Franklin	1/3 rd	1/3 rd
Garfield	1/6 th	1/6 th
Grant	1/6 th	1/3 rd
Grays Harbor	0	1/3 rd
Jefferson	1/5 th	1/3 rd
King	1/3 rd	1/3 rd
Kittitas	25%	1/3 rd
Klickitat	7/30 th	1/3 rd
Lewis	see below	see below
Lincoln	7/30 th	1/3 rd
Mason	1/3 rd	1/2 th
Okanogan	7/30 th	1/3 rd
Pacific	1/3 rd	1/3 rd
Pierce	1/3rd	1/3rd
Pend Oreille	1/3 rd	1/3 rd
Skamania	1/6 th	1/3 rd
Skagit	1/3 rd	1/3 rd
Snowomish	1/3 rd	1/3 rd
South Bend	0	1/5 th
Spokane	1/3 rd	1/3 rd
Stevens	1/3 rd	1/3 rd
Thurston	1/3 rd	1/3 rd
Vancover Island	1/6 th	1/3 rd
Walla Walla	1/15 th	1/3 rd
Whatcom	1/6 th	1/3 rd

1/6th down 1/3

Taxpayers Question 2: No Public Debate about alternative economic choices. – Why not?
Why is it that during the jail planning processes, numerous people asked that community public hearings be held before the Council, that alternatives to building the jail be considered including examining restorative justice alternatives, prevention and early intervention solutions? Yet no action was taken…who is ultimately responsible to the taxpayers for fair and legal due process?

Taxpayers Question 3: No Fiduciary Responsibility to the Citizens – Why not?
There was no accountable feedback loop to those citizens who spent days and months working on the issues, analyzing the SDEIS, the FEIS - providing concerns, questions. Why was it allowed that considerable information was provided into the planning process by trusting citizens, dozens of questions and concerns were repeatedly raised – and ignored? In the FEIS document, they finally include the dozens of letters and testimonies listing serious citizens' concerns…and most of it was arbitrarily dismissed as "outside the scope" of planning. ***The jail industry contractors dismiss it.*** Who enforces the state and federal EIS laws?

Taxpayers Question 4: No Valid Needs Assessment - How can an invalidated 6-page Jail Capacity Needs Document adequately justify a $132.5M capital expenditure? Especially a tax that would put people in debt forever? Especially when taxpayers paid millions for planning that was supposed to be based on a valid Needs Assessment? How does it work to deliver this piece AFTER ALL THE PLANNING WAS DONE? Especially when this document was questioned on Page FS-7 in the FEIS report *by that same administration and sent back to the authors*? Instead they proceeded to push the tax to the voters with only facilities demands and biased industry plans? Where is the accountability?

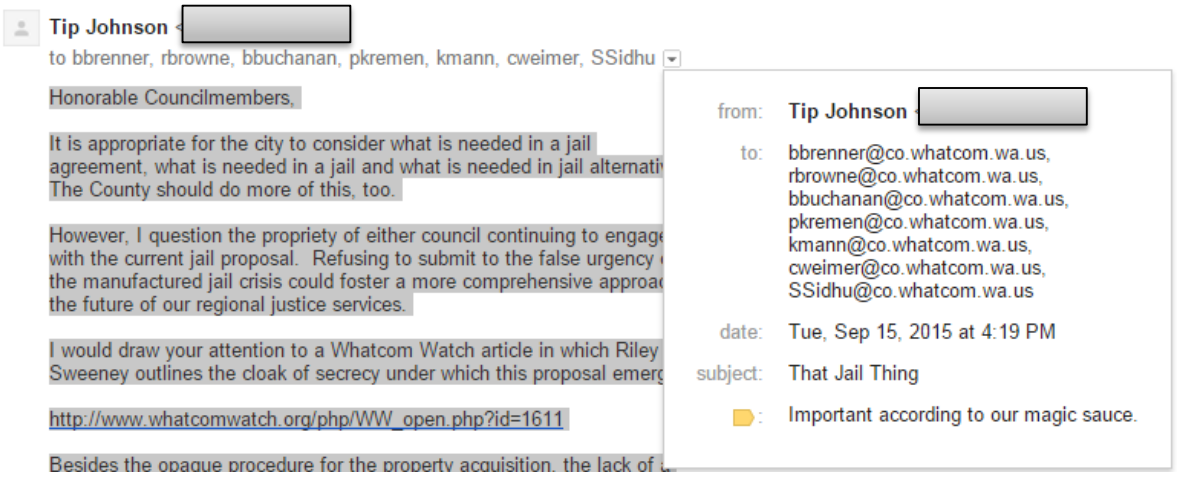
Who protects taxpayers
from the jail industry vendors,
from the law enforcers, from insider's interests?

When an educated person reads all the documents…it is provable that there *never has been a valid needs assessment produced to economically justify this large capital expansion. Yes a plan to build a regional jail project was delivered, but no economic assessment was done to justify the project or the sales tax for the voters. Even though taxpayers have paid many times to receive a full and valid needs assessment, they only got insider demands – an honest assessment was never delivered by the jail industry contractors or by the Executive Branch to the people.*

Instead, evidence points
to the jail tax as a professional con game
foisted upon vulnerable citizens.

Taxpayers Question 5: No Clear Fiscal Accountability for Taxes Received? Why Not?

Where is the fiscal accountability to the citizens? Many concerns have been raised by taxpayers. Where did the tax money go from the 1999, 2004 and 2008 taxes? One of our citizens asked questions of the Council…and here is one of the letters:



Honorable Councilmembers,

It is appropriate for the city to consider what is needed in a jail agreement, what is needed in a jail and what is needed in jail alternatives. The County should do more of this, too.

However, I question the propriety of either council continuing to engage with the current jail proposal. Refusing to submit to the false urgency of the manufactured jail crisis could foster a more comprehensive approach to the future of our regional justice services.

I would draw your attention to a Whatcom Watch article in which Riley Sweeney outlines the cloak of secrecy under which this proposal emerged.

http://www.whatcomwatch.org/php/WW_open.php?id=1611

Besides the opaque procedure for the property acquisition, the lack of a credible needs assessment or public participation process should be ringing alarm bells. The proposal has bounced around from 800 some beds to 600 some, 500 some and now 400 some. The right figure is very important and requires competent planning. This has been sorely lacking.

It is very important because medicaid benefits terminate immediately upon incarceration. Medical is already about 40% of jail operations and one of the fastest growing components. If half the folks landing in jail could be better managed in diversionary programs that preserve their benefits, we suddenly save 20% of operations off the top and provide citizens better outcomes at much lower costs than those incurred under incarceration.

Policy makers should also consider why the jail is crumbling. Did supervision fail to assure that specification were achieved in the construction? Shouldn't we find out why before embarking upon the construction of another large public facility? Why is the jail still such a mess, with leaking sewage and unsafe wiring? We already passed one sales tax increase to address those problems.

An analysis of 14 land assessments on eight parcels surrounding the jail property produced an average value of $30,212 per acre. The jail property itself is assessed at $44,329 per acre. Why did the County pay $149,468 per acre?

According to Sweeney, "Throughout this process, now County Executive Louws pushed for a quick selection of the jail property..." What was the hurry? Ironically, Louws himself helped establish the unprecedented comparable property value that cost taxpayers $4,177,176 over the jail site's $1,761,206 valuation.
In 2000, Louws bought 6 acres cattycorner from the jail site for $660,000. He sold it to Homeland Security in 2010 for $4,850,000 with two buildings currently valued at $2,538,240. Because of that sale, the land is uniquely assessed, well over any nearby property, at $240,413 per acre. Even if the land doubled in value over the ten years Louws had it, the Feds essentially still delivered him a million dollar premium just as he prepared to run for County Executive, a position from which he engineered the somewhat sketchy jail property acquisition - next to Homeland Security, the US Civil Defense Highway, the railroad, and the airport with the joint Emergency Operations Center.

That¹s starting to sound a bit like the makings of a FEMA camp. What really bothers me is that folks in jail need frequent connection to the courts. Should we also anticipate the relocation of the county seat to this Ferndale location when sustaining the also crumbling courthouse becomes unmanageable? If we are posturing for a regional justice center, shouldn¹t it be done in the open with the involvement of policy makers and the public?

The current jail proposal intends to use 100% of funding available for public safety, leaving nothing for emergency services, fire protection or ancillary services. Law and justice is the largest and fastest growing component of the County budget and is poised to explode under the current proposal. It is likely to devour the entire budget, with potential to interfere with the delivery of other goods and services taxpayers require.

http://www.nwcitizen.com/entry/proposed-new-county-lockup-financial-analysis

Finally, it is worth remembering that Louws, quoted in the Cascadia Weekly, weakly explained that he simply "lost track" of pursuing jail alternatives, even though it was one of his "assignments".

That's just not good enough. It is past time for a do-over on the jail proposal. A different jail proposal might target banked property tax value and preserve the dedicated sales tax option for application to a broader range of services.

Please just say, "No, thank you², and lets work on something designed to help our neighbors, friends and family members stay in jobs or school and out of jail. That¹s the way to save costs.

Thank you.

Taxpayers Question #6: No Good Records Available to Maintenance Claimed? Why not?

Was there truly good maintenance done on the jail in the past decade or more? Why was this kind of concern not truly addressed for the Bellingham City Council members when they asked, or when the taxpayers asked for an accounting? ***Especially when the Sheriff claims certain things are true in his verbal and written testimony - yet he doesn't back up his testimony with verifiable facts?***

When taxpayers asked public records for the maintenance records, here is a string of emails that shows how taxpayers are responded to. In the end, the request was essentially denied. Why?

Request 2015-178 - facilities Documents Inbox x

Tip Johnson <t[redacted]>
to me

Apparently, there is no record of the millions Elfo said went into the jail. Either that, or they just stonewalled me. Either way, this is a public disclosure issue now that he said it.

Tracking number 2015-178

------ Forwarded Message
From: Tip Johnson <[redacted]>
Date: Mon, 21 Sep 2015 14:42:09 -0700
To: PublicRecordsOfficer <PublicRecordsOfficer@co.whatcom.wa.us>
Subject: Jail Building repair estimates, structural evaluations, known issues

Hello Mark,

Another request. There has been a lot of talk about problems with the jail, and anecdotes about someone removing a bearing wall in the basement. I would like to inspect any documents related to structural reports, repair or renovation cost estimates, and costs and descriptions of remedial work that has been done to keep it going. Thank you,

Tip Johnson

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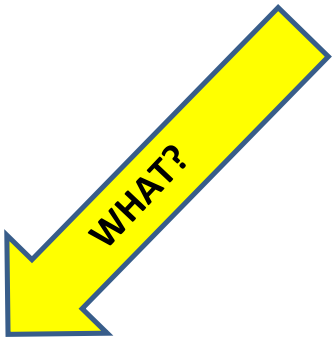
From: PublicRecordsOfficer <PublicRecordsOfficer@co.whatcom.wa.us>
Date: Thu, 24 Sep 2015 20:38:25 +0000
To: Tip Johnson <tip@skookum.us>
Subject: RE: Jail Building repair estimates, structural evaluations, known issues

Tip,

Whatcom County received your request for public records on September 21, 2015. It was assigned tracking number 2015-178 and was forwarded to the Facilities Management Division where we reasonably expected any responsive records to be found.



The work you reference pre-dates anyone currently employed at Whatcom County. Facilities Manager Michael Russell tells me that he is not aware of any documentation of the work on the wall, but believes there may be documentation of the effort to remediate the effects of the previous work. He is willingly to talk with you about what he knows about the issue.

We estimate that it could take ~~up to a month to dig through~~ the archives in an attempt to locate any responsive documents.

Should you wish to speak with the Facilities Manager, please call Facilities at 360-778-5360 and ask for Mike.

Mark Burnfield, CPRO

From: PublicRecordsOfficer <PublicRecordsOfficer@co.whatcom.wa.us>
Date: Mon, 26 Oct 2015 16:58:50 +0000
To: Tip Johnson <tip@skookum.us>
Subject: Request 2015-178 - update

Tip,

After talking with a couple of people at Facilities this is what I have learned. The work on the jail in the past few years has been performed by Sierra Detention Systems. Sierra did subcontract with an engineer to look at the building as part of their project and the engineer made recommendations that included work on the openings that had been made in the basement. The project Sierra was hired to do has not been closed out and all of the records are still in the possession of the contractor. We cannot provide a time estimate of when the County will have access to said records.

How do you wish to proceed?

Mark Burnfield, CPRO

=====

From: PublicRecordsOfficer <PublicRecordsOfficer@co.whatcom.wa.us>
Date: Fri, 6 Nov 2015 23:04:10 +0000
To: Tip Johnson <tip@skookum.us>
Subject: Closing Requests

Tip,

You had indicated verbally that is was OK to closed records requests 2015-178 and 2015-195. I'm just writing to get confirmation.

Mark Burnfield

Last E-Mail Received by the taxpayer:

From: Tip Johnson <[redacted]
Date: Fri, 06 Nov 2015 23:04:44 -0800
To: PublicRecordsOfficer <PublicRecordsOfficer@co.whatcom.wa.us>
Subject: Re: Closing Requests

Mark,

No thank you. For one, I never indicated any lagging interest in 2015-195. As far as 2015-178 goes, I've received confidential email advising me that such records do exist and how to go about finding them. In addition, I have opened a line of communication with the contractor. Let's keep it all still active, do our jobs and try to stay out of trouble. OK?

Thanks,

Tip

=====

From: PublicRecordsOfficer <PublicRecordsOfficer@co.whatcom.wa.us>
Date: Thu, 3 Dec 2015 00:06:53 +0000
To: Tip Johnson <[redacted]
Subject: Request 2015-178 - Facilities Documents

Tip,

Attached are the only records found by Whatcom County Facilities Management in response to your request.

I will now be closing request 2015-178.

Mark Burnfield, CPRO

One page document 2015-178 Facilities Docs.pdf - Describes Sierra Detention Systems concern over the angle at which some bolts were installed.

=====

Taxpayers Question 8: Why is our Executive Branch intentionally and inhumanely mistreating our citizens in violation of Whatcom County Code 1.28.100? Is it necessary – or is it to coerce the taxpayers under duress to comply with an enforcer's demands?

By their own admission, these officials have admitted that instead of repairing or fixing the jail, or reducing the overcrowding, the jail overcrowding has continued for years – even with other taxes passed to build a new jail, to fund more mental health. Why? Does admitting to the abuse of taxpayers excuse accountability?

Right now, taxpayers inside the jail suffer, and their family members suffer. The taxpayers who are paying more taxes suffer and families of taxpayers suffer as they pick up the pieces and pay more for jail contractor services. Civil rights continue to be violated and people are mistreated.

The Whatcom County Sheriff's Office, the Prosecutor and the Executive Branch continued to operate above the law in non-compliance with their own WCC 1.28.100. Today they still are operating in a similar manner. They still have not addressed and instead sidestep any responsibility for the overcrowding. Even as they negotiate new contracts today…they still are not examining their own administrative bias or corrections.

Where is the accountability and fiduciary responsibility to house inmates in a humane manner?

See this string of emails sent to the County Executive by a taxpayer. Others have also asked in testimony before the Council why the Executive doesn't have to follow their own Whatcom County Codes?

This string of emails from a taxpayer was functionally ignored by the Executive.

From: BBGUN1010@aol.com [mailto:BBGUN1010@aol.com]
Sent: Monday, October 05, 2015 11:03 AM
To: Bill Elfo; Jack Louws
Cc: Barbara Brenner; NaDean Hanson; w[redacted]
Subject: Fwd: FW: Jail overcrowding under WCC Sec. 1.28.100

Bill and Jack,
I hope you will answer the questions posed by Wendy Harris.

Thank you.
Barbara Brenner

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

From: bbrenner@co.whatcom.wa.us
To: bbgun1010@aol.com
Sent: 10/5/2015 8:19:04 A.M. Pacific Daylight Time
Subj: FW: Jail overcrowding under WCC Sec. 1.28.100

-----Original Message-----
From: Council <Council@co.whatcom.wa.us>
To: Barbara Brenner <bbrenner@co.whatcom.wa.us>, Barry Buchanan <BBuchana@co.whatcom.wa.us>, Carl Weimer <cweimer@co.whatcom.wa.us>, Ken Mann <kmann@co.whatcom.wa.us>, Pete Kremen <PKremen@co.whatcom.wa.us>, Rud Browne <RBrowne@co.whatcom.wa.us>, Satpal Sidhu <SSidhu@co.whatcom.wa.us>
CC: Dana Brown-Davis <dbrown@co.whatcom.wa.us>, Jill Nixon <jnixon@co.whatcom.wa.us>, Kristi Felbinger <KFelbing@co.whatcom.wa.us>, Marina Engels <mengels@co.whatcom.wa.us>, NaDean Hanson <nhanson@co.whatcom.wa.us>
Subject: FW: Jail overcrowding under WCC Sec. 1.28.100
Date: Mon, 5 Oct 2015 15:18:53 +0000

From: WENDY [mailt[redacted]
Sent: Monday, October 05, 2015 12:30 AM
To: Council; Jack Louws
Cc: city council; Joy Gilfilen
Subject: Jail overcrowding under WCC Sec. 1.28.100

I have been reviewing the Whatcom County Code with regard to the jail issue, and I have some questions regarding the application of WCC 1. 28.100.B through E, inclusive.

I know that the Sheriff has been advising the public for quite for some that there is a problem with jail overcrowding. As I read WCC 1.28.100.E, this situation was anticipated and an appropriate remedy enacted into Whatcom County law. I also note the County Code reflects some recent changes in unrelated sections, so I assume this law is still current and applicable.

My question is whether a maximum capacity designation was determined pursuant to WCC 1.28.100.B, who made this designation, where it can be found and the maximum number of prisoners reflected.

My next question is whether the maximum capacity pursuant to WCC 1.28.100.C was tracked and where this data may be found.

Does this data, if there was compliance with the county code, reflect a maximum capacity that exceeds the average daily population for any calendar month?

Under WCC 1.28.100.D, any report of conditions of overcrowding required by the County Code is considered a notice of emergency suspension of standards. I am aware that the sheriff has spoken about an emergency situation in the jail. I would like to know why the procedures of WWC 1.28100.E , which does not include building a new jail, were not implemented?

WCC 1.28.100.E reflects two possible options in response to jail overcrowding: 1) A joint effort between the Sheriff's office and the Superior Court to release prisoners before the end of their term (it is unclear if this commutes the sentence), or 2) transfer to other approved facilities.

I am concerned that a Whatcom County website poses the question, "what is an overcrowded jail" and then fails to reference or incorporate the legal requirements of WCC 1.28.100. Instead, it noted that "overcrowding eventually caused the jail to turn some offender groups away and delay some court orders to

arrest and hold people." This is not a remedy within the provisions of the county code. Why would the Sheriff's office turn away offender groups or delay court orders in violation of the county's own regulations? http://www.whatcomcounty.us/faq.aspx?qid=281

Any information or public records that you could provide to shed light on this situation and my above questions would be appreciated.

Thank you. The relevant County Code provision is set forth below. Please forward this to the Incarceration Prevention and Reduction Task Force as I lack their county email address. Please accept this email as part of the official record.

Wendy Harris

1.28.100 Overcrowding.

B. Existing Jails. The chief law enforcement officer or his designee shall propose a maximum capacity for each detention or correctional facility within his or her jurisdiction. This capacity shall reflect a judgment as to the maximum number of prisoners who may be housed within the facility in a humane fashion.

C. Overcrowding. The maximum capacity may be exceeded to the extent that the average daily population for any calendar month does not exceed the established maximum capacity.

D. Any report of conditions of overcrowding required under this section shall be considered as a notice of an emergency suspension of standards.

E. The chief law enforcement officer or his designee shall establish, with the cooperation of the presiding judge of the superior court, a procedure for release of prisoners before the end of their term or the transfer to other approved facilities when overcrowding occurs as defined in this chapter.

Bottomline:

Here was the reply Wendy Harris did not directly receive regarding her letter. Note this non-answer only responded to through the Council member and cc'd to the taxpayer.

From: "Jack Louws" <JLouws@co.whatcom.wa.us>
To: "BBGUN1010" <BBGUN1010@aol.com>, "Bill Elfo" <belfo@co.whatcom.wa.us>
Cc: "Barbara Brenner" <bbrenner@co.whatcom.wa.us>, "NaDean Hanson" <nhanson@co.whatcom.wa.us>, "w harris2007" <[redacted]>
Sent: Monday, October 5, 2015 11:26:38 AM
Subject: RE: FW: Jail overcrowding under WCC Sec. 1.28.100

We are working on it.

Jack Louws
Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225

Really? The taxpayer never got an answer directly. And as of the date of this document, still has not responded, nor solved the problems.

Wendy's final comment about this follows (from an email dated Oct. 5), and it sums up what taxpayers feel about the administration's attitudes and behavior:

"FYI… ACCORDING TO THE CODE, THE SHERIFFS OFFICE WAS SUPPOSED TO WORK WITH THE SUPERIOR COURT. IF HE DID, IT IS NOT REFLECTED ON THE WEBSITE AND MISLEADS PEOPLE. IF HE DID NOT, HE WAS NOT FOLLOWING THE COUNTY CODE. EITHER WAY, IT DOES NOT LOOK GOOD."

Who is being Inhumane?
The taxpayers or the officials?

If this is a true liability situation, why was it allowed to continue? Why was there no emergency plan to solve the inhumane conditions? Why was there no plan to move staff out of harm's way to free space?

Even if the tax was passed, a new jail would still not be built for over four years!?!

It is time to Stop. Stop over-criminalizing, over-incarcerating and over-taxing the citizens for the benefit of the incarceration industry.

This is noble cause corruption: selling incarceration businesses (punishment services) under the guise of public safety. Be honest. Yes, we need jails for violent offenders who need to be removed for their safety and the safety of the community. Most people in jail in Whatcom County are not violent, are not a danger to the community.

Taxpayers are the people who fund the government. Taxpayers pay the officials salaries.

On April 8, 2015 the Restorative Community Coalition sent another clarifying e-mail from the Restorative Community Coalition to Carl Weimer, Whatcom County Council Chair, to Jack Louws, Whatcom County Executive, to the NAACP, ACLE, Seattle City Attorney, and other attorneys asking for support in investigating the patterns of inhumane treatment of citizens in Whatcom County. It was ignored.

Attached on the next 3 pages, is a copy of the email. The taxpayers are doing their job. We need your help.

E-Mail Notifying Whatcom County of 15 ways our County is Over-incarcerating

Sent April 8, 2015 – No response.

Joy Gilfilen <joy@joygilfilen.com> 4/8/15

to Carl, Jack, Craig, James, administration, contact

Here is the email forwarded to the NAACP, the ACLU, Seattle City Attorney, and the James Bible.

---------- Forwarded message ----------
From: **Joy Gilfilen** <[redacted]>
Date: Tue, Apr 7, 2015 at 11:30 PM
Subject: List of Whatcom County excessive jailing issues
To: Craig.sims@seattle.gov, Irene Morgan <[redacted]>

Hello, again, have no idea if you can help us, but here is the list of things -- patterns of behavior -- we have found in Whatcom County that is causing over-incarceration.

All of the following things are happening in Whatcom County. Each item listed we have witnesses and real stories for. This kind of action on the part of our administration is leading to an excessive number of our citizens being arrested and jailed. We believe we can show there is a direct link between the increase in the jail bed stay stats and the desire to drive the demand up so that a Regional Jail project can be built it Whatcom County - an 800 bed facility for 200,000 population - to the tune of $122.5 million.

Unfortunately, we have found patterns that reflect what the Department of Justice found in Ferguson, MI. All of the following could be verified with a review of the statistics and documents of public record. Our field review and research has found that there is a police and poverty bias, then the administrative attitudes and political actions are police revenue generating. All of this combines to produce increased jail bed stays, led by administrative action.

1. **Arresting the homeless,** poor in sweeps, changing homeless rules – directly overcrowds jail
2. **Stacking of charges** - People are arrested on one charge, then administratively compounded
3. **Excessive continuances** caused by Prosecutor not signing papers, have extended stays 8 months
4. **Prosecutors** change the nature of plea bargains when pleas were already negotiated
5. **Excessively high plea bargain rates**, Prosecutor will not negotiate even weak cases

EMail re - 15 Rev Generating.docx

6. **Excessively high bail amounts** that make it impossible for people to get out
7. **Reduced Blue Ribbon Drug Court** had rules and policies changed causing different outcomes
8. **No proper facilities for Substance Abuse Treatment**, so arrests increase costs to taxpayer
9. **Automatic jailing, prosecution** of at least one person on any callout for Domestic Violence
10. **High percentage of arrests** for driving with suspended license (crime) vs. non-violent misdemeanor named No Valid Operating License. Same problem, different result.
11. **Witnesses not being interviewed** in a timely manner – sometimes not until a year later
12. **Reduced good time by 50%** caused by administrative decision
13. **Issues with people being arrested just because** the cops were called, even without major issue
14. **Excessive problems with mental health patients** with people taken off legal meds cold turkey/ causing trauma and additional problems with stress, abuse, inability to handle the detention
15. **No alternative social services available** that would downsize the jail

That is our short list of whats happening inside. Hope you can help us ASAP. We are in a critical stage right now...and the tension is really, really quite high.

Here is why people are unable to speak out...the psychological abuse of being a border town with excessive police forces, a prosecutor who has been in business over 36 years, a Sheriff who is determined to increase his territory, a media that is publishing constant terror, an agressive jail lobby...and the list goes on. Check out what has been happening...without any investigation:

- Police death of a civilian on Sunset Drive + 7 hour standoff on a major highway
- Police death of a civilian on Mosquito Lake + his Mother is arrested
- Police death of a man at the Border (maybe there is a review, we don't know for sure)
- WWU "riot" that seemed odd in how it happened, but it was not investigated for excessive use of force when college students were fired upon by law enforcement
- Arrests from the SWAT action in the non-violent Occupy protests
- Ferndale High School was used for a SWAT shooting drill (during school)
- Sehome High School was locked down on a fear action (false threat)
- Sheriff goes on King 5 News and reports that Bellingham and Whatcom County has 31 gangs and we are being overrun...and no review by businessmen for accuracy or correction (yet real sex trafficking, arms and drugs are happening under cover)
- Excessive use of deep violence in media reporting – striking fear and creating serious bad press for Bellingham, when the arrest records of violent behavior is not increasing.
- A sales tax was passed a few years ago...and a jail built, and there has been no public accounting of where the money has actually gone...and now they want another .02% sales tax passed to fund a $122.5 Million dollar police/jail expansion

EMail re - 15 Rev Generating.docx

- Road funds, Excise Tax funds, real estate transactions have been transacted, millions of dollars is seized by authorities and sent to the Drug Task Force...limited accountability or results

- 501C3 Sheriff's Foundation has been created to support the Sheriff in doing things that are not authorized by the Council

- Jail industry officials are working inside the Sheriff's facilities and prosecutors offices...with no reporting; and we have excessive numbers of law enforcement in our area relative to population

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Thank you for your time. We would really appreciate help on this matter. It is truly beyond our ability to investigate or intervene on a legal level. All we can do is political intervention, as per our prior email. This is all deeply inhumane activity...and it is hurting alot of people in Whatcom County. We have multi-million dollar local/regional businesses being essentially run out of town by the dominative behaviors. Our business people and officials are scared to step up to stop this; or they don't even understand it is happening.

Just so you know, all this is proveable. You can't really make this stuff up.

RestorativeCommunity.org - our newest site, but it has been repeatedly hack...this is in recovery
ReclaimLives - 5 minute video about our organization's work

Attachments area
Preview YouTube video Restorative Community Coalition: Reclaiming Lives

EMail re - 15 Rev Generating.docx

Testimony
& Letters
from the RCC

Historical
Exhibits from
Restorative Community Coalition

Illustrating Taxpayers Requests for Fiduciary Responsibility

April 27, 2016
TO: PDC Investigators
FROM: Joy Gilfilen

RE: Addendum Part 3 - Please Attach to the PDC Complaint #1122. Addendum 1 & 2 sent on April 17, 2016

This last section of documentation (Pages 125-196) is added for historical record as evidence to the PDC showing that the taxpayers have been doing their due diligence in the jail planning process in Whatcom County. Citizens have worked hard to stay within the guidelines set forward, and have since learned that the system was rigged against the taxpayers, for their concerns have been dismissed without discussion.

My direct experience goes back to early 2006, when I became President of the Restorative Community Coalition. Formerly called the Whatcom County ReEntry Coalition, this is a 501C3 non-profit organization – the first such Coalition in the state. We started working on the issues when their most recent planning process started. From our testimony and correspondence with officials, I have selected specific documents that show how the Whatcom County Executive Branch, the Council and other officials have deliberately and intentionally ignored the taxpayers concerns during the jail planning, land purchase, and sales tax initiative process.

This packet includes in reverse chronological order:

1. **Citizen Abuse: Notice of 15 Ways the County is Over-Incarcerating**..... **Page 126**
2. **Interlocal Letter to County, Municipalities, Tribes**..... **Page 129**
3. **Exclusion: Asked to Leave Interlocal Meeting**..... **Page 133**
4. **Hard Truths: No Needs Assessment letter**..... **Page 138**
5. **Analysis: No Needs Assessment**..... **Page 146**
6. **Bellingham City Council Email**..... **Page 151**
7. **FBI Hard Talk Email**..... **Page 152**
8. **FEIS Summary Cover Letter**..... **Page 155**
9. **FEIS No Action Alternatives FS-2** ..... **Page 156**
10. **FEIS No Needs Assessment FS-7**..... **Page 157**
11. **FEIS Samples of Citizen's Letters with Substantive Concerns Dismissed**..... **Page 158**
    Since 2010 and during the jail planning process, hundreds of serious concerns were minimized by the jail industry planning contractor and Executive Branch; then literally dismissed in writing in the FEIS. Just 10 days later the County spent roughly $150,000 an acre of taxpayers $$ for land that will require an estimated $10 million more to mitigate.
12. **SDEIS Comments from RCC Avoided - "Outside the Scope"**..... **Page 166**
13. **Scoping Hearing Comments from RCC Ignored**..... **Page 171**
14. **Facts & Report to Jay Farbstein, Jail Planner**..... **Page 186**

NO PUBLIC HEARING WAS HELD on the Final Environmental Impact Statement after its publication and before the Council was advised to just buy the land. This was the first time that the public received full notice that virtually all their concerns were dismissed as "outside the scope" and derailed. **This plan has never been approved by any official body.**

Citizen Abuse

E-Mail Notifying Whatcom County of 15 ways our County is Over-incarcerating

Sent April 8, 2015. There was no response at all from the Executive, or the Council in Reply.

Joy Gilfilen [redacted] 4/8/15

to Carl, Jack, Craig, James, administration, contact

Here is the email forwarded to the NAACP, the ACLU, Seattle City Attorney, and the James Bible.

---------- Forwarded message ----------
From: **Joy Gilfilen** [redacted]
Date: Tue, Apr 7, 2015 at 11:30 PM
Subject: List of Whatcom County excessive jailing issues
To: Craig.sims@seattle.gov, Irene Morgan <[redacted]>

Hello, again, have no idea if you can help us, but here is the list of things -- patterns of behavior -- we have found in Whatcom County that is causing over-incarceration.

All of the following things are happening in Whatcom County. Each item listed we have witnesses and real stories for. This kind of action on the part of our administration is leading to an excessive number of our citizens being arrested and jailed. We believe we can show there is a direct link between the increase in the jail bed stay stats and the desire to drive the demand up so that a Regional Jail project can be built it Whatcom County - an 800 bed facility for 200,000 population - to the tune of $122.5 million.

Unfortunately, we have found patterns that reflect what the Department of Justice found in Ferguson, MI. All of the following could be verified with a review of the statistics and documents of public record. Our field review and research has found that there is a police and poverty bias, then the administrative attitudes and political actions are police revenue generating. All of this combines to produce increased jail bed stays, led by administrative action.

1. **Arresting the homeless,** poor in sweeps, changing homeless rules – directly overcrowds jail
2. **Stacking of charges** - People are arrested on one charge, then administratively compounded
3. **Excessive continuances** caused by Prosecutor not signing papers, have extended stays 8 months
4. **Prosecutors** change the nature of plea bargains when pleas were already negotiated
5. **Excessively high plea bargain rates**, Prosecutor will not negotiate even weak cases
6. **Excessively high bail amounts** that make it impossible for people to get out
7. **Reduced Blue Ribbon Drug Court** had rules and policies changed causing different outcomes
8. **No proper facilities for Substance Abuse Treatment**, so arrests increase costs to taxpayer

9. **Automatic jailing, prosecution** of at least one person on any callout for Domestic Violence

10. **High percentage of arrests** for driving with suspended license (crime) vs. non-violent misdemeanor named No Valid Operating License. Same problem, different result.

11. **Witnesses not being interviewed** in a timely manner – sometimes not until a year later

12. **Reduced good time by 50%** caused by administrative decision

13. **Issues with people being arrested just because** the cops were called, even without major issue

14. **Excessive problems with mental health patients** with people taken off legal meds cold turkey/ causing trauma and additional problems with stress, abuse, inability to handle the detention

15. **No alternative social services available** that would downsize the jail

That is our short list of what's happening inside. Hope you can help us ASAP. We are in a critical stage right now...and the tension is really, really quite high.

Here is why people are unable to speak out...the psychological abuse of being a border town with excessive police forces, a prosecutor who has been in business over 36 years, a Sheriff who is determined to increase his territory, a media that is publishing constant terror, an aggressive jail lobby...and the list goes on. Check out what has been happening...without any investigation:

- Police death of a civilian on Sunset Drive + 7 hour standoff on a major highway
- Police death of a civilian on Mosquito Lake + his Mother is arrested
- Police death of a man at the Border (maybe there is a review, we don't know for sure)
- WWU "riot" that seemed odd in how it happened, but it was not investigated for excessive use of force when college students were fired upon by law enforcement
- Arrests from the SWAT action in the non-violent Occupy protests
- Ferndale High School was used for a SWAT shooting drill (during school)
- Sehome High School was locked down on a fear action (false threat)
- Sheriff goes on King 5 News and reports that Bellingham and Whatcom County has 31 gangs and we are being overrun…and no review by businessmen for accuracy or correction (yet real sex trafficking, arms and drugs are happening under cover)
- Excessive use of deep violence in media reporting – striking fear and creating serious bad press for Bellingham, when the arrest records of violent behavior is not increasing.
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ReclaimLives - 5 minute video about our organization's work

Attachments area
Preview YouTube video Restorative Community Coalition: Reclaiming Lives

Why not VOLUNTARILY investigate such serious issues in the face of Ferguson, when the head of the FBI, and the head of the Department of Justice are speaking out…and when we are facing a $110 MILLION massive tax burden?

Why would you NOT look into cost cutting measures, into possible errors in judgment or patterns?

NO ONE IS THREATENING…WE ARE ASKING FOR CORRECTIONS BEFORE WE ADD MORE COSTS ONTO TAXPAYERS WHO ARE ALREADY UNDER ECONOMIC DISTRESS.

Interlocal Letters

'Interlocal' Letter to County, Municipalities, Tribes

(Only One Mayor Acknowledged Receipt)
County Executive Branch did Not Respond

Restorative CommUnity Coalition
"*Reclaiming lives since 2006*"

www.RestorativeCommunity.com
www.WhatcomRec.org
Email: imPeace2@comcast.net
Phone: 360-354-3653
Video: Reclaiming Lives

Date: April 2, 2015

To: Whatcom County Executive Jack Louws and Council Members
Bellingham Mayor Kelli Linville and City Council Members
Ferndale Mayor Gary Jensen and City Council Members
Everson Mayor John Perry and City Council Members
Lynden Mayor Scott Korthuis and City Council Members
Sumas Mayor Bob Bromley and City Council Members
Nooksack Mayor Jim Ackerman and City Council Members
Blaine Mayor Harry Robinson and City Council Members
Lummi Nation Chairman Tim Ballew and Council Members
Nooksack Tribal Chair Robert Kelly and Council Members

From: Joy Gilfilen, President
Restorative Community Coalition

RE: Opposition to Sales Tax Initiative, to the Whatcom County plan to build an 800 Bed Jail, and to the plan to expand the Sheriff's Headquarters and staff.

The Restorative Community Coalition is a Whatcom County non-profit organization that has been told to "stand down" from this discussion because "the jail is a done deal". Instead we are the only non-profit standing up. Why? We represent taxpayers and work with people who have been incarcerated, their families, and others across many sectors of our community who are negatively impacted by the costs and ripple effects of incarceration and over-criminalization.

Our Board will not stand down because:

- It is not right action to encumber the citizens of this community with excessive jail costs and taxes, when there are other choices that have not been discussed in an open and transparent fashion.

- It is not right action to drive the sales tax initiative to the voters prematurely, for this does not honor due process, and it does not allow alternatives to jail to be discussed. By alternatives to jail we are not talking about reentry and recidivism. We are talking about preemptive actions like implementing mental health diversions, restorative justice, restorative economics, intervention and trauma therapy, job retraining…and many other alternatives that reduce the jail population at the highest leverage point where taxpayers get the highest return on investment of dollars and effort.

- It is not good business management to avoid this conversation, for there has not been a solid Needs Assessment produced that justifies this taxpayer investment. There has been no review of past

administrative practices. There has been no discussion of how we could reduce the flow of people into the jail using prevention, or early intervention, or restorative justice or restorative economics solutions. There has not been a professional SWOT analysis comparing this choice to building a smaller jail downtown and supplementing other social services and solutions. When we over-criminalize, we punish people unfairly and promote poverty and excessive trauma, which is debilitating to our communities. If we overbuild, we will indebt taxpayers for generations unfairly. What if there are better options that have not been discussed?

We are deeply concerned that the Executive Branch seems to be going around the County Council to get individual city financial buy-in prematurely without getting Council approval first. Are you being used as leverage – for this seems like putting the cart before the horse.

The RCC asks you to think carefully about the implicit and explicit implications of this financial contract request by the County Executive. We invite you to ask yourselves (individually and as a collective):

1. If your City endorses this financial plan are you implicitly endorsing and agreeing with the County Executive Branch's planning process to proceed without a fully vetted Needs Assessment?

2. Are you indirectly giving approval to dramatically expand government without public debate? This is the largest capital expansion project in Whatcom County's history, and the operating costs will only expand.

3. By agreeing to help fund the $122.5 million dollar government expansion, are you in full compliance with all the EIS rules, and feel that you have received full disclosure of all the implications of this on your community, on the taxpayers?

4. Do you feel that there has been adequate discussion of alternative economic options that could remove many of the clients from the jail, thereby affecting projections? What if this plan is an excessive overbuild? Are you prepared to pick up your share?

5. Have you actually read through the entire Final Environmental Impact Statement and agree that so many citizen concerns are truly "outside the scope" of the planning process, and that no further public hearings were needed to proceed?

We are attaching some documentation for your immediate consideration:

1. **March 22, 2015 Restorative Community Coalition Letter addressed to the County Council**
   This letter directly addresses what we believe to be is the lack of an adequate and comprehensive Needs Assessment. Additionally, asked for a Committee Meeting of the Whole, and asked that an Alternative Restorative Economics Plan be discussed for the public benefit and consideration.

2. **Restorative Economics Plan Phase 1**
   Our Coalition has been studying on alternative solutions that could reduce overcrowding and liability to the County. We submitted this document to open public discussion, so that people could understand that many things could be done in our community to reduce the demand for incarceration. This is simply an outline of the first nine things that our County, and our cities, could do to reduce crime, reduce incarceration, increase vitality.

   Based on our research, this is an opportunity to change the socio-economic habit pattern of over-criminalization. With a little ingenuity, we could instead produce new jobs and economic vitality by budgeting funds differently. Some of these projects could be implemented immediately and they would reduce liability and give room for a smaller jail to be built in downtown Bellingham with less cost. Municipalities could be far more independent as well, and regain some control over their own budgets.

The development of this enclosed alternative plan is of course not comprehensive – for we have not had the opportunity for open public debate. It needs to be discussed with other organizations and jurisdictions, and it needs to have the Phase 2 and 3 sections expanded. As an all-volunteer Coalition, we have had limited resources…yet we have been planning economic alternatives.

This plan was produced independently by our Coalition because we were excluded from the jail planning process and not allowed to present alternative solutions for masterminding. To come up with these solutions, we have done extensive international and local research. We have conducted hundreds of conversations with different individuals and groups and held a conference and other open meetings the past few years. These conversations have ranged from talking with inmates, family members, probation officers, public defenders, prosecutors, judges, law enforcement, legislators, businessmen, trauma intervention specialists, non-profits, healers and many others.

3. **Restorative Community Coalition Executive Summary**
   We are enclosing this document to introduce you to our organization so you are more fully informed of our purpose and philosophy.

   We regret that our most current website is limited in scope at this time. We have not been doing much fundraising while we were deeply researching. And, we have been repeatedly hacked over the past few years.

   However, you can go to it at: www.RestorativeCommunity.com. We will be posting a lot of information to this site the next few weeks that includes research about what we have seen happening in Whatcom County and across our nation. We can also direct you to our original site: www.WhatcomRec.org to get some fundamentals of who we have been as we expanded. You can also listen to our 5 minute You Tube video that outlines our core work: Reclaim Lives. This video was done for us by students from WWU and with some of our clients.

4. **Questions from the Bellingham City Council, a response Letter from the County Executive Dated March 16, 2015 and the Agenda Document from the anticipated Committee Meeting of the Whole**
   The Questions, the Agenda and the Letter from the County Executive are attached for your information. It was announced that the public could come listen to Executive Jack Louws and Sheriff Elfo discuss the questions and issues with the Council in a Committee Meeting of the Whole that day. Instead the plans were changed and that discussion was held earlier without the public, and the actual agenda proceeded with only an information session about how sales taxes might be used to fund the expansion. This event was then conducted by the City of Bellingham.

   This is of grave concern to us…for the questions the Council asked were not recorded for public view. Why not?

Additionally we invite you to carefully examine certain statements of the County Executive in the above referenced letter to the Bellingham City Council dated March 16, 2015. We ask you to evaluate his statements for purpose, truth and accuracy from your own perspective before you embrace the contracts that the County Executive presents to you. Here were some of our concerns:

1. Paragraph 1 – While it may have been an involved (and in fact a very expensive) public process; was it transparent and inclusive? Was it open public debate – or just a formality? In our point of view…just because people record issues, if the issues are not actually addressed, is that honorable and adequate due process? Did the citizens in this case get their concerns addressed?

2. Paragraph 2 – As evidenced in the published FEIS citizen concerns, we question that this plan and the purchase of the land had the alleged support of the majority of the community. Since there has been no open public discussion, no Needs Assessment, and the County Council itself is questioning the

proposals…how can this claim be true? How is this measured?

3. Paragraph 3 – What is each cities true legal and financial obligation to do business with the County? What choices do you have if you don't sign this contract? Are you vulnerable if you do not sign?

4. Paragraph 6 – The public was assured from the beginning that this was to be a "county jail." However, now the Executive says that, it is "impossible to take on this ***regional jail project*** without a financial commitment from the cities". How did this happen that we went from a local county jail to a regional jail project?

5. In subsequent paragraphs, there is much to be concerned about for the taxpayers – since there has been limited transparency, little public explanation, and virtually no debate about alternatives, obligations and liabilities in the event this jail becomes unsustainable financially.

Why is there such a rush to take this plan to the taxpayers? Why is the Executive not talking about solving the deeper problems of mental health, addictions, stress and poverty first? Why wait until after we build a jail? If there are solutions that provide a better ROI to the taxpayers, and reduce the demand for expensive jails – why are we not discussing this?

Why in the planning process did they not engage the conversation about how the national statistics show that the crime rate is dropping? Why are we avoiding the conversation about the real long term costs of trauma caused by incarceration…and how it relates to an increase in poverty? Why are we not discussing restorative justice and restorative economics solutions first? Communities across the nation are implementing these options successfully – why not do it in Whatcom County?

Our Coalition is asking the municipalities to think first before you indebt your taxpayers. We are asking you to stand up for the citizens of this county.

If you would, please,

- ☐ Talk to each other and discuss the implications before you tell the citizens that you fully approve.
- ☐ Review the FEIS due process and the citizen concerns about changes in policies, in jurisdictions, and changes in administrative and political power, changes in treatment of those incarcerated.
- ☐ Examine how many other costs have not been assessed or factored into this plan, and realize that as these costs accrue the real cost of this jail and government expansion will continue to escalate.
- ☐ If the County Executive says they have done the Needs Assessment, ask them to produce it.

We feel that there are serious concerns here that must be considered before our legislative branches of government sign off on this proposal. Please do not accelerate this premature move to take the initiative to the taxpayers in August. Please ask for due diligence and prudence during this time of economic stress.

Attachments

Example: Exclusion

Asked to leave Interlocal Meeting in Lynden April 3, 2015

*(copy of email exchange **where staff clearly states that Council representatives were allowed and invited. Then Excluded**)*

4/3/15

Joy Gilfilen <joythinks@gmail.com>
to Satpal, Irene, Dana, Jill, Kristi, Marina, NaDean, Council, Jack

Satpal,

Please accept my apologies for speaking out of turn.

I feel that our community citizens have been disrespected over and over by the planning process. I truly disliked having you be asked to leave, when you are an elected official working for the taxpayers, representing Whatcom County.

Joy

On Fri, Apr 3, 2015 at 11:29 AM, Satpal Sidhu <SSidhu@co.whatcom.wa.us> wrote:

Dear Joy,

While I appreciate you informing Council Members about the meeting on County Jail in Lynden, I do not think it is appropriate for you to speak on my behalf. I can speak for myself.

I fully understand that there is people's business that needs to get done. All the elected Mayors and County Executive are entrusted with responsibility to manage huge task of running the respective governments in their jurisdictions.

I was informed of the meeting and was not invited specifically to attend. I respect (and I think all should respect) to allow the elected officials to conduct their administrative business as they deem appropriate.

NOTE: Dana: Would you please forward this message to all the attendees at the Lynden Meeting today. Thanks.

Thanks,

Satpal Singh Sidhu P.Eng., MBA Fulbright Scholar
Member Whatcom County Council
Office 360 676 6690
Mobile: 360 305 4948

**** Both Emails were sent to the following people:**

from: **Joy Gilfilen** <joythinks@gmail.com>

to: Satpal Sidhu <SSidhu@co.whatcom.wa.us>

cc: Irene Morgan <impeace2@comcast.net>, Dana Brown-Davis <dbrown@co.whatcom.wa.us>, Jill Nixon <jnixon@co.whatcom.wa.us>, Kristi Felbinger <KFelbing@co.whatcom.wa.us>, Marina Engels <mengels@co.whatcom.wa.us>, NaDean Hanson <nhanson@co.whatcom.wa.us>, Council <Council@co.whatcom.wa.us>, Jack Louws <JLouws@co.whatcom.wa.us>

From: joythinks@gmail.com [mailto:joythinks@gmail.com]
On Behalf Of Joy Gilfilen
Sent: Friday, April 03, 2015 9:58 AM
To: Barbara Brenner; Council; Satpal Sidhu
Cc: Irene Morgan; NaDean Hanson
Subject: Re: FW: Jail meeting 8 a.m. Friday April 3 in Lynden

Hi, Barbara,

Just wanted you to know that Irene and I went to attend this meeting, as did Satpal Sidhu, your Council Member.

We were all three officially asked to leave, and uninvited from the meeting.

Mayor Kortuis insisted it was an Executive session and he did not invite us. So I spoke up and handed out the letter that we sent to all of you last night, together with all the attachments. I said that I wanted it to be on public record that we believed that there had been no Needs Assessment, that the Coalition's and the public's concerns have not been addressed, that there has been no discussion of alternatives allowed, and that we oppose this initiative, and this action.

I also just wanted you to know that the people present included the County Executive, the mayors of Lynden, Nooksack, Bellingham, Blaine. Plus the Sheriff, Dewey Desler, Tyler Schroeder, Brian Heinrick. There was no secretary, and no obvious recording of the meeting.

Just wanted you to know that your Council Member Satpal Sidhu was officially uninvited to be present, and you have two witnesses who will testify to this event.

You know, I don't know what is officially o.k. relative to the open meetings act. While it might be acceptable to kick out the public; since this is the County's business, I think that it is totally inappropriate to ask a County Councilman to leave.

Thought you might want to know.

Joy Gilfilen, President
Restorative Community Coalition
360-739-7493

On Fri, Mar 27, 2015 at 4:34 PM, <BBGUN1010@aol.com> wrote:

Joy and Irene,

FYI. I don't know where this will be in Lynden, maybe the city hall. I can't make it as I already have something at the same time but thought you would be interested.

Barbara

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

From: bbrenner@co.whatcom.wa.us
To: bbgun1010@aol.com
Sent: 3/27/2015 4:28:08 P.M. Pacific Daylight Time
Subj: FW: Jail meeting 8 a.m. Friday April 3 in Lynden

-----Original Message-----
From: Council <Council@co.whatcom.wa.us>
To: Barbara Brenner <bbrenner@co.whatcom.wa.us>, Barry Buchanan <BBuchana@co.whatcom.wa.us>, Carl Weimer <cweimer@co.whatcom.wa.us>, Ken Mann <kmann@co.whatcom.wa.us>, Pete Kremen <PKremen@co.whatcom.wa.us>, Rud Browne <RBrowne@co.whatcom.wa.us>, Satpal Sidhu <SSidhu@co.whatcom.wa.us>
CC: Dana Brown-Davis <dbrown@co.whatcom.wa.us>, Jill Nixon <jnixon@co.whatcom.wa.us>, Kristi Felbinger <KFelbing@co.whatcom.wa.us>, Marina Engels <mengels@co.whatcom.wa.us>, NaDean Hanson <nhanson@co.whatcom.wa.us>
Subject: FW: Jail meeting 8 a.m. Friday April 3 in Lynden
Date: Fri, 27 Mar 2015 23:27:54 +0000

From: Jack Louws
Sent: Friday, March 27, 2015 3:32 PM
To: Mike Martin; Dewey Desler; Tyler Schroeder; 'Mayor Kelli Linville '; Scott Korthuis; 'David Wilbrecht'; 'Gary Jensen'; 'Greg Young'; 'James S. Ackerman'; 'John Perry'; 'Mayor Bromley'; Bill Elfo
Cc: Pam Brown; Council; Brian M. Heinrich (bmheinrich@cob.org)
Subject: RE: Jail meeting 8 a.m. Friday April 3 in Lynden

Good afternoon City Mayors,

Thank you for the productive meeting yesterday, and for scheduling a follow up meeting next Friday. I will be in attendance.

I'd like to re-emphasize the timeline we are on for consideration of this important project. To make this possible for the August 8th ballot, I need to receive by the end of day next Friday April 3rd every jurisdictions concerns and specific changes you would like to incorporate in the document. Hopefully everyone will be prepared with specific requests and concerns next Friday morning, allowing us the opportunity to discuss them.

I will then take all of this information and compile the (agreeable) changes into the document, and return a final document for you and your legislative body's consideration on or before the end of business on April 10th. I intend to have a detailed presentation to our council of the inter-local on the 14th. Of course we will available to help you in the presentation of this if you request it.

I ask that you allow the final document to considered by your respective councils on or before April 27, and that they take a vote either for or against it. As I have said all along, I think this is a good compromise that will allow for us as a community to build a regional facility and I ask for favorable consideration, but I will fully respect a no vote. All I ask is that the reasons for non-support are clearly articulated so that we can make an assessment of whether it will be possible for a compromise to be reached prior to the due date of the November ballot.

If we meet this time schedule, having signed inter-locals from the Cities that guarantee an income to cover the payments of bonds prior to the County Council meeting on April 28th, it will allow the County Council the opportunity to place this ballot measure to the voters, if they so choose. Of course, they have the same opportunity to not support this, if they find it unacceptable.

Since our first meeting in January when we laid out the preliminary agreements to all the cities, time has passed quickly. I thank everyone who has provided detailed comments, and for everyone's participation. I'd like to especially thank Admin Mike for coordinating these city meetings, and hopefully helping the cities come to consensus prior to our meeting next Friday on the important remaining issues.

As always, call me, Tyler or Dewey with any questions you may have.

PLEASE PASS THIS ALONG TO YOUR LEGAL STAFF. WE NEED THEIR INPUT!

Best wishes to all.

With respect,

Jack Louws
Whatcom County Executive
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From: Mike Martin [mailto:MartinM@LYNDENWA.ORG]
Sent: Friday, March 27, 2015 10:48 AM
To: Jack Louws; Dewey Desler; Tyler Schroeder; 'Mayor Kelli Linville '; Scott Korthuis; 'David Wilbrecht'; 'Gary Jensen'; 'Greg Young'; 'James S. Ackerman'; 'John Perry'; 'Mayor Bromley'
Cc: Pam Brown
Subject: Jail meeting 8 a.m. Friday April 3 in Lynden

All:
I got notes of regret from both Greg and Gary in Ferndale, but everyone else can attend or send representatives. So please schedule a Jail meeting at the time and place in the subject line. I will send out a draft agenda *before* the meeting – sorry about not doing that yesterday. We in Lynden will make sure Greg and Gary are up to speed..

I hope to send the County a marked up version of the Agreement today from our City Attorney. I circulated it among staff at other cities for comment. I took out the sections having to do with the cost sharing formula until we get that settled. The rest was pretty benign. I'm trying to get as much done as possible as we go along so there are fewer things to deal with.

Mayor Scott and I have been discussing concepts for the cost-sharing plan and hope to have something for everyone to consider Friday. If the idea gets legs I'll circulate it to all parties before the meeting.

Thanks all. Please call if questions or issues.
Mike

Mike Martin
Lynden City Administrator
Direct: 360/306-3104
Cell: 360/961-7545

Note: In Jack Louws' invitation above, he included the Whatcom County Council and their representatives. At this point it was not announced as a private meeting or an Executive Session.

Councilmember Satpal Sidhu, Restorative Community Coalition Founder Irene Morgan, and President Joy Gilfilen were invited by Councilmember Barbara Brenner to attend (since she could not).

After we showed up for the meeting, Mayor Korthuis met with Sheriff Elfo and Executive Louws, and they decided to make the meeting an Executive Session. We were formally asked to leave and not allowed to participate.

Hard Truths Letter

Hard Truths:
"No Needs Assessment" Letter
Asking for a Committee Meeting of the Whole

Restorative CommUnity Coalition

DATE: March 22, 2015

TO: Carl Weimer, Whatcom County Council Chair

FROM: Joy Gilfilen, President
Restorative Community Coalition

RE: 1) Hard Truth: There is no Needs Assessment.
2) Asking for a Council Committee Meeting of the Whole
3) Opposition to the Jail Building Tax Initiative
4) In Favor of Restorative Economics and Public Discussion

We ask that our Council stop the continued planning to build this Jail until a comprehensive Needs Assessment is done that includes public debate, that addresses alternative solutions to building the jail, that answers community concerns and that transparently assesses the real long term impacts of our fiscal decision on the people of this community.

This is in follow up to the meeting we had with you and Ken Mann, the 2014 Finance Committee Chair, regarding our request to meet with the entire Council in a Committee Meeting of the Whole to discuss the No Jail Alternative Option that is allowed for in the FEIS plan, and to present the Restorative Economics Action Plan we have been developing. You asked us for more information to help the Council understand our position and the complexities of this problem, so we are sharing this with you and the rest of the Council.

1) Hard Truth: There is no Needs Assessment. Without a Needs Assessment, what is the basis to justify the expenditure of millions of taxpayer dollars in planning to build a jail? How can you ask the public to spend $122.5 Million on government expansion to build one?

Without a comprehensive Needs Assessment as a precursor to the planning process, the planning process itself is fatally flawed. You are the stewards of this community's social, environmental, and financial well-being. If the planning process is flawed the decisions you make based on that information will also be flawed.

A lot of money has been spent in the process to date. Unfortunately, it has been largely spent looking to justify conclusions in place before the research was begun. If the expenditures of a few million dollars in

County funds on jail planning and land acquisition were made based on incomplete information, spending many times that amount will only compound the error.

On the other hand, undertaking a robust analysis including a comprehensive and open Needs Analysis will either demonstrate that the conclusions are appropriate, and build better support for what is now yet one more issue dividing this community, or it will demonstrate that the current plans don't reflect best practices or the needs of Whatcom County. Asking taxpayers to tax themselves hundreds of millions more in construction and operating costs before having critical questions rigorously analyzed is not good management. Ignoring inconvenient facts is not good management. And why would you dismiss as "outside the scope" concerns brought up by the citizen's that illustrate many failures in planning?

If there is not a Needs Assessment, then in the words of FBI Director, James Comey, this is the kind of "Hard Truth" Conversation that needs to be had. We are all now in a predicament, for millions of taxpayer dollars have been spent. Our question is, "Why?"

No Needs Assessment: Page FS-7 of the Final Environmental Impact Statement

Dated November 8, 2013 says,

> ***Non-SEPA Concerns***:
>
> *Needs Assessment*
> *Several comments were received regarding the Needs Assessment, including assumptions used, errors, data accuracy, etc. All comments were forwarded to the Needs Assessment authors. This EIS however, uses the final conclusions on capacity, facilities and the environment to evaluate impacts. With a proposed bed capacity of 521 and design features of the Sheriff's Headquarters and other facilities, the EIS scope is assumed to be correct.*

Are taxpayers and other government entities expected to accept this paragraph as a valid explanation for why we should pay hundreds of millions of dollars in construction capital and operating costs for a jail that expands county government dramatically? Our analysis finds many areas where more investigation and research is warranted, including:

- Taxpayers concerns about assumptions, inaccuracies in data, and errors;
- Corollary challenges this jail building plan raises across a broad spectrum of issues, ranging from inmate management to extension of urban services to a rural area to safety concerns to cost management, among others;
- Additional effects creating changes in civic behavior, likely compounding public costs for transportation, road budgets, sewer and water facilities and other infrastructure requests;
- Jurisdictional, fiscal and trade impacts from changes in governmental offices, changes in balance of power between Executive and Legislative and Judicial branches

When we examine the above referenced FS-7 paragraph critically, it raises deep concerns:

1) Overall Position: ***The authors write off the Needs Assessment as a Non-SEPA issue.*** Yet, part of the SEPA responsibility is to assess the environmental impacts. According to our research this means they have the responsibility ***to study the impacts on humans*** as well, and a Needs Assessment is part and parcel of that.

In our scoping comments, the RCC raised concerns about multiple layers of human impact. Moving the jail impacts the people who live there (those arrested awaiting legal action and those convicted and who are serving time) and their families. There is also a social, business, organizational and fiscal impact to the entire citizenry of the county, as well as on future generations who will deal with the ripple effects of this large government facility.

So why has the County and their Planners discarded the Needs Assessment as irrelevant? How is this not a SEPA issue? And if it is not, then who is accountable to the taxpayers?

2) The authors essentially say in the FEIS report this is not their responsibility. Yet part of the justification for paying the planners millions of dollars to do this planning was the promise to deliver to the people a Needs Assessment.

   At least this was the repeated promise of the Executive Branch to the taxpayers and to the Council in various presentations, and it was a good part of the stated reasons for hiring them. ***A Needs Assessment was requested with the first EIS, then the Jail Task Force repeatedly asked for it, as did our Coalition, and others who gave input. It was part of the second million dollar planning process as well. It was promised, and not delivered in what is now four years.***

   (Note: The authors did announce publicly that they posted a Needs Assessment to the web at 9 PM on Sept 26, 2013. What we found was a limited scope Jail Capacity Needs Document that did not address the Needs Assessment conversation. Ironically this was announced at the end of the only actual public hearing held on the SDEIS portion of this project. And it was posted only 43 days before the final EIS was published – and it was never reviewed in a public hearing or allowed to be challenged in open public process. We have attached at the end of this letter, a document for "Why the Jail Capacity Needs document is not a Needs Assessment").

3) Sentence 1: The authors acknowledge that public comments were received about ***"assumptions used, errors and data accuracy" issues***. And then say that "these comments were forwarded to the Needs Assessment authors". We ask, what kind of resolution, review, or response is that? What happened? How have these issues been addressed, mitigated or corrected?

4) Sentence 2: In the next sentence, the authors effectively dismiss the issue as essentially irrelevant to the end goal. They say that the basis of their findings in the FEIS is now about using the final conclusions on capacity, facilities and the environment. Whose conclusions and based on what actual Needs Assessment?

   In the documentation we read from the FEIS process, it seems that the County goal has been to build a large county facility since 2003, ***based on a pre-determined estimate made by the Sheriff and the Whatcom County Facilities Administration*** as stated in the Sheriff's Memorandums and in other summaries.

5) It makes us wonder: Is this why we have felt like all the RCC attempts to have an 'alternatives to building a jail' discussion have been excluded from the process and why we have not been allowed to debate these options? Is this why we find throughout the documentation that public hearings were not conducted for various reasons, and why other and many citizen concerns were denied comment as being "outside the scope" of the jail building process? ***At a minimum it demonstrates a lack of transparency and due process for the taxpayers.***

6) Our core question is this: ***Taxpayers were promised a Needs Assessment multiple times. Why did we pay for it when it was not delivered? Now in the FEIS we are told that it was not necessary?*** According to whom? ***Why not?***

7) Lastly, the final sentence in this summary paragraph states that this proposed design is for a 521 bed capacity jail. This statement diminishes the truth. In the FEIS report, it is clear that the actual proposed design is for an 800 bed jail by 2026 – which is in 11 years. ***In this summary, why do they use the number 521? This seems to misrepresent what is in their actual plan. To us, it seems to be misleading and confusing.***

According to the FS-7 Summary paragraph, it seems that the authors admit they did not deliver and have no plans to deliver a Needs Assessment. **Taxpayers were promised a Needs Assessment multiple times. When promises are made to taxpayers and then not kept, it undermines trust in government.** The County is asking taxpayers to fund a jail; keeping and strengthening trust is critical.

2) Asking for a Council Committee Meeting of the Whole

We wish to discuss lack of transparency and due process in a public venue that is available to the people. We wish to discuss the Restorative Economics Alternatives so the public can hear choices and options. We wish to actually be included in part of the public process of helping our community leaders find new economic, civic and social solutions that work for the whole of our community.

We know that a new jail does need to be built or renovated to reduce liabilities to the people inside – for we care about both the inmates and the staff. However, we do not agree that this plan is the best choice…nor is it the only choice.

The Restorative Community Coalition has been speaking out during this process to ask the Council, the planners and the administration to discuss alternatives to incarceration.

Rather than engaging the question, we have been told that our conversation is "outside the scope" of planning to build the jail.

Maybe, maybe not:

Recent influential voices across the nation concur that this hard truth discussion is highly relevant. These divergent voices say our Nation has a problem with over-criminalization, there is failure in incarceration, we need to examine police, racial and other biases. These leaders are looking for solutions – why aren't we? What if we have some of them in Bellingham?

It is clear that the RCC focus on finding and proposing solutions is on target. We are on trend, and we deserve, as taxpayers and as a non-profit, to be heard in our County and before the Council. It seems that our community may be in a position to embrace the leading edge of change by finding and implementing real alternative restorative economic solutions that are sorely needed.

Would that not be a great service to our local citizens as well as a great service to our nation?

Here are a few validations:

- One is an article **Over-criminalization of America**. This recent article is written by Charles Koch where he discusses how over-criminalization is at the roots of much of the poverty in America. He cites the studies and gives five ways to change the trends. Each of these solutions is a topic our Coalition has been asking our Council and the planners to include. This substantiates our work.

- **"Hard Truths"** is a speech given by Director of the FBI, James Comey, one of the most influential and highly regarded law enforcement officers in the nation. On Feb. 12, 2015 in a speech at Georgetown University, the Director discusses how we, as a Nation, can no longer avoid dealing with hard truths…including biases, even police biases. In the Q & A session that follows his talk, the Director was asked by a student whether or not incarceration works. His answer and I paraphrase, was essentially: No, we are not doing good in this area. We are not getting the value and end results we need to get…[prison and incarceration systems] are not the way to deal with our problems.

- Erik Holder, US Attorney General, recently gave a Department of Justice **Update on Investigations** from the Ferguson investigations. He speaks about the "vital efforts to examine the causes of misunderstanding and mistrust between law enforcement officers and the communities they serve; to support and strengthen our public safety institutions as a whole; and to rebuild confidence wherever it has eroded." He went on to describe the nature of how police were generating revenue in Ferguson. Of course, we are not Ferguson. We are Whatcom County.

  Disturbingly, however, our experience of working in the field with the people of Whatcom County shows that similar patterns may exist in our County.

  Based on our own further investigative **public research, stats tracking and field work, there may be similar trends and we wonder if a review of past administrative actions might be diligent for our community to undertake before automatically funding more money into these departments?**

  The RCC has not done the research In Whatcom County to prove a racial bias. Our work has been on the larger picture. We have found indicators of a poverty bias, and what appears to be injustice. However, unless our community proactively chooses to openly discuss and review our business administration and court practices, compare and examine our results, trends and past history…it is difficult to improve our performance. It is hard for the public to track where our money is going, and it is difficult to pinpoint where we can create more efficiency and accountability.

  Perhaps this is the kind of thing that would be appropriate to forward to our Charter Review commission process? Perhaps it is necessary to create a 3rd party review citizen oversight board where people who are not part of administration, nor receiving government contracts, are tasked with reviewing complaints? Or perhaps there should be an independent fiscal accountability review which looks at the return on investment to the taxpayers, not just to the County?

In the above references, these powerful men are speaking to the core fundamentals of why the Restorative Community Coalition has been advocating for Alternatives to Jails on an economic, social and systemic basis. This is why the RCC has said that we are not "standing down" from the conversation in Whatcom County. There is no better time than right now for our community to openly and safely address these course corrections ***before*** we taxpayers are asked to validate the actions of the administration. Right now

is the best time to investigate alternatives; ***before*** we are asked to spend hundreds of millions more in taking the road of 30 years of habit, and unwittingly obligate our children to a life of prison debt when there might be a better way.

3) The RCC is opposed to this jail building project / taxing initiative. This is based on our deep research into what does not work; and conversely we have done the research to find and recommend alternatives that would work.

- There are ***better choices*** that have not been discussed.
- ***The public has not openly had a chance to discuss the concerns*** we have about the jail plan. Instead, the discussion and concerns have been excluded.
- ***The taxpayers have not received a comprehensive Needs Assessment*** that was promised and paid for. Instead they got an excuse and a very weak Jail Capacity Needs Document that was neither vetted, nor discussed in public debate.
- There has been a ***lack of transparency, and no public debate about other economic options*** and alternatives to building a large jail, so this eliminated the chance for the public to learn, understand or have a fair say in how their money is being used.
- There has been ***no public education allowed about restorative economics*** and instead all our attempts to bring the conversation forward has been derailed by what appears to be pre-existing administrative, police and jail industry bias, and even derailed by using confusing definitions.

It seems that this planning process has fallen far short of serving the taxpayers. As a result our Coalition found that we had no choice but to instead begin actively researching and seeking solutions to the shortcomings.

Our goal has been:

- ***To find ways to achieve a better result,*** a better return on investment and a better internal rate of return to the taxpayers who pay the bills
- To help ***make our communities safer*** by reducing trauma and violence and increasing self-reliance, achievement and health of the community as a whole
- To ***reduce the hemorrhaging of taxpayer dollars*** and the unintended and often hidden ripple effects of excessive regulation, over-criminalization and incarceration
- To find ways to deal with poverty and societal depression by ***putting people back to work using free enterprise solutions*** rather than locking them up in jail
- To ***support the reinvestment of the community goodwill*** dollars into social services and non-profit organizations who are already doing good work, and who deserve to be supported by better funding and collaboration

- To ***show, by doing, how investing in people,*** in education, intervention, prevention, restorative justice and other programs provides a far better return on investment of time, money and resources.

4) We are in Favor of Restorative Economics using community collaboration

To that end, we submitted the Phase 1 – Restorative Economic Action Plan on Dec. 29, 2014 and we have asked to discuss our solutions with the Council as a whole. This is only the 1st phase. The 2nd phase focuses more on cooperative enterprise; and Phase 3 on more long-term legislative or public / civic change that takes longer to implement.

We have not heard back from the Council on this matter. To be clear, this is just the first step in three steps that we believe would help the County reduce the overcrowding and liabilities issues in the quickest and simplest manner possible.

By working as a community, we can reduce liabilities, and reduce the urgency to build a huge jail. We can provide an opportunity for the Community to actually complete a full Needs Assessment and to find a better way to deal with long term challenges. Using proven alternatives that have worked in other municipalities and counties, it is entirely possible to reduce the size of our incarcerated population dramatically – thereby saving money and cutting costs to the taxpayers.

The Phase 1 Action Plan includes nine ways that the Council, non-profits and the community stakeholders can help reduce the jail population by investing differently in intervention, prevention and restorative economic alternatives.

These options do not require a lot of regulation. They mostly require a new way of thinking and a reallocation of funds. They increase public safety, reduce costs and create employment immediately. For your convenience, and as requested, all of the items have models and links and cross-references – for they are proven solutions.

Only three of the nine projects are directly associated with the Restorative Community Coalition. The three RCC projects have business plans that show a self-reliance-based end goal. We have properties earmarked and people identified who can help implement them. All we need is funding. And the Coalition is more than willing to team with other groups in the community to help get the job done most effectively. It is not about us, it is about healing and empowering our community.

In the FEIS, it says there must be two choices provided by the planners. Our goal was to help fill in the second choice, that was largely not explored in the FEIS.

The taxpayers paid for both choices to be researched and presented. In this FEIS, the second choice is limited in scope and diminished with little research being done. It is mislabeled to be called the No Jail Alternative – which is misleading. This 2nd option does include that a jail would be built downtown on property owned by the taxpayers. It is a reduced cost alternative that was not fully studied nor discussed with the public openly or allowed to be debated.

As part of this choice, we submit Restorative Economic solutions – specifically Phase 1 as the first step in a comprehensive plan to address the long term community needs of our County. Our desire here is just

common sense: By helping people get to work, not jail, we all win because we grow taxpayers, not tax consumers.

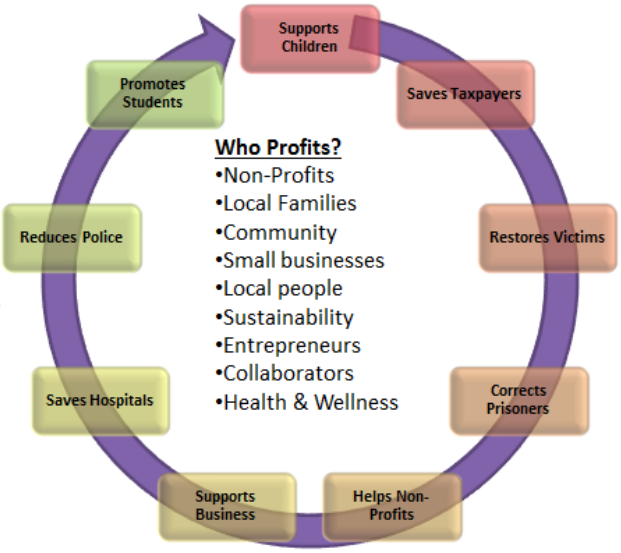
We ask that our Council stop the continued planning to build this Jail until a comprehensive Needs Assessment is done that includes a second choice.

The public deserves transparency, due process and open public debate. It is logical that taxpayer concerns must be addressed, and the long term impacts of any fiscal decision on the people of this community must be known before the taxpayers are asked to foot the bills.

Please let us know when we can meet to address the full Council.

Depreciating to the Taxpayer, as different from being Proactive as taxpayers.

Compound Depreciating spiral



Compound Appreciating spiral

No Needs Assessment

ANALYSIS: NO NEEDS ASSESSMENT

(RCC attachment sent to Whatcom County Council in above letter dated 03-20-2015)

Why the Jail Capacity Needs Document Does not Justify the Taxpayers Investment

(in building the Whatcom County Adult Corrections Facility and Sheriff's Headquarters)

Reason 1: The Jail Capacity Needs (JCN) document is not a Needs Assessment.

Simply put, it is inadequate in scope. It is out of order, developed ***after*** the entire plan was designed, not before it was developed. The JCN document was submitted Sept 26, 2013 and included as Supplement 1 to the Final Environmental Impact Statement for the Whatcom County Adult Corrections Facilities and Sheriff's Headquarters published Nov. 8, 2013. **At the tail end of the SDEIS public hearing, at 9 PM the people in the audience were told that the Needs Assessment was posted online, and that people had a few days to write in comments about it.** It was not handed out that night, and there has been no additional opportunity for open public debate or cross-examination.

When we examined what was posted, we found a tiny, limited scope 5-page JCN document – not a Needs Assessment. The difference is substantial.

- **Sequence: A Needs Assessment comes at the beginning of the planning process to examine, analyze and determine the broader need and the best options for the whole. It does not come at the end of a planning process to justify a pre-determined result.**
- Comprehensive Analysis: A Needs Assessment is expected to be critical, comprehensive, and unbiased, to assess the risks and liabilities to the taxpayers, so that the Council has choices to consider; and it is designed to ensure the taxpayers know that what they are paying for is in the best interests of and for the benefit of the whole community. **Especially in a project of this size and magnitude, a quality Needs Assessment sets the foundation or basis that justifies the expenditure of taxpayer funds.**

This JCN does not serve, for it is out of Sequence

In 2016 we find that the origin of the size dates back to the Blue Ribbon Panel and Marvin Wolff. Since then, taxpayers have been sold three sales tax increases. **There still is no unbiased PROOF of NEED.**

1. If you look at the documentation from the DEIS process, the Jail Task Force discussion records, the SDEIS process, and ultimately the FEIS you will uncover the paper trail of the origin of the presumed need. **I**t is not an actual unbiased need. We believe you will find, as we did, that **the original basis of this pre-determined planning process originated from the Sheriff's office and the Administrative Services Department in 2003.** It was a projected estimate by the Sheriff and facilities, which was then "supported" by hired consultants as a facilities projection.

2. Over the course of the next few years funding was acquired to build the Division Street property. A clear trail is not found in the FEIS that led to the delivering of data to jail planners who created the 1st actual 2010 EIS document that the current FEIS is based on. That 2010 work, which cost taxpayers about a million dollars, was found to contain inaccurate data which led to a false and oversized reading on the size of the jail. This is what spawned citizen furor, and caused the work on multiple properties to be discarded, and a callout for the development of the Jail Task Force.

3. So it was determined that a new Needs Assessment was needed to correct the old one, the Jail Task Force was created and another million dollars in planning was earmarked. Unfortunately, even after six months of waiting and working, a Needs Assessment document was not delivered for the Jail Task Force. Instead they had to hire their own consultant to give them some information.

4. The next actual document the taxpayers received is the Jail Capacity Needs document dated Sept. 26, 2013, which is three years ***after*** the formal planning was already commenced and ***after*** the two million dollars in contracts had been awarded for jail planning.

5. This JCN document was submitted online late the night of Sept 26, 2013 by the DLR Group and only then announced to the public at around 9 PM. People were told it was the "needs assessment" but that is a misnomer. Copies of this document were not given to the public…it was only announced.

6. This posting and announcement to the public was just before the adjournment of the only Public Hearing ever held on the SDEIS. **Since that time there has been no public hearing held on this document nor on the Final Environmental Impact Statement. So there has been no public discussion about this documents value, validity, or quality – no cross examination where people can cross-check with others what they are reading, what information is missing, what people question.**

7. In the FEIS, the jail planners write that these public hearings are not necessary. They later confirmed this in Council testimony.

8. It seems that at no point was an actual unbiased Needs Assessment provided to the taxpayers. As a result, here are some of the inadequacies in planning:

    - There is no Comprehensive comparisons to alternatives that give options, so there is **no solid way to determine whether or not it is a smart economic choice to buy this jail**.

    - There is no Needs Assessment that shows risks or **consequences to the public of overbuilding**.

    - There is no Needs Assessment that validates the size and **scope of the jail relative to current research and changing market trends.**

    - There has been no oversight or **no examination of current administrative policies** that could have led to jail overcrowding, to the conditions, to any unnecessary liabilities created by inefficiencies. The document received does not address these matters, and only provides limited information that is quite general in nature.

9. The documentation actually seems to show that information that would be required in a quality Needs Assessment has been excluded - creating a bias in its very exclusion.

10. In the required No Jail Alternative part of the FEIS, the authors allude to the fact that market analysis and assessments of alternatives were their responsibility in this choice, yet very little research or documentation of information is included in the sections, and there is none in the JCN document that we can find.

11. In the FEIS, the authors then proceed to exclude concerns, discussion and public comments about these concerns about having a Needs Assessment, or challenging the estimates or projections of the planners as "outside the scope" of the jail planning process. As a result, **we feel that this FEIS process actually seems to obfuscate, exclude, or misdirect the discussion of information** that would be necessary to produce an unbiased Needs Assessment, and narrows the discussion to only that which supports an 800 bed pre-determined estimate.

12. We draw your attention specifically to a letter written April 23, 2010 by the Sheriff that says, ***"It was estimated that by 2014 there will be a need for 800 to 1000 adult custody beds."*** Notice that it is now 2015 and we are not close to that occupancy level or that need. An estimate does not equal validated truth. ***And just because he said it, does not mean it is a validated statement based on an unbiased assessment***.

13. This is especially concerning since we have found under scrutiny that the estimates he speaks about do not seem to be substantiated by unbiased review of the statistics later provided by others in the documentation. For example, ***the Jail Task Force work and recommendations did not substantiate the estimate.*** The Jail consultant, ***Jay Farbstein, in the middle of the process did not substantiate the estimate***, and actually challenged some of the pre-suppositions of the prior work. Additional testimony in the FEIS provided by many different upstanding, ***qualified professional people and organizations challenged facts, expressed concerns, and gave opposing views substantiated by research – most of which was labeled as "outside the scope".***

14. Therefore, the very limited public process raised many concerns and illustrates how the numbers estimated by administration are not supported.

15. Multiple Public Hearings were declared as not necessary.

16. There was no public debate, cross examination, or questioning allowed, so none of the broader issues got addressed.

Instead the taxpayers received a short, extremely narrowly focused Jail Capacity Needs document that is not reviewed through a public hearing, is not comprehensive, nor is it complete.

Bottomline, the RCC conclusion is that it seems that the Council and administration has now spent millions in planning to build a jail – without a solid, unbiased fundamental basis established first. Instead, the County seems to have proceeded based on in-house estimates. Ultimately, in the cover letter of the FEIS, the recommendation was still to build a jail of essentially 800 beds that is expandable, plus a 2 acre Sheriff's compound – all at the taxpayers expense, but without full public debate on options.

And, as discussed in the cover letter, the FS-7 paragraph of the FEIS document confirms that a Needs Assessment has not been used to justify the demand to build what amounts to an 800 bed facility when you read the fine print and the plans. This concerns us.

Reason 2: The Jail Capacity document is Narrow in Scope; Inadequate to justify taxpayer investment

The statistics provided in the Jail Capacity Needs document repeatedly fail our measures of what would constitute an unbiased Needs Assessment. Here is a short list of the biggest problems:

1. It is missing information that is critical to the whole discussion. **There is an incomplete discussion of downtrends, market variables, actual statistics** from the PEW research or Bureau of Prisons.

2. Information that would show negative or **pushback trends and risks to overbuilding the jail are not included.**

3. Does not address fiscal responsibilities or the **community economic conditions in the market that could make it unsustainable for the taxpayers to pay for and operate a large facility** of this kind. Excluded are many additional costs that will compound for the taxpayers.

4. There are **no 'alternatives to jail' studied** that reduce the inflow of 1st time people into the jail in the first place; nor has there been any financial impact or cost benefits of implementing them. Since alternatives to jail have a proven high rate of return on investment (some as high as $48 per dollar invested), **this is a double-impact flaw that exposes the taxpayers to grave financial risks that come with overbuilding a jail.** Note: "Alternatives to jail" are not to be confused with reentry or alternative programs used after incarceration. They are not at all the same thing and are not comparable.

5. **Alternatives to Jail are pre-emptive and have a much higher return on investment to the taxpayers, with a high efficacy rate.** These alternatives dramatically improve the overall safety, health and vitality of communities. Alternatives to jail are ways to actually stop or greatly reduce the inflow of 1st time and non-violent people into the jail funnel by redirecting them into **restorative justice programs, trauma therapies, recovery programs, mediation, addiction and intervention programs, drug court, homeless court, veterans court, mental health court and more.** These alternatives are designed to stop, mitigate and reverse trauma at the base, or at the prime point to get the maximum leverage and return. Why would we not consider this?

6. The JCN document does have a page where they mention alternative programs, but this page refers only what are most commonly called ReEntry Programs. ReEntry programs are used after people have been incarcerated – to help people reenter society. These programs are designed to reduce recidivism, or the recycling of inmates. To label them alternatives in this context is quite confusing to the readers, for they are distinctly different from alternatives to jail. ReEntry programs happen ***after*** incarceration, and have a much smaller efficacy rate than pre-emptive programs. **Alternatives to jail are intended to prevent people going into jail in the first place, by redirecting them to better options.**

7. **There is no comprehensive SWOT analysis**. SWOT stands for Strengths, Weaknesses, Opportunities and Threats. A comprehensive SWOT analysis is normal in a business analysis of an investment of this nature, size and scope. It would be reasonable to expect such an analysis for the Council and taxpayers

to understand their investment risks. Without this, there is little basis to substantiate a solid economic business decision; there is a limited perspective on how to see or measure risks or to consider other options.

8. The document discusses having a 20% vacancy rate based on pure speculation about legislation that 'could' be passed based on California politics. California is not Washington. California has a track record of failure in their incarceration system. Then, the document discusses adding a 10% buffer for more room in case of riots. By comparison, private prisons only operate with a 5% vacancy rate. Is this logical - at $80,000 costs per bed – **to speculate and add this extraordinarily high vacancy rate buffer for a small, local Whatcom County Jail?** Why so high? Who will pay for this? If we actually do need this overage…this extra vacancy rate for violent or maximum security beds…do we really need it for the minimum or medium security beds?

9. The document does not cover much 'need to know' information about the challenges of other counties in dealing with their vacancies, and the conflicts inherent in building large jails**. It does not thoroughly discuss the statewide issues of vacancies and the closing of prisons, the problems that are happening across the state with building prisons, nor the national patterns of overbuilding facilities and then selling them out at bargain basement prices to private contractors.** These are big economic and jurisdictional conversations that could have substantial impacts on the Whatcom County taxpayers investment and put the taxpayers at grave risk.

10. The document has many deficiencies. It includes incomplete and/or non-comparable data, and seems to be making illogical statements based on the data provided. It seems highly speculative based on the highest possible population projections and incarceration growth rates. It seems we are designing our incarceration system on purpose to plan to expand for failure.

11. By comparison, this plan does not seem to be designed to improve the public safety of all citizens into the future – or it would it seems that citizen issues would be readily discussed. There is very little pre-emptive in this plan that we can determine.

We have gathered a substantial body of our own local statistics that come with an overview of statistics we have gathered from dozens of sources, ranging from observing court proceedings to tracking arrest reports in the newspapers, and other statistical data gathering methods. We have been doing our own work as well as reviewing best practices and can document our findings.

There are many different ways of understanding what is happening in the marketplace, and we believe we have a unique way of seeing the problems and the hidden opportunities we have to make our community safer, healthier and a happier place for our children.

We stand ready to review our work and to discuss promising, research-supported solutions with the Council. Please let us know how we can serve.

Footnote: The Restorative Community Coalition is a 501C3 organization in the business of reclaiming lives. We are an action oriented coalition advocating for restorative, economic, systemic and social change. Our goals have been to connect, educate and advocate for the benefit of the whole by helping people who have been incarcerated, their families and the broader community recover from and deal with the direct and hidden costs, the ripple effects and economic impacts of incarceration.

COB Letter

FROM: Joy Gilfilen <joy@joygilfilen.com>
Email sent to the Bellingham City Council, 03/16/2015

2:39 PM (19 minutes ago)

To: ccmail, Michael, Irene (City Council, and Michael Lilliguist, Irene Morgan

Hi, to the Members of the Bellingham City Council,

Last week at the Council meeting, we understand that the County is asking you to endorse and essentially ratify the jail building plan the County has created.

We at the Restorative Community Coalition have deep concerns about this, for we have been working on this issue for several years. It is a highly complex issue, and in our view, they are asking you to take a political stance that has pretty significant repercussions and ramifications both explicit and implicit - without giving you the full scope of the discussion. This is a matter of great magnitude, for this is a public trust responsibility and could be a grave disservice to the taxpayers unless you do your own due diligence on the issues and get fully informed on what has happened in this jail planning process.

For example, A hidden impact from this endorsement is realizing that the Council would in effect be recommending that the taxpayers embrace and pay for the largest expansion of government in Whatcom County's history. This is a constitutional level kind of impact and it has big consequences. You see this is not just about building a jail and solving a short term problem. This has huge economic, political, jurisdictional, judicial, social, public service, civic change and emotional implications on the people of Whatcom County. None of which has been discussed publicly in any hearings.

When seen with fresh eyes, this "by default" government expansion project not only builds a jail, but truly imbalances the amount of economic power held by the Executive Branch of government. And this expansion of Executive banch power and regulative power is not based on a complete Needs Assessment about what is in the public's best interest long term. It was a facilities estimate, and the process has not included any public hearings that addressed public concerns that did not support building the jail. There has been no fiscal analysis of taxpayer return on investment compared to other options, no discussion of alternatives, nor any discussion about what happens in the event this project is overbuilt and it becomes fiscally unsustainable.

The public has essentially been closed out of the due process, and the jail planners have been paid millions of dollars to give their recommendations to the extent that they even gave what appeared to be legal advice at the end, where they said no public hearings were necessary. So, does this lack of due process create a precedent for how governments are allowed to expand - expecially if the City Council ratifies it and approves by default?

We would ask for an opportunity to share with the Council our concerns about this plan. We can walk you through the EIS processes, share some of your research, statistics and experience in developing alternatives to building a jail that would yield a higher return on investment to taxpayers of the public could be made aware.

By way of introduction, we are attaching two documents and a video that might be of interest to the Council.

- Phase 1: Restorative Economics Action Plan - a way to look at less costly, higher return actions.
- RCC - 501 C 3 outline of what we are doing today from the standpoint of serving our community leadership and other groups.
- Reclaiming Lives - a 4 minute video about who we are, and what we do

These should give you an idea of what the Restorative Community Coalition is, what we stand for, and why we stand for restorative economics and restorative justice rather than penalties, punishment, and incarceration as solutions to poverty, unemployment and homelessness.

Just to be clear, we have tried to bring our solutions to the table through the County Planning process on the jail...and all of our work has been dismissed as being "outside the scope" of planning to build the jail. Similarly, hundreds of other concerns brought up by taxpayers were dismissed as being outside the scope as well. A very informative process for the Council might be to actually read the Final EIS report basically from front to back, especially the public comments sections.

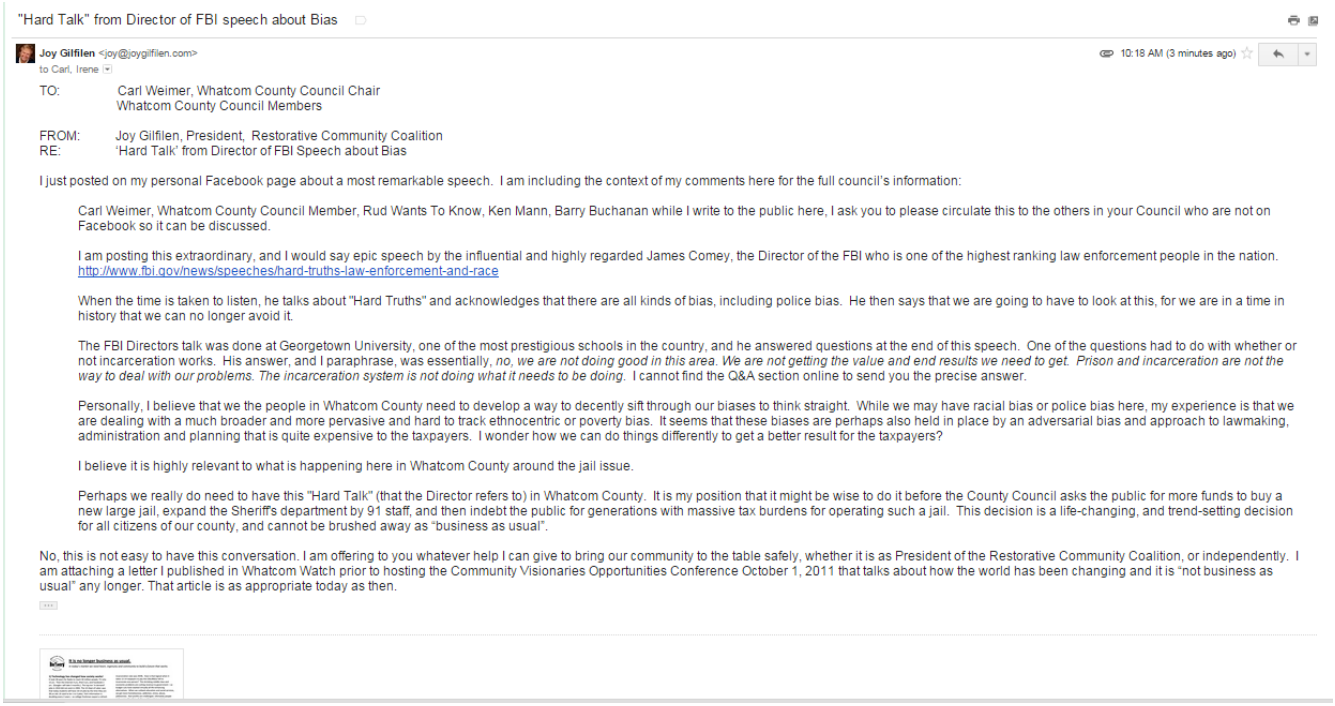
Please let us know if we can help provide some perspectives on the jail planning process and on restorative economics alternatives.

My phone number direct is 360-739-7493.

Joy Gilfilen, President

FBI Hard Talk Letter

FBI "Hard Talk" Email to Whatcom County Council
RE: Director of FBI Speech about Bias



"Hard Talk" from Director of FBI speech about Bias

Joy Gilfilen <joy@joygilfilen.com> 10:18 AM (3 minutes ago)
to Carl, Irene

TO: Carl Weimer, Whatcom County Council Chair
Whatcom County Council Members

FROM: Joy Gilfilen, President, Restorative Community Coalition
RE: 'Hard Talk' from Director of FBI Speech about Bias

I just posted on my personal Facebook page about a most remarkable speech. I am including the context of my comments here for the full council's information:

Carl Weimer, Whatcom County Council Member, Rud Wants To Know, Ken Mann, Barry Buchanan while I write to the public here, I ask you to please circulate this to the others in your Council who are not on Facebook so it can be discussed.

I am posting this extraordinary, and I would say epic speech by the influential and highly regarded James Comey, the Director of the FBI who is one of the highest ranking law enforcement people in the nation.
http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race

When the time is taken to listen, he talks about "Hard Truths" and acknowledges that there are all kinds of bias, including police bias. He then says that we are going to have to look at this, for we are in a time in history that we can no longer avoid it.

The FBI Directors talk was done at Georgetown University, one of the most prestigious schools in the country, and he answered questions at the end of this speech. One of the questions had to do with whether or not incarceration works. His answer, and I paraphrase, was essentially, *no, we are not doing good in this area. We are not getting the value and end results we need to get. Prison and incarceration are not the way to deal with our problems. The incarceration system is not doing what it needs to be doing.* I cannot find the Q&A section online to send you the precise answer.

Personally, I believe that we the people in Whatcom County need to develop a way to decently sift through our biases to think straight. While we may have racial bias or police bias here, my experience is that we are dealing with a much broader and more pervasive and hard to track ethnocentric or poverty bias. It seems that these biases are perhaps also held in place by an adversarial bias and approach to lawmaking, administration and planning that is quite expensive to the taxpayers. I wonder how we can do things differently to get a better result for the taxpayers?

I believe it is highly relevant to what is happening here in Whatcom County around the jail issue.

Perhaps we really do need to have this "Hard Talk" (that the Director refers to) in Whatcom County. It is my position that it might be wise to do it before the County Council asks the public for more funds to buy a new large jail, expand the Sheriff's department by 91 staff, and then indebt the public for generations with massive tax burdens for operating such a jail. This decision is a life-changing, and trend-setting decision for all citizens of our county, and cannot be brushed away as "business as usual".

No, this is not easy to have this conversation. I am offering to you whatever help I can give to bring our community to the table safely, whether it is as President of the Restorative Community Coalition, or independently. I am attaching a letter I published in Whatcom Watch prior to hosting the Community Visionaries Opportunities Conference October 1, 2011 that talks about how the world has been changing and it is "not business as usual" any longer. That article is as appropriate today as then.

Actual words: Sent 02-13-2015

TO: Carl Weimer, Whatcom County Council Chair
Whatcom County Council Members

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RE: 'Hard Talk' from Director of FBI Speech about Bias

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It is no longer business as usual.

In today's market we need heart, ingenuity and community to build a future that works.

1) Technology has changed how society works!
It took 38 years for Radio to reach 50 million people, TV only 13 yrs. Then the Internet 4 yrs, iPod 3 yrs, and Facebook 2 yrs. (Google+ will take 3 months.) The top ten 'in demand' jobs in 2010 did not exist in 2004. The US Dept of Labor says that today students will have 10-14 jobs by the time they are 38 yrs old. (It used to be 1 to 3 jobs). Tech information is doubling every 2 years – so college freshman expect a refresh in their junior year.

How is this affecting our civic dialogue? How is this changing our political, social and structural patterns? How is this changing science, business, and more?

2) Our global economy has changed our financial world, business, jobs and entire industries.
Eighteen million people are unemployed. Millions more are unemployable and have given up finding a job. Displaced from the market, they end up homeless, standing in food bank lines, or in jail/prison. Oddly, many jobs are left empty – for our workers are not prepared for the new economy. Employers are going offshore to fill the gap. China is becoming the largest English speaking nation.

What's the real emerging opportunity for educators, entrepreneurs, our community to fill the gaps? How can we reconstruct?

3) Ecological challenges demand new ideas.
The Dept of Economic and Social Affairs 2011 stats say that about half of the earth's forests are gone, groundwater resources are being depleted and contaminated. Enormous losses in biodiversity have already occurred, and climate change threatens the stability of all ecosystems.

They say that over the next 40 years, $1.9 trillion per year will be needed for incremental investments in green technologies. *Where is the real opportunity of the future for business, for jobs, for sustainable economies, for social transformation?*

4) Our penal system is unsustainable and not achieving life-enhancing results.
Our tax dollars are not working in the way that most taxpayers believe they are. YES! Magazine reports that in the past 30 years the US population grew by 35% - yet our incarceration rate was 293%. How is that logical when it takes 12-14 taxpayers to pay the $36,000/yr bill to incarcerate one person? The shrinking middle class and economic problems are cutting revenue to government – so budget cuts have slashed virtually all life-enhancing alternatives. When we cutback education and social services, we get more homelessness, addiction, stress, abuse, joblessness. Non-profits are challenged. Ultimately people end up recycling through the punitive prison system.

Whatcom County is already spending 70% of its budget on law and justice (up from 64% last year). 80% of the people in jail are illiterate, homeless, mentally ill or dealing with alcohol or other addiction issues and end up using a disproportionate amount of the tax dollars. St. Joes Hospital writes off roughly $20 Million dollars a year for Charity Care.

How can we redirect money to get a better return on investment, to rebuild our community so we expand lives rather than constrict them? What about restorative justice, mental health courts, job-reskilling, trauma therapy?

5) Diverse local independent entrepreneurs, activists, innovators, farmers and organizations are pioneering new solutions. For example, last year's Transition Whatcom Conference gathered over 800 people to discuss transitioning to a lower footprint society. Sustainable Connections has 650 green business members, 4th Corner Exchange is spawning economic alternatives, and the Business Alliance for Local Living Economies hosted their international conference here. We have three institutions of higher education that are doing remarkable work in technology, environment and leadership. We have leaders in recycling, organic foods production, science and the healing arts. We have more volunteers and non-profits than virtually anywhere in the country. Bottomline, we have the potential to harness outstanding intellectual capital to deal with the challenges ahead.

Let's join together in building bridges to our collective future! Working side by side with passion, we can set the pace for healthy change. We can blaze all new trails and establish Whatcom County as a caring innovative community that is leaving a legacy of vitality, strength and sustainability to our children.

This article was written by Joy Gilfilen, President of the Whatcom County ReEntry Coalition and Founder of UnitingCreatives.com a co-sponsor of the Community Opportunities Conference to be held Oct. 1, 2011 in Bellingham, WA. The Whatcom County ReEntry Coalition is a 501C3 organization that serves people at risk in Whatcom

Joy@UnitingCreatives.com UNITING CREATIVES **360-739-7493**

WHATCOM COUNTY

ment Services
e
26-9097
00-833-6384

FEIS

SUMMARY

Cover Letter

unty Adult Corrections Fa
Final Environmental I

Dear Reader,

The Final Environmental Impact Statement for the Whatcom County A s Facilities and Sheriff's Headquarters is issued by Whatcom County and the City of Fe rdance with Chapter 197-11 WAC. This Final Environmental Impact Statement (FEIS) respon ents received from distribution and public review of the Supplemental Draft Environmental tatement.

The Draft Environmental Impact Statement was issued on October 18, 20 with a comment deadline of November 19, 2010. The Preferred Site Alternative was subsequently withdrawn from consideration and a review was undertaken by a Jail Planning Task Force (JPTF). The JPTF made recommendations for a new alternative site along with one studied in the original DEIS. The County is now proceeding with planning for the Adult Corrections Facilities and Sheriff's Headquarters on a new site.

A Supplemental Draft Environmental Impact Statement (SDEIS) was issued on September 13, 2013 and public comment meeting was held on September 26, 2013. Notice of availability of the SDEIS was mailed to affected agencies, residents and interested parties. Contained within the FEIS are written summaries of the oral comments given at the public comment meeting as well as all comment letters received during the comment period, all combined, there were a total of 47 received.

All comments received during the SDEIS comment period have been addressed in the FEIS, and have minor text modifications resulting from those comments and where appropriate, additional technical or expert review. Specific text modifications include the following areas: Glossary, Fact Sheet, Summary, Air, Water, Wetlands, Land Use, Aesthetics, Transportation and Public Services and Utilities.

Copies of the FEIS have been placed at the following

Whatcom County Library System, Central Branch
Bellingham Public Library, Central Branch
Western Washington University Library
Ferndale Library

The Final EIS, along with the Supplemental Draft EIS studies are available via the web at: http://www.co.

Sincerely,

Tyler R. Schroeder

Jori Burnett

Copy of FEIS Summary Cover Letter:

1) Ignores that the DEIS report issued on Oct. 18, 2010 had a flawed Needs Assessment that caused an erroneous 2400 Bed jail to be planned. The public expected a corrected Needs Assessment and paid $1 Million more. Officials proceeded without a corrected one.

2) It lies when it says that "all comments received…have been addressed". No, most were dismissed with no discussion.

Minimizing Taxpayers Concerns

Technically misleading. Multiple letters were signed by multiple people, and some letters reflected concerns from organizations of people. Together, there were hundreds of concerns expressed in this FEIS. Yet, most were dismissed as "outside the scope" by the jail contractors - without consideration. Or they said it was up to the Council – then they told the Council NO PUBLIC HEARINGS were needed.

FEIS

No Action Alternatives

FS-2

Description of the Alternatives

Two design alternatives have been analyzed on the LaBounty Road Site in addition to a No Action Alternative. The No Action Alternative involves keeping existing facilities in downtown Bellingham and the Work Center on Division Street. The No Action analysis is essentially unchanged from the 2010 DEIS. The two LaBounty Road Site alternatives involve different approaches to building setbacks, building orientation and parking; there is no difference in size of the facilities. Alternative 1, which is the preferred design alternative, depicts the inmate housing on the westernmost portion of the developed area of the site. The jail support, lobby and sheriff's offices are to the east. The warehouse is north of the jail support building. There is a secure staff parking lot located to the north of the westernmost sheriff's office building. The public parking and sally port (inmate entry) is on the southern portion of the site. Alternative 2 shows the housing north of most of the other buildings. The jail support and warehouse buildings are south of the inmate housing. The jail lobby and sheriff's office buildings are to the east. The secure staff parking remains on the north side of the site and the public parking remains on the south side of the site. The sally port is west of the jail support building.

No Action Alternative

Under the No Action Alternative, Whatcom County would not construct new Adult Corrections Facilities or Sheriff's Headquarters at the LaBounty Road Site. It is assumed that the current facilities (the main jail in downtown Bellingham and the work center in Bellingham) would continue to be used.

Authors and Principal Contributors to the EIS

FEIS Author

Shockey Planning Group
Reid Shockey, AICP, President
Camie Anderson, Senior Associate
Doug Gresham, PWS, Wetland Ecologist
2716 Colby Avenue
Everett, WA 98201
(425) 258-9308

They planned

NO ALTERNATIVE

NO CHOICES

Non-SEPA Concerns

No Accountability to Taxpayers

FEIS
No Needs Assessment
FS-7

Environmental Impact Statements are regulated by State law in terms of content (WAC 197-11-444). The public may have strong opinions about other aspects of a project, but not all can be discussed in the environmental documents. In this matter, public comments were received during the EIS comment period that are unrelated to the required topics under SEPA. While not a part of the Final EIS, they are summarized in this section in the interest of allowing citizens to have their say. Where citizens make specific comments below, their comments are acknowledged, with the statement that they lie outside the scope of the EIS. No further analysis of the comment was conducted nor discussed in the Final EIS.

NO ALTERNATIVES

Mental Health Alternatives and Alternatives to Incarceration

Several citizens advocated for strengthened mental health programs or mental triage facilities as an alternative or preventative to incarceration. While it is true that a significant portion of offenders in the jail have mental health issues, they are incarcerated because they have violated a state or local law. Law enforcement has little if any latitude in those situations.

Whatcom County supports and encourages the diversion of appropriate mentally ill offenders into the mental health and community support systems. It must plan, however, for what appears to be actual need for jail capacity. It cannot responsibly ignore the factual information which indicates that mentally ill offenders will exist into the future and that sufficient space needs to be provided to house them in a humane manner.

Appendix F is a memorandum that provides expanded discussion of this issue.

Assuring Court Appearances

Citizen commenter's recommended measures to increase the rate of court appearances to reduce the number of arrests for failure to appear. The County Staff responds that they are willing to entertain various methods to accomplish that purpose. The possibility of having such a position or system to generate reminders was discussed. No decision has been made. It is important to note, however, that those people who would be targeted need to have an active phone number and/or email address for this system to be effective.

Needs Assessment

Several comments were received regarding the Needs Assessment, including assumptions used, errors, data accuracy, etc. All comments were forwarded to the Needs Assessment authors. This EIS, however, uses the final conclusions on capacity, facilities and the existing environment to evaluate impacts. With a proposed bed capacity of 521 and design features of the Sheriff's Headquarters and other facilities, the EIS scope is assumed to be correct.

NO VALID NEEDS ASSESSMENT!

FEIS Samples of Dismissals

Samples of Citizen's Letters (with Substantive Concerns) Dismissed

Concerns

and REPLY

NewJail@WhatcomCounty.US

From: Keith Comess <
Sent: Wednesday, Sep
To: NewJail@Whatc
Subject: SEIS Comments

The adverse impacts of this project well
1) High initial cost (estimated $109 milli
2) Increased traffic (prisoner transportati
3) Adverse effects on adjoining neighbor
reduced "quality of life" for adjoining res
4) Adjunctive costs to the public (upgrades required for roads, sewage, traffic control services)
5) The well-known phenomenon of over-incarceration (perceived need to "fill" empty beds)
6) Need for additional recurring costs (including additional police, Sheriff's Department personnel for staffing and transportation; purchase costs, fuel and maintenance for vehicles)
7) Costs are based on estimates and over-runs have not been included
8) Inflation-adjusted rates for prisoner housing (food, medical services, clothing) have not been factored into the projected sums for the project.

Additionally:
1) Crime rates have fallen nationally, especially for serious (particularly violent) crime
2) Many prisoners are simply those unable to afford bail bond costs and are housed at public expense
3) The size of the facility is based on projections, not known, actual needs and may be excessive
4) Businesses presently located in proximity to the downtown jail facility (such as bail bondsmen) will need to relocate, leaving the "central core" vacant. This leaves unsightly, empty buildings and reduces property and business tax rates in the City of Bellingham
5) The projected facility includes a substantially enlarged Sheriff's Office. The need for this has not been demonstrated
6) There has been no cogently argued case against building the new jail in the parking lot adjacent to the existing building.

In a climate of reduced public services, the cost burden for the jail - competing as it does with other social needs such as schools - simply cannot be justified. There are many other alternative scenarios (including "creative sentencing", use of existing facilities for low-risk offenders) that further undermine the argument favoring this project. In summary, this proposal lacks a logical basis and should not be constructed.

Respectfully,
Keith Allen Comess, MD

4. Adjunctive costs to the public (upgrades required for roads, sewage, traffic control services).

Comment acknowledged. This comment falls outside the scope of the EIS.

5. The well-known phenomenon of over-incarceration (perceived need to "fill" empty beds).

Comment acknowledged. This comment falls outside the scope of the EIS.

6. Need for additional recurring costs (including additional police, Sheriff's Department personnel for staffing and transportation; purchase costs fuel and maintenance for vehicles).

Comment acknowledged. This comment falls outside the scope of the EIS. However, it may be considered by the County Council as it makes the final decision on the site purchase and whether to go forward with the project.

7. Costs are based on estimates and over-runs have not been included.

Comment acknowledged. This comment falls outside the scope of the EIS.

Virtually all the other citizen concerns are also handled in the same way – "outside the scope".

NewJail@WhatcomCounty.US

From: Frances DeRook <fderook@gmail.com>
Sent: Wednesday, September 25, 2013 5:11 PM
To: NewJail@WhatcomCounty.US
Subject: SEIS Comments

There are several problems with the new jail, it's size, and it's current proposed location west of I-5 on Labounty and Sunset in Ferndale:

1) The new jail is 8.3 miles from the County Court house, a 15 minute drive on the freeway under optimum conditions. This means excessive back and forth driving and ferrying of prisoners and the risk, time, manpower, vehicle wear and tear and fossil fuel pollution this entails.

2) Crime, especially violent crime, has actually been DECREASING in recent decades so planning for a jail that will hold 649 and possibly up to 800 in-mates makes little economic sense. However, it makes perfect sense if you plan on FILLING all those beds with non violent criminals, those who can't post bail and those awaiting trial.

3) The new site would require bringing in huge infrastructure: water, sewer, waste, roads, traffic circles etc. All of this at enormous taxpayer expense, of course.

4) Moving out of down town leaves many businesses bereft of their source of livelihood. Do they relocate to be closer to the new jail? Do they become unsightly empty shells with all of their attendant decrepitude? Is this optimal for downtown?

5) The name of this new jail is actually "Whatcom County Adult Correctional Facility ***and Sheriff's Headquarters.***" Everyone should be made keenly aware that 32,000 square feet of this new facility is intended for the Sheriff and 116 of his staff. Is this truly necessary at taxpayer expense? Have we heard a cogent reason why the Sheriff needs to relocate there and why- in particular- he needs this outrageous amount of space?

If time, money and the environment were not important considerations, then a $109 million project with as much space as anyone wants might be a viable concept. However, given the exigencies of the environment, schools, existing businesses and the genuine possibility for correctional reform with emphasis on treatment and rehabilitation, this facility is NOT in the best interests of Whatcom County or its citizens. There are truly viable alternatives which are more affordable and reasonable, including building on the parking lot site adjacent to the current Sheriff's office and jail. An appropriate size, safe and properly located facility can be constructed while preserving the environment and utilizing tax payer money for more pressing needs.

Frances DeRook, MD

Thank you for attending to and conside

Respectfully submitted,

Frances DeRook, MD
Bellingham, WA

More answers are just like this – and solve no problems:

1. The new jail is 8.3 miles from the County Court house, a 15 minute drive on the freeway under optimum conditions. This means excessive back and forth driving and ferrying of prisoners and the risk, time, manpower, vehicle wear and tear and fossil fuel pollution this entails.

See response to Comess Comment 6 (Page 2-10).

2. Crime, especially violent crime, has actually been decreasing in recent decades so planning for a jail that will hold 649 and possibly up to 800 in-mates makes little economic sense. However, it make perfect sense if you plan on filling all those beds with non violent criminals, those who can't post bail and those awaiting trial.

Comment acknowledged. This comment falls outside the scope of the EIS.

Comment acknowledged. This comment falls outside the scope of the EIS.

Comment acknowledged.

NewJail@WhatcomCounty.US

From: Arlene <rebelbrandi@gmail.com>
Sent: Saturday, September 28, 2013 8:36 AM
To: NewJail@WhatcomCounty.US
Subject: new jail

My concern in this country as a minister, teacher and counselor, is that we continue to ignore the children with obvious problems and then want to incarcerate them as adults. An ounce of prevention is worth pounds of cure. Not only could we diminish the number of criminals but also the number of citizens who suffer at their hands.
Please start working with children instead of building more jails.

Rev. Arlene C. Ferguson

Excerpts from another Group of 12 Taxpayers – reiterating the concerns expressed in earlier evidence; again, largely ignored.

Recommendation: We ask that a robust diversion and alternative sentencing program be implemented.

Where is the analysis of how we'll pay to build the jail? Where is the analysis of the cost to run the jail?

The project has been moving forward for more than two years yet there is no available analysis of how we will pay for construction of the facility. Phase I alone is estimated at from $140-$160 million plus architect fees and land. That financial analysis should be done right away and the information should be immediately provided to taxpayers.

There also is no information regarding the high annual cost of operating such a large jail. This information is absent from the DEIS and it states:

> **among the unresolved issues are "how to fund construction and operation of the project. These details would be resolved during the design phase of the project."**

Operating such a greatly expanded facility will present an enormous annual cost to taxpayers already strapped and resistant to tax increases – even for public safety. Doesn't it seem critical, even at the early stages of decision-making regarding the design of such a facility, to address the feasibility of funding for operations? In addition to direct costs to operate such a facility, should decision-making even at this stage also involve consideration of the funding required for operation of the courts, which must exist to process charges against arrested individuals? Court funding today is strained. Will it even be possible for our County to support an expansion of the courts implicit in the projected scale of such new corrections facilities?

Recommendation: We ask that these financial numbers for construction and operation of the jail and for increased costs in the court system be estimated and provided at this time.

The county moved from an estimated cost of $41 million for a jail to an estimated cost of $140-$160 million for a jail during a severe reduction in public budgets.

The jail size expanded significantly in the Omni-Group/HDR plan in 2008 and in addition, a new Sheriff's Headquarters, a power plant and public facilities were added on. There is no explanation for the increase in incarceration, the increase in jail size or the need for such things as a $16 million power plant or $7 million in buildings for facilities support.

We need a transparent and inclusive public process.

A robust public process will result in a better project in many ways. Citizens not only can provide good ideas and suggestions, they can support a project and ultimately they pay for the project. The best time to involve the public is early on, when needs are determined and the most important decisions are made.

The goals for the project, as stated in the Omni-Group 2008 report, include laudable intentions such as "Foster community acceptance and endorsement of the selected site." Unfortunately, this current scoping process is the first opportunity for public comment and is the minimum required. There is little available on the website, there has been no broad

outreach, and the information is exceptionally difficult to track down. The site evaluation process was to have included "transparency for review and comment by governmental and community interests." Yet there was no opportunity for public comment during the site evaluation process. A desired site attribute is to "Be perceived by the community and local jurisdictions as an appropriate jail location." That attribute will not be there if the community is shut out of the process or if we are presented with just one or two sites and a project that this community cannot afford.

Washington State SEPA handbook encourages lead agencies[9] to engage the public as early as possible. Yet Whatcom County has not done that and the Draft EIS states:

> **Time and Place of Public Meeting to Receive Comments on the Draft EIS**
> Because Whatcom County provided a 60-day scoping period in lieu of the standard 21-day scoping period, and offered to conduct site visits for interested parties during the scoping period, the County does not anticipate holding a public meeting to receive comments on the Draft EIS. The Proposed Action will be addressed by the Whatcom County Council in a future open session.

Recommendation: We ask that Whatcom County hold at least one public hearing on the EIS.

Again, we agree that the current jail system is a problem and that a new jail will be needed.

We ask that you:

- involve the public in this process,
- put all the sites back on the table for consideration,
- revise the foundational numbers so that we begin design and site selection with an accurate and realistic projection of our needs, and
- work with the public on alternatives that will make our community safer at a lower cost.

We look forward with working with you on this and offer our help and support so that our community can have a safe jail that is the right size for our current and future needs and so we can have robust and adequately funded alternatives to incarceration in the future.

Signed,

Steve Brinn
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Bellingham, WA 98229

Vanessa Blackburn
Bellingham, WA 98225

Arlene Feld
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Bellingham, WA 98225

Jeffrey Thigpen
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Bellingham, WA 98225

Michael Lilliquist
Bellingham City Council
210 Lottie Street
Bellingham, WA 98225

Kay Sardo
510 South State Street
Bellingham, WA 98225

14. (15:14) Irene Morgan, 1258 E. Pole Road, Everson: I studied the Re-Entry coalition 7 years ago. Presented at many meetings, advocate for people w/ conviction histories. Advocate for restorative justice, which is having much success across the nation and world. Feel that diversion is a good plan and along with to keep so many people from going into our jail we could have the restorative justice, diversion and expand drug courts. Thank goodness the mental health courts are being considered. Need homeless and veterans courts because most of these people do not know how to live in our society. What I have experienced with my sharing ideas we have been to many different places and most ideas have been excluded and/or ignored. Mr. Farbstein came, hired by the County during JPTF. He came and presented and asked for different people to present different alternatives, none showed up in his statements. Joy submitted 17 page EIS statement the last time – very little what she said was included. Thank Lisa McShane – too poor to make bail. If tried, could find alternative that costs less than $79 per day. Guess what, that is what the Re-entry coalition does. We help people who are coming back to the community – A young woman had 24 arrests, 4 years in prison $250M in taxpayer money. It took us 5 months of caring and saying how can we help you, $1,500 and 5 months of case management – within that time she became a fully functional citizen, a taxpayer, a volunteer. Burien just announced they have cut student problems 30 students in one year who were having problems, solved with restorative justice. Last year, one problem with a student. Why are we not considering restorative justice, why are we not spending our money on restorative justice? Vision – Restore Life Center – farm, (it is housing, education, employment and also a recovery center), go to farm and get connected with the cycles of life and how we all actually live on this planet. Education is far more effective than incarceration. The price is much cheaper and the results are functional members of our society. (Taxpayers and good citizens). We have done it, we have the results. Jails are closing everywhere across the land. This kind of expenditure we are putting forth is not sustainable. It has been proven that jail is not the place for implementing the kinds of alternatives we speak of. Jail atmosphere doesn't allow people to learn. Use tax dollars to educate before we incarcerate. (Will email)

17. (29:03) Lisa McShane 1451 Grant Street – I read the headline in the newspapers saying that the jail proposal is for 521 beds, surprised to see 649 beds in the EIS. Recommend 521 and no larger, and make it expandable. If in 20-30 years the future taxpayers, if they need a new wing, they can pay to add to it. Current jail is 30 years. If it had been sitting empty for 30 years, would we want it now? Things change. Need to make sure this one can be expanded. Empty jails are not free; it costs money to maintain it. I think we should build the right size jail and Invest in programs that are proven to reduce our need for a large jail. Such as investing in Juvenile justice; putting money into getting the mentally ill into treatment, instead of into jail. And paying for a simple reminder system (just like dental offices use) to remind people to show up to court date, to reduce the failure to appear rate and implement alts to bail so jail isn't full of people waiting to make court appearance because they can't make bail. All of this environmental impact, because the footprint of a building is one of the large impacts it is going to have on the environment. Size is important. Looks forward to reading the Needs Assessment when it comes out. In constructing and designing the jail, make sure it has a lot of natural light. Average length of stay is 27 days. People who spend a lot of time there are the people that work there. Make better environment for people who work and will be there. Make sure good insulation, reduce operating cost. Hard to comment on EIS w/o "Needs Assessment" being done. Thought we'd know needs assessment before we moved forward with options.

6. (24:18) Tim Johnson 1513 Sycamore, Bellingham. Would like to see things in the EIS, particularly economic analysis. I spoke to a number of attorneys in town and they had questions about it and would be interested in whether the EIS addressed their issues. Analysis on transportation costs. There is expectation that major population center of Bellingham is where most people live there would be an added cost in transporting from Bellingham into Ferndale. Other issue: Expectation that there would a bifurcation of the criminal and civil court, I think this EIS should analyze that. Most of Civil cases handled in Bellingham and Criminal handled in Ferndale. What does that mean in terms of judges, court commissioners; these costs should be included in EIS.

(25:43) Tim Johnson continued (he came back up to mic) - At what point does the definition of the county seat change, by changing the jail and the court system and Sheriff's Office moving that to Ferndale. So that essentially Ferndale becomes the de facto county seat, rather than the City of Bellingham and what does that mean for Whatcom County, would like to see some analysis of that and in addition to that maybe some transparency on the owners of the property around the property, because that is where the law offices will be located to handle criminal cases.

The Jail is a Fail

Walter Haugen
Ferndale, WA 9828
5890 Barr Road

The Jail is a Fail. There are four reasons why I say this. The first reason is the **extravagance**. The cost is reported to be $109 million. Now consider the GDP for the whole of Whatcom County for 2012, which Dave Gallagher of the Herald reported on September 13th as $9.89 billion. The jail cost of $109 million is 1.1% of the entire Whatcom County GDP for a whole year. So what does this statistic mean? Consider that all of the petroleum used in the US every year only accounts for 5 to 5.5% of GDP. Think of it. Our country runs on oil – our factories, our agriculture, our infrastructure. All of it runs on oil, but for all those functions, the value of the oil used is only 5% of GDP. Since Whatcom County is similar to the rest of the country, what pro-jail advocates are proposing to do is use the equivalent of one-fifth of the oil energy in Whatcom County for **ONE** project. ONE!

The second reason is **Washington State already has too many jails**. Right now there is a 389-bed jail in Thurston County that is sitting empty at a cost of $500,000 per year (*Whatcom Watch*, Sept. 2013:7). Several years ago the per year cost was at $450,000. How much will it be by the time a new jail is completed? $600,000 per year to sit empty? $700,000? How much will it cost for the new jail in Whatcom to sit partially filled? If it is not to have empty beds, what is the justice system going to do? Start jailing people for spitting on the sidewalk?

The third reason is the **prison-industrial complex**. We all know that the US has the highest incarceration rate in the developed world – even higher than South Africa and Russia! This is because of the prison-industrial complex. For instance, in California law enforcement unions lobbied extensively for the three-strike law and this law alone has contributed a great deal to California's budget troubles. It is likely Washington will suffer the same fate unless we damp down this predilection to put people behind bars. We already have budget problems now. Consider how much it costs to keep someone behind bars. "For example, in the US as a whole in 2007, the average cost per person on probation was $3.42 per day while the average for parole was $7.47. If one compares this to the average cost to house a prisoner of $78.95 per day, it quickly becomes apparent that social sanctions agreed to by the prisoner (i.e. probation or parole) are more cost-effective than actually warehousing prisoners."[xi]

More substantial concerns by taxpayers… not addressed.

The Jail is a Fail

What does the prison-industrial complex have up its sleeve? Simply put, it is **slavery**. Besides the structural racism of more people of color being in prison than their representation in the population at large, the "new chain gangs" are far too inefficient. Recent forays into institutionalized slavery by the *prison-industrial complex* sheds some light on how inefficient slave labor can be. "For example, in the fall of 2011, 105 prisoners from a Washington state correctional facility helped pick apples at an orchard in Quincy, Washington. They picked 1,217 bins of apples in 6 days, or an average of 1.93 bins per person per day. Since I was a migrant worker myself and picked apples for 8 years in Washington, I can state with some credibility that this is inefficient and far below minimum work levels. Over my career picking apples, I never picked less than 3 bins a day, even on my first day. In my last two seasons, I averaged 8 bins per day. My experience is typical of migrant workers, whether Mexicans or Americans."[ii]

The fourth reason is that **it's a boondoggle**. The prison-industrial complex is a boondoggle in itself, since it makes quite a bit of money off the sufferings of prisoners and the structural racism of prison. In addition, it provides welfare for law enforcement. High-paying jobs are created based on fear and greed. A constant stream of prisoners is needed to keep law enforcement officers employed. IF you doubt this is a boondoggle, just look at the exponential growth of the Border Patrol and Homeland Security. Billions of dollars are wasted annually on increased security procedures that do little to deter terrorists but instead harass ordinary citizens. There are an incredible number of jobs in Whatcom County that are based on fear – fear of Muslims, fear of blacks and Latinos, fear of foreigners, fear of "the other." It is just shameful.

This jail is shameful. The jail is a fail.

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[i] Daily prisoner costs: http://www.creditloan.com/infographics/how-much-does-it-cost-to-keep-a-criminal/ - from *The Laws of Physics Are On My Side*, Haugen (2012:77)

[ii] Prison labor: Milkovitch, Matt, "Prison Labor Works for Colorado Growers," *Fruit Growers News*, Issue 37: January 2012. Available online at: http://fruitgrowersnews.com/index.php/magazine/article/prison-labor-works-for-colorado-growers/ - - from *The Laws of Physics Are On My Side*, Haugen (2012:77)

Like most others, this taxpayer's concerns were not addressed. Below you will find various versions of repetitive answers that show the Run-Around Citizens were given in the FEIS responses to hundreds of concerns expressed.

(It was typically an "outside the scope" or a blame the council, or the non-existent Needs Assessment for not answering the question.)

EXAMPLES:

- **Comment acknowledged. This comment falls outside the scope of the EIS.**
- **Economic, social and political impacts are not within the scope of an EIS. The City of Ferndale conducted a Fiscal Impact Analysis; a copy of that document is available on the City's web page.**
- **Comment acknowledged. The Jail Planning Task Force studied these issues and concluded that a new jail was needed. Information was provided by jail consultants and was further vetted as part of the Needs Assessment performed in 2013.** ***(There were only flawed reports, No Needs Assessment was produced.)***
- Comment acknowledged. The EIS discusses the impacts of the proposed decisions. The location, sizing, project elements are decisions made by Council and based on the Needs Assessment.

October 14, 2013

SDEIS Comments from RCC Avoided
(Representing a broad sector of voices)

Comments in red boxes below are from the FEIS response published just 10 days before the jail planners and the County Executive recommended to the Whatcom County Council they should buy the land. NO Public Hearing. Extraordinary price. No mitigation of taxpayers concerns.

TO: Michael Russell
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225

From: ReEntry Coalition of Whatcom County
PO Box 31026
Bellingham, WA 98228
360-354-3653

Dear EIS Folks,

The ReEntry Coalition of Whatcom County is submitting these comments in addition to the verbal comments submitted by Irene Morgan, the Founder, at the last public hearing on Sept 26, 2013.

In reviewing the SDEIS Report, the Coalition has several very specific concerns that we request be addressed:

1) On page FS-2 there is discussion (but no explanation there or later) as to why there are 521 beds required, then immediately talks about adding an extra 128 beds, then more later. Why? There is no explanation for why there is this discrepancy or the rationale behind it. And there is no matching explanation for why the Sheriff's staff and jail staffing is increased either. It seems that this should be part of the planning process, so that the County Council understands the full impact of the original jail, the expansion and the staffing costs related to that.

> Comment acknowledged. This comment falls outside the scope of the EIS. The Needs Assessment discusses the rationale for the bed count; for SEPA, it is necessary to look at the upper possible end of impacts to allow for a full range of decisions for determining environmental impacts. Discussion of maximum build-out as part of an environmental impact statement does not commit the County to actually house that many inmates. The actual size of the facility is determined solely by the County Council.

2) On Page FS-2 there is a discussion of how large the Sheriff's office and the Warehouse will be. This is a huge additional capital expenditure, yet the addition of a Sheriff's headquarters to the jail initiative provides for a huge expenditure that would not be required downtown. In the political process, it only was a 5 minute addition to the Jail Task Force recommendation on the last day. The Task Force never discussed this in any of their previous meetings, and now it is suddenly a huge capital cost. There is no justification in the DSEIS for the size or scale of these facilities, and no explanation of the current size and why the expansion is so large. This should be explained and justified, not just accepted.

> Comment acknowledged. The EIS discusses the impacts of the proposed decisions. The location, sizing, project elements are decisions made by Council and based on the Needs Assessment.
>
> **Yet, there is no needs Assessment.**

3) On page FS-3, and on S-7 there is a line item that says that an "Emergency Fuel Storage Facility" would be constructed on the site. Why? Where did that come from, and why is it included here?

There is nowhere we can find in the document that this is justified, explained, or discussed. There is no environmental or safety impact considered.

It seems that if the plan is to house hundreds of people on this site, why would you place a dangerous Emergency Fuel Storage Facility on the site? Especially since the County's fueling station is only 2 miles away? Why place this in the middle of several toxic manufacturing, and hazardous waste companies? This seems illogical and out of the realm of what a jail is being built for. This should be justified and considered.

4) On page 69-70 of the Off-site Odor Impacts, and on Page S-26 under Environmental Health – there is a conflict that has not be rectified to our satisfaction. On these pages they discuss all the odor complaints that have been filed in the past few years, yet conclude there is no impact on the people incarcerated. The conversation seems to be about impacts during construction only. Then later, it says there is no significant unavoidable adverse impacts.

How can this be, when later, in Wendy Jones comments she states that by law the inmates need to have outside fresh air. How do they have fresh air in a hazardous waste manufacturing area when there is clearly a problem with odor at the sites? Doing an inside HVAC system doesn't solve the problem of being outdoors, getting fresh air, especially during summer hours when odor goes up considerably in the area, and when the inmates cannot leave the area? This needs to be addressed for health concerns.

They did not adequately address the health impact, smells and danger of inmates living in a hazardous and industrial waste center.

Additional information has been obtained from NWCAA and the City of Ferndale regarding the stack height. While the stack height has been increased, complaints against Washington Builders continue. However according to NWCAA these complaints are nuisance related, not a health impact to the existing neighborhood and the proposed staff and inmates.

There are standards that must be met in terms of indoor air quantity and quality per ASHRAE 62.1. Possible strategies to mitigate environmental odors include odor filters at the HVAC systems as well as positioning air intakes in the most favorable direction. These are mentioned on Table S1-1 (Page S-17) as potential mitigation.

There are also American Correctional Standards that are guidelines supporting inmate outdoor recreation. The facility has a number of environmental conditions that will be mitigated during design in order to make the outdoor areas useable as four-season spaces. Table S1-1 has been amended to add these as potential design-phase mitigation measures.

5) On Page S-3, there is an acknowledgement that there will be impacts on the inmates of moving the jail facilities out of downtown and away from legal, social and other services. While it notes there are concerns expressed, it stops there. There is no additional discussion about these impacts, how and why this is true, what the social and societal and civic impacts on the inmates, their families or on the whole of downtown. There is no discussion about the financial, civic, social, personal, or any other impacts. This needs to be addressed, concerns discussed, and illuminated.

See Response to Commess Comment 12 above (Page 2-11).

6) On Page 13-23, the discussion about video trials and visiting; and in Wendy Jones letter: They indicate that a courtroom would be built at this location, and that video arraignment, video visiting with all people from friends, family, attorneys, probation officers and others – even video trials would become the norm. It appears that the whole conversation is about how it is convenient to staff, and less expensive to the County.

While this is spoken as if this is normal, this flies in the face of the evidence that justice is not done when the inmates (who are already isolated from all personal support) is now reduced to being seen only on camera. Remember that inside a jail are often first time offenders, and they have little contact with help, and little compassion is shown – as if they are already guilty just because they were arrested. Statistics show that 85% of communication is lost on video. So this further disadvantages the inmates and creates a preponderance of plea agreements, and does not ensure justice is done.

Additionally, this means that vendors and vendor costs for providing video services will likely be moved to the inmates and their families, who cannot afford to pay. This increases vendor profits, reduces headaches to the staff, but doesn't insure any "innocent until proven guilty" standard. There is no evidence presented that this is good. We would like to see the environmental impact of this discussed about how it affects the inmates and their families long-term.

Comment acknowledged. This comment falls outside the scope of the EIS.

7) On page 14-1 there is a discussion of Public Services and Utilities.
There were substantial concerns brought forwards and comments made to the EIS scoping hearing about the social-civic and economic impacts of moving the jail out of downtown Bellingham and out of the County Seat. This concern appears to be addressed a small amount here in this section of the SDEIS, but is inadequate to the size of the questions and concerns.

The Coalition believes there should be a full study of the social and economic and political impacts of building a new law and justice center outside the County Seat. This is not addressed anywhere in the EIS Statement.

It does discuss the very shortsighted economic fact that all these utilities and support services are being changed, often to being provided by the City of Ferndale. There is no discussion on the financial, civic and social impacts of any of this on the City of Bellingham, or on any of the other cities, nor on the flow of commerce out of the downtown core.

The financial impact of moving all this business outside of downtown Bellingham and away from the people who need these services should be discussed as a human environmental impact issue. As well, the impact of the No Jail Alternative should be discussed, and how it would be a positive or negative impact on the taxpayers and the inmates.

Economic, social and political impacts are not within the scope of an EIS. The City of Ferndale conducted a Fiscal Impact Analysis; a copy of that document is available on the City's web page.

8) In the 4 page Memo from Sheriff Elfo re: No Action Alternative: We find many things to question in this memo since this is a subjective discussion of all the problems existing in the current jail, as reported by the person who is in charge of the current jail, and simultaneously most stands to benefit by the building of a new jail.

   It seems that this is not an outside influence review. There is no 3rd party discussion, nor is there any evidence provided that there has been any 3rd party review by people who are not part of the jail industry. Has there been any report of the current state of repair of the jail, and why it could or could not be repaired? There are many opinions and comments made that are not backed up by the evidence presented in the SDEIS document, so the people are not fully informed of the state of affairs.

   There is no discussion whatsoever about how the current jail could be repaired or a smaller one replaced downtown in conjunction with an alternative approach or a restorative justice or safety focused approach taken. According to this memo, there is no alternative in the No Alternative solution offered except to build a new jail in Ferndale.

   Therefore, we request that an efficiency study actually be done by an outside party about the decisions that have been made that have led to the disrepair, and the decisions that have been made administratively that have led to longer jail bed stays, more non-violent arrests, and less time being given for "good time".

Avoidance/Not Studied

Comment acknowledged. The Jail Planning Task Force studied these issues and concluded that a new jail was needed. Information was provided by jail consultants and was further vetted as part of the Needs Assessment performed in 2013.

9) Regarding the multiple-page testimony given by Wendy Jones, Chief Corrections Deputy. This is again, information given on why the jail should move and how it would operate. We believe the attempt was made here to explain how it would benefit the taxpayers and administration, and to discuss the social and civic impacts.

   Unfortunately, this report doesn't explain how any of the advantages paid for is actually supporting or helping benefit or assist the inmates, how it makes our county safer, how it supports reductions in recidivism rates, or any of the other concerns that have been addressed by citizen questions.

   While there is considerable knowledge demonstrated about many issues, there is little 3rd party documentation that backs up some of the opinions expressed. Other than reducing the liability to the County, and having new living quarters improved, the discussion fails to explain any of the reasons that it is actually positively impacting the jail population to be moved out of the downtown core. In fact, it shows the opposite, that there will be substantially more isolation of inmates, which has a negative impact on inmates, and a negative impact on their families. The impacts of the isolation of the inmates needs to be further explored and explained in the next report.

Comment acknowledged. This comment falls outside the scope of the EIS.

   We do wonder why over half of the SDEIS Report was needed for Traffic impacts, and how much of the capital costs of the jail will be needed? If it was downtown, there would be no such costs.

Comment acknowledged.

10) The Coalition has testified multiple times and with various details before the Jail Task Force, before the Jail consultant Jay Farbstein, and at the draft EIS hearing where we have asked multiple times that this jail building process include a discussion of how we can reduce the jail populations, and to address how we can help divert people out of the school to prison pipeline. Our Coalition is working on behalf of the people who are incarcerated in Whatcom County, their families, and the people who are most directly impacted by the Jail system itself. They have no other voice.

Many of the concerns addressed in testimony by the ReEntry Coalition of Whatcom County on behalf of these inmates and their families seem to not have been heard clearly, or have summarily been discarded without explanation in the process of developing the SDEIS Statement.
Here are key issues the Coalition has asked for:

- That proven alternatives to incarceration be considered in the planning process, so that we can reduce demand for the jail beds, and therefore reduce the size of the facility, and not have to move it out of the downtown core. Each time, we have asked that the jail planning process include a review and consideration for how we can reduce the jail population using alternatives that provide a higher return on investment to the taxpayers than incarceration. These requests have gone unrecognized.

  There has been no such inclusion of this information in the SDEIS, and no explanation for why it was discarded. Alternatives include implementing options such as restorative justice, mediation, an expanded drug and teen court, that we look at Veterans Court, Homeless Court, Mental Health Court and more. We have asked for recovery programs, intervention programs, job re-skilling options, functional literacy programs that our Community could implement to reduce the incarceration rates, jail times, jail bed rates and occupancy. There is no discussion of any of this, nor any recognition as to why this is not being considered.

  Comment acknowledged. This comment falls outside the scope of the EIS. Discussion regarding the existing mental health and related services has been added to the Summary section and is also included in ***Appendix F***.

- We have asked that a needs assessment for the jail numbers be provided by people who are not from the jail industry. In the SDEIS process, it was not included. The needs assessment was only announced at the end of the public hearing, so the people who attended the public hearing had no time to read or comment on that needs assessment. Adequate time has not been given to review their findings.

  We request that since the Needs Assessment was completed by the jail industry consultant the DLR Group, that there should still be a 3rd party review by people who are not part of the jail industry. We request that a needs analysis be done by people who are interested in getting people out of the jail system, not those who are interested in profiting by people going into the system – and that this study be added to the current process as soon as possible.

  Comments acknowledged. These comments fall outside the scope of the EIS. They do speak to the range of concerns held by the writer.

Scoping Hearing Comments (Ignored)

Date: May 30, 2013

To: Michael Russell
Whatcom County Facilities Management
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360-676-6746

From: Joy Gilfilen, President
ReEntry Coalition of Whatcom County
PO Box 31026
Bellingham, WA 98228
360-354-3653

RE: EIS Comments for the scope of the Whatcom County Adult Corrections Facilities and Sheriff's Headquarters on LaBounty Road in Ferndale

This submission is in addition to our spoken testimony at the EIS scoping hearing held in Ferndale on May 16, 2013. This material is a written supplement to that testimony.

Attached you will find several pages outlining what our organization believes needs to be addressed in the EIS. Our primary contention is that the impact on humans and the human environment must be studied and included in this report. This is based on the National Environmental Protection Act (NEPA) guidelines.

Since this entire project concerns humans and how they are housed, judged and treated by our county, how can the environmental impact on this population not be included in this EIS?

We have nine attachments:

- Section 1: References from NEPA: Why the impacts on humans must be included in the EIS as per the National Environmental Protection Act
- Section 2: Impacts on Infrastructure development and land
- Section 3: Environmental impacts on inmate, families, staff, businesses, trade, services
- Section 4: Impact on our Political, Social, Civic Structures
- Section 5: Legal issues to be studied for their impact
- Section 6: Aesthetic, historic, cultural, economic, social or health impacts
- Section 7: Alternative Options to the Jail and Jail Site choices
  - Section 8: Impartial 3rd Party review of the statistics, size and scope of the proposed Jail
- Section 9: Community Groups to include to Explore Alternatives

The ReEntry Coalition of Whatcom County is willing to serve in providing relevant data to help EIS researchers provide a fair and impartial Environmental Impact Statement for our County Council and taxpayers. We are an organization with direct interest in this population and issue, and by NEPA standards, our organization would be logical to be included. It is our observation that many of the organizations who have been included in the Jail planning process to date have been those who will most benefit from a large capital project, or at the least who have a hands off relationship with those who are negatively impacted; while those people who are being most negatively impacted have been excluded without adequate representation. Therefore the results of this process have the potential to be skewed.

For example: For purposes of accuracy, our Coalition wishes to go on record that we will be using the term 'Jail' during our submission comments. We wish to be clear that in all this discussion we are referring to the building of the Whatcom County Jail. We are not submitting these comments under the presumption that we are building a prison or a correctional facility that would place it under an expanded or other legal definition. If it is in fact a "Whatcom County Adult Correctional Facility" as it is written on the Comment Request document, then that would completely change the nature of our comments, and inevitably the scope of this EIS.

Experience causes us to question the distinction between building a Jail, which historically we have used in Whatcom County, and building a prison or "correctional facility" which is typically run by the state Department of Corrections. Since we at the Coalition are not attorneys, we have to work with what resources we have to understand the distinction. Without the resources to check the WAC, we at least checked the peoples most logical resource…two online sources to see if using the term might matter. We have concluded that it is critical at this point to make the distinction in our writing up of our comments:

1) In Wikipedia, it states that many terms (jail, prison, correctional facility) are used interchangeably, and then says, *"In some legal systems some of these terms have distinct meanings."* Our question is…what is the legal distinction in Washington State, and what is the impact if we comment on a Jail as different from a Correctional Facility?

2) In the online Free Dictionary, it states: *Prison is a place used for confinement of convicted criminals. Aside from the death penalty, a sentence to prison is the harshest punishment imposed on criminals in the United States. On the federal level, imprisonment or incarceration is managed by the Federal Bureau of Prisons, a federal agency within the department of justice. State prisons are supervised by a state agency such as a department of corrections.*

Confinement in prison, also known as a penitentiary or correctional facility, is the punishment that courts most commonly impose for serious crimes, such as felonies. ***For lesser crimes, courts usually impose short-term incarceration in a jail, detention center, or similar facility.***

3) Therefore, we would like to go on record to state that since the US Dept of Justice statistics show that 60% of all those incarcerated at local ***jails*** are awaiting trial or bond hearing, it is logical to say that our Whatcom County Jail needs to remain a Jail, not an Adult Corrections Facility. Many of our Whatcom County people held in our facility are not yet convicted of a crime. In fact, we have had people waiting in our local Jail for months, even years, before they plea or are found guilty.

If there is a movement to turn our Whatcom County Jail into a state Adult Corrections Facility, then it seems that this distinction needs to be made and a different EIS statement needs to be requested, and a different process would need to be followed. With that in mind, attached are our comments.

SECTION 1
References from NEPA: Why the impacts on humans must be included in the EIS as per the National Environmental Protection Act (NEPA)

Like few other infrastructure projects, the Jail site acquisition and building process is about the impact on human populations since the entire purpose of the site is about housing citizens who are going through our Whatcom County legal and justice system. Therefore, everything concerning this process has multiple ripple effects throughout the citizenry and impacts the "human environment", safety, wellness and vitality of our community.

The scope of this EIS should not be limited to the human impact on our natural environment, roads and other infrastructures. According to our research, the impact on human populations falls within the guidelines of the National Environmental Protection Act, which is the oversight Act to the EIS process.

Here is an excerpt from the "Citizen's Guide to the NEPA" which discusses jurisdictional inclusion, how states must meet or exceed national NEPA standards, and indicates that those agencies who have "an interest in the matter" should be included in the process.

For further reference, please read the document produced by the Council on Environmental Quality from the Executive Office of the President. A complete guide can be downloaded at:

http://ceq.hss.doe.gov/nepa/Citizens_Guide_Dec07.pdf

For purposes of this document, we are providing certain excerpts here:

Who should be a part of the scoping process?

> [Page 9] Some large or complex proposals involve multiple Federal agencies along with State, local, and Tribal agencies. If another Federal, State, local, or Tribal agency has a major role in the proposed action and also has NEPA responsibilities or responsibilities under a similar NEPA-like law17, that agency may be a "joint lead agency."
>
> A "joint lead agency" shares the lead agency's responsibility for management of the NEPA process, including public involvement and the preparation of documents. Other Federal, State, Tribal, or local government agencies may have a decision or special expertise regarding a proposed action, but less of a role than the lead agency. In that case, such a Federal, State, Tribal, or local government agency may be a "cooperating agency."
>
> A "cooperating agency" is an agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative). Thus, a "cooperating agency" typically will have some responsibilities for the analysis related to its jurisdiction or special expertise.
>
> Once it has developed a proposed action, the agency will enter the initial analytical approach (Number 2 in Figure 1) to help it determine whether the agency will pursue the path of a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).
>
> Note 17: About a quarter of the states have such laws; for example, New York, Montana, Washington, and California all have such laws. New York City also has such a law. A list with

references is available at *www.nepa.gov* by clicking on "State Information" or directly at *http://ceq.eh.doe.gov/nepa/states.html*.

"The agency will also request comments from other Federal, State, Tribal, and local agencies that may have jurisdiction or interest in the matter."

What should be included in the process?

[Page 16] The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is the heart of the NEPA analysis. The lead agency or agencies must, "objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."31

Reasonable alternatives are those that substantially meet the agency's purpose and need. If the agency is considering an application for a permit or other federal approval, the agency must still consider all reasonable alternatives.

Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Agencies are obligated to evaluate all reasonable alternatives or a range of reasonable alternatives in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

Why must the impact on the Human Environment be included and studied?

[Page 17] The agency must analyze the full range of direct, indirect, and cumulative effects of the preferred alternative, if any, and of the reasonable alternatives identified in the draft EIS. For purposes of NEPA, "effects" and "impacts" mean the same thing. They include ecological, aesthetic, historic, cultural, economic, social, or health impacts, whether adverse or beneficial.33 It is important to note that human beings are part of the environment (indeed, that's why Congress used the phrase "human environment" in NEPA), so when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS should discuss all of these effects.34

What is the section of the NEPA Regulations on what must be studied/included?

CEQ NEPA Regulation Section 1508.8
[40 C.F.R. § 1508.8.]
"Effects" include:
(a) Direct effects, which are caused by the action and occur at the same time and place.
(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

SECTION 2
Impacts on Infrastructure Development and Land

Besides the normal environmental impact items that would logically be covered in an EIS, the following issues all need to be studied, impacts identified and issues mitigated.

I. Transportation/Roads/Construction of Infrastructure

Extra traffic from law enforcement, staff and persons coming to visit/service and inhabit the Jail will cause traffic pattern changes and:

- Expansion, widening and maintenance of the roads which will in turn impact the DOT, State, County, Interstate highway and local roads budgets, services, jurisdictions.
- The increase in emergency traffic as well as vendors going to and from the Jail may impact the other industrial plants in the area, and will impact services at the site, and how they use roadways, right of ways, etc.
- Will it impact the on and off ramps of I-5 specifically, since the patrol routes of ingress and egress to this site are partially limited and served only by one on and off ramp?
- What will be the impact of construction be on the commercial businesses and on the surrounding area, not just the property the prison will sit on?

II. Wetlands

This large Jail will have an impact on the wetlands located on this property, and on adjoining properties, and the changes in roadways and infrastructure may even impact the Nooksack River during flood periods.

- The land covered by parking lots, facilities, roadways, and miles of fencing. What is the impact, including the polluted water runoff entering our streams and rivers from construction and from the increased volume of use?
- What types of flora and fauna are on the property and on adjoining properties – and what will be the long-term impact?

III. Pollution

The Jail will cause a great amount of pollution due to density, 24/7 living, and more.

- Where is the waste going? How much will there be? What type of waste?
- Who will be in charge if something goes wrong?
- What are your waste disposal strategies and who handles waste spills?

IV. Safety of industrial/toxic environments

Putting a high hazard facility in the middle of volatile industrial environment produces a unique mix of complications.

- What happens in case of fire, and how will that impact the other industrial properties?
- What if people escape, what kind of vulnerabilities are there for the community?
- What if there is a derailment of the train? This is close to a railroad crossing, so how will that impact the Jail security, safety, potential threats?
- What about fire services?
- What is the impact of rail traffic, potential coal train traffic and railroad regulations on this Jail?

V. Energy and other public utilities

What is in place there already, and what would need to be provided by other agencies?

- How much energy, gas, electricity, etc will be required to run the Jail? Will any of these pose an excess hazard when we view it in context of the neighboring hazardous industrial sites?

- What plans are there for energy conservation, or what could be included?
- Are there existing water mains and electric hookups, if not where would it have to come from?
- Will the city of Ferndale be required to install water/sewage and electric infrastructure to the new Jail?

VII. Lights – an often overlooked issue, must be addressed in this situation

- To ensure that there are no escapes and for "security" reasons especially in a flat jail, ALL prisons and jails use an inordinate amount of lighting 24/7 inside and outside. Think of all the electricity used for the mall on just the lighting.
- This WILL affect the wildlife and plants for several miles around. It will interfere with their mating, eating, and sleeping habits and patterns and could extinguish certain species. Does this endanger any protected species?
- Further, it will have an impact on those living near the Jail with total light and noise pollution. And it will have a visual impact on those driving by on the freeway who will all be constantly reminded that there is a Jail there. What would be the impact on Tourism trade?
- Can this even be mitigated? If not, this impact certainly needs to be compared to the costs and impacts of building and running a Jail that is tall rather than spread out, and one that is already inside the city where street lights and city lights already exist, and are accepted as normal.

SECTION 3

Environmental Impacts on Inmates, Families, Staff, Businesses, Trade, Services

There will be substantial impacts on people all across our community for moving the Jail out of its current location, which is in the County seat. It will displace people, businesses and services, change commercial routes, habits of how we do business in all our government related processes. All the cultural, economic, social, psychological and physical impacts need to be studied.

In fact, even the question of whether our local Jail can legally be moved out of the County seat needs to be studied for the implications and ripple effects of that move.

Thousands of people and hundreds of millions of dollars a year of commerce will change patterns.

Bureaucratic agencies and staff:

What will the impact be on the lifestyles and business habits of the office staff members, Jail officers, arresting officers, the various levels of attorneys and their research staff, prosecutors offices, public defenders officers, medical support, doctors, psychologists and more?

Support Businesses and Vendors:

What are the impacts on companies such as the bail bond companies, canteen and food vendors, taxi drivers and transportation services?

Non-profits and other Service Organizations:

What is the impact on the non-profit organizations, advocacy and mediation groups that work with people from all sides of the process? How will it impact the staff and administrative people, the inmates, the victims, the reentry programs and anyone else who serves this population?

The inmates themselves

- How does this emotionally affect those who are being charged, have not yet gone to trial and have not yet been found guilty, to be in a large compound like this?
- What is the impact of not being able to have easy access to their defenders or their support people?
- What is the impact of being tried by video and not by humans?
- What are the physical and health impact of living next to a waste and garbage and medical hazards facility, next to potential coal train and industrial traffic? Some of these people will live on site 24/7 for days, weeks, months, even years. Athough technically it is only supposed to hold people less than a year, that is not the reality. What is the net effect of all this toxic exposure, and is there a liability to the County for this exposure?
- What happens when people cannot be held, and are released in the middle of the night when there are no taxi services, or public transportation is available? They cannot afford to pay for taxis, and will be released in the middle of the county. Will there have to be a secondary central processing facility in downtown Bellingham to mitigate all these impacts?
- What about people on work release, or those in drug court or teen court checking in for urine samples, probation, and the rest of servicing those people who are in process through our highly complicated legal system? How will that be handled?
- Will we need additional facilities to mitigate these impacts?
- The list of impacts on inmates and all the citizens is large and complex and it must be studied and mitigated…and at what real cost?

Families of the inmates:

These people are already heavily impacted financially and physically by their family members being taken out of the family, and not being easily accessible.

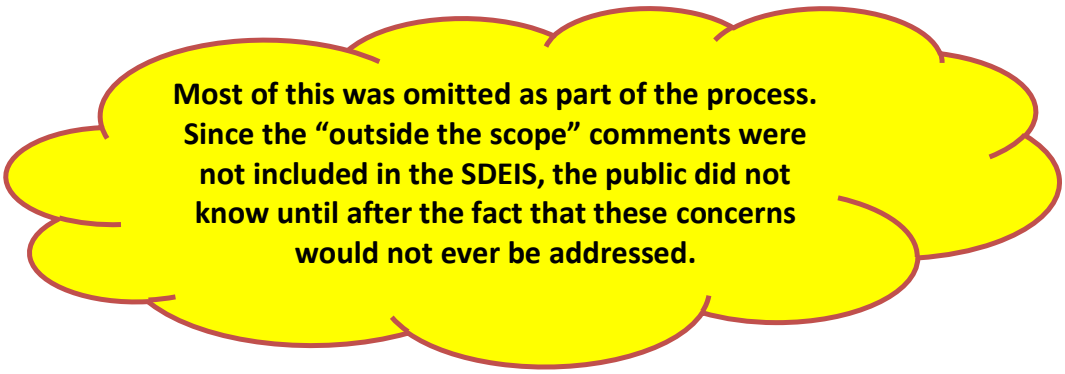
- How will it impact the large segments of our population who are dealing with poverty today?
- It is far more expensive and will unfairly impact our poor and homeless to not be able to visit or provide support to their family members. How does this ripple out to affect the family dynamics?
- Often it is the head of a household who is incarcerated, and people with children. What is the impact of that?
- Family members, many of who may or may not have easy transportation, will not be able to meet the people being released, and they may be unable to easily visit or get help to their family members who have been incarcerated. What is the ripple effect on them, their children, their access to support?

No True Due Process for Citizens:
None of this was honestly studied.
It was omitted as part of the process (other than an opinion given by Wendy Jones, Chief of Corrections without documentation).
Most of these concerns were not addressed in the report…and
the public was not notified until after the FEIS was published
and declared "outside the scope".

SECTION 4
Impact on our Political, Social, Civic Structures

What will be the shift in the economic, social and fiscal effects on our taxpayers and civic centers of moving this Jail out of the downtown core? Out of the County seat?

- How will the balance of power in our county shift? How will our attitudes change if the Jail becomes a Correctional Facility?
- How will it affect the capacity and response times of the different jurisdictions and agencies?
- This is a key shift in how we do government business. It deserves to be studied for the impact on our cities, our state, our taxpayers, on the airport, and on commerce.
- What will be the impact and changes in taxes, consumption of services, changes in city jurisdictions, law enforcement patterns, political legislative districts?
- How will it impact the urban growth areas, manufacturing facilities and growth areas for Ferndale, city shopping, political influence?
- How does it impact the safety and efficacy of the current offices, business and infrastructure investments in the downtown Bellingham core?
- How will it economically, culturally, socially and businesswise affect the tiny town of Ferndale; and how will it change the business and tourism climate and population?
- What will be the fiscal impact of all the City of Bellingham officers having to travel north to Ferndale to handle bookings? The largest amount of population is served quickly in downtown Bellingham…so how will that impact safety downtown when officers have to travel farther for all arrests? Will it increase the police costs downtown?
- Is there any plan to move the Courts out by the Jail so that business can be conducted in an efficient manner, or is there some other plan to conduct trials…and do business? What is the cost or anticipated manner to do this?



SECTION 5
Legal issues to be studied for their impact

There are legal issues that need to be studied for the human environmental impact. There are many complex and overlaying law and justice issues, many jurisdictions and authorities for all the infrastructural and civic changes.

- What legal precedents could be unwittingly set? How can we examine the potential impact of many changes on the legal landscape can have on the inmates, the community?
- Are we, by moving the Jail out of the county seat creating an unwitting legal issue and changes in how we deal with local, state and national issues?
- How will placing our Whatcom County Jail in this location - outside the city boundaries, and outside the civic center of the city impact legislative and political power, civic jurisdictions and all governmental agencies and services?
- What will be the federal legislative, judicial, administrative impacts?
- What will be the reentry and restorative justice impacts on recidivism rates locally, statewide?
- If state and federal inmates will be housed here, what will be the impact of the state and federal use of this facility to house higher level prisoners – on our local inmates?
- Is there a change in the legal status of the facility when the name is being changed from the 'Whatcom County Jail' and is the now being called in the EIS scoping process the 'Whatcom County Adult Correctional Facility and Sheriff's Headquarters'?
- Does the change in name presumptively change the legal status of the facility and set precedence and/or change the power and scope of our Sheriff's authority and activities?
- Does it change the functional and legal use of the facility by other law enforcement agencies, city, state, federal and other agencies?
- Does the name affect who can be housed there, the building of the facility, how it is operated?
- Does the name change give more power to our Sheriff arbitrarily, and without the knowledge of our citizens?
- Research should also be done into what services can realistically and effectively be offered within a Jail environment regarding reentry services. The plans as discussed indicate that the Sheriff wishes to have alternative services, and potentially the mental health triage unit running out of this facility. The public deserves to know what the impacts of that are, and whether that is the best use for the investment of our tax dollars.

  Our research shows that most educational, diversion, reentry, restorative and alternative services are best administered when they are not from within a Jail compound. In fact, there has been shown to be a reverse prejudicial negative impact on people who have to go there for these services. We need an outside opinion on these matters included in the EIS study, and we need comparative projects to see the impact of including these plans in this Jail, or if they should be done in a completely different fashion at less cost to our citizens.

  There is a Washington State Supreme Court Ruling that found that trying a case within a Jail environment is prejudicial to those visiting and those who serve on juries. How would that ruling affect our Jail and how we handle court cases in the future?

SECTION 6
Aesthetic, historic, cultural, economic, social, or health impacts

Regardless of whether the impacts are adverse or beneficial, according to NEPA the impacts should be studied for the whole community. They say, "It is important to note that human beings are part of the environment (indeed, that's why Congress used the phrase "human environment" in NEPA), so when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS should discuss all of these effects."

Therefore,

- What is the opportunity cost for Ferndale to lose its potential as a tourist city if the businesses of the city change to support an oversized Jail that may be turned into a contract services facility for downsizing state and federal facilities?
- What will be the impact on the Lummi Nation, on all the other city police departments across our County?
- What will the impact be on the people coming to do business at the Silver Reef Casino?
- What is the precedence of other county Jails being turned into prisons?
- What are the trends of the industry as a business and the trends in the commercialization and privatization of Jails into prisons? Looking at the Jail industry in the context of our environment is relevant to the citizens of this county making a smart decision about this Jail.
- What is the possibility that this local Jail is being set up to meet the standards for conversion into becoming a state prison, federal detention center, or a private prison? Is it being established to become that?

SECTION 7
Alternative Options to the Jail and Jail Site choices

NEPA indicates that alternatives to the current project should be provided if there are other alternatives that are viable. According to the NEPA reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

For this purpose, we raise several alternatives that should be considered in tandem with the current proposed site. They should be judged based on relevance, current economic conditions, ease to build, assessing the real return on investment of tax dollars to the citizens over time, and common sense. Who ultimately is going to pay for all this – and what makes sense to them?

- **Alternative 1: Why not study the Division Street property at Irongate?**
  Why is it not a viable option compared to the Ferndale property? It currently houses the Work Release facility. It could be developed to work in tandem with, or in complete replacement of the current Jail. There are at least 10.5 acres that could be used that is inside the city limits of Bellingham, that is easy access to I-5, that has transportation, roads and industrial quality services close by. There is easy access to emergency, medical and fire services. Why can this not be used for this purpose, and not cause the complete disruption of the downtown civic core?

- **Alternative 2: Why not compare the feasibility of building the Jail downtown?** Especially relative to this site? Why not examine the adjoining property downtown that is already owned as a viable alternative to the Ferndale property? Why not study it in the context of all else that has been raised in these comments? It seems that in context, this site should certainly be studied in this EIS process. The information provided to the Jail Task Force was that it was not actually better or worse to build a vertical jail as different from a flat jail. So why not re-study this site? Especially if it was built in tandem with the Division Street property, or in tandem with alternative and restorative justice options like the next suggestion.

- **Alternative 3: Why not build a smaller jail, and a large ReStoreALife Center facility?**
  Fashioned after the highly successful Delancy Street Project in San Francisco with some modifications, the whole purpose is to reduce costs to the taxpayers, get a safer city and restore a civic center that is healthy and viable, while getting people out of the recidivism cycle and putting them to work.

  Why not study the logic and efficacy of building a Jail of a smaller size…like 400 to 500 beds that is more in line with national trends? Why not study the impact for how we can intentionally invest in early education, prevention and restorative justice alternatives that have been proven to yield a higher return on investment of tax dollars to the community?

  Rather than cutting back on Drug Court and Teen Court, why not expand them, and add Veterans Courts, Homeless Courts and Mental Health Courts (which also have a high proven success rate) and

do a complete reversal of penal system practices that have been proven not to work? Why not use the old Federal Building for this purpose (a current albatross for the City of Bellingham), and get a better return for our community?

According to the US Bureau of Prisons, US Justice Department and the PEW Research Center statistics, crime rates nationally are going down, alternative treatments have been proven viable with high success rates and there are many programs that are already proven to replace the growth of jail populations. And they are better for the community on all levels.

Right now, the ReEntry Coalition of Whatcom County is currently building a coalition of organizations locally who are planning such an alternative. For a short list of organizations who could be included in this solution go to Item 9.

SECTION 8
Impartial 3rd Party Review of the Statistics, the Size and Scope of the Jail

In any project of this size, it seems that it would be prudent and common sense to see if there are errors or efficiencies that could be implemented that could reduce the expenditures or reduce the size of the project. This would fall within the scope of this EIS process.

At present, the current statistics given to justify the large Jail do not satisfy our organization. They are not complete and have not been juried by an outside source. Logically, these statistics should all be reviewed and validated if they are to justify an $80 million dollar or more expenditure of funds by our County Council and by our citizens.

- What if the statistics are fallible and our County over builds an excess 200 extra beds at $80,000 per bed cost (not including the cost of the land and the operating costs)? This would give us a capital expenditure in the tens of millions to recover. We would need to know what would be the exit alternatives to recover these costs, or what else could be done with these beds?

- It seems that the very statistics used to validate this size of Jail, are statistics created by and provided by the very departments that have been in charge of producing the incarceration rates and bed stays through administrative, prosecutorial and law enforcement action.

  It seems that whether they are quality and justified statistics should be validated by an outside party. For these very departments are also those who will ultimately benefit by the growth of the Jail. Therefore, it stands to reason that this could constitute a conflict of interest, and should rationally be reviewed for the benefit of our County Council and our taxpayers in this EIS report. This seems to be the very purpose of the NEPA request for outside oversight of projects of this size and scope.

  In our organization, working directly with those who are going through the legal process in our county, there are many questions that have been raised about the changes in arrest practices, about inefficiencies in our prosecution, our Jail operation and incarceration patterns. The confluence of these issues seems to be causing bottlenecks in the system that may be overloading our bed occupancy rates and may be driving statistics artificially up. It seems that this should be reviewed by an outside source to see what the real situation is, and to see if some administrative changes would change the bed occupancy rates, and therefore change the County's projections.

- It seems that it is just common sense, as citizens, to ask that we review all this through the EIS report. Especially since this Adult Corrections Facilities and Sheriff's Headquarters request includes the demand to provide a 38,000 square feet (about an acre) headquarters for the Sheriff, plus provide an additional 32,000 square feet (about another acre) for storage. It seems that it might be worth reviewing all our law and justice efficiencies before our taxpayers pay for this.

  Can this EIS process examine what is the national precedence for building this size of a Sheriff's

headquarters to administer the jail needs of a county with a population of about 200,000? Especially considering that in Whatcom County we also have an abundance of other law enforcement agencies who have headquarters…such as the new large Ferndale Police Station, a Bellingham Police Station, Homeland Security, Border Patrol, and many other headquarters. What is the reason that our Sheriff need this huge headquarters?

- To be more specific, we would ask this EIS Study to look at similar cities across the nation to compare actual trends in incarceration and jail bed rates over the last 30 years. Our request would be that the study looks at and compares statistics like the following:
    - The number and types of arrests as a comparison to other similar communities
    - The time that people spend in our local Jail relative to other communities
    - The number of charges filed against each person compared to the rate of plea bargains and compared to how many charges were actually filed by the officer initially
    - The range of incarcerations relative to the length of stay for non-violent crimes, the number of extended stays based on probation violations, the days spent waiting for the Prosecutors office to take administrative actions, and more.

Our County Council and our citizens could then see the changes in trends and arrest practices and identify the reasons for increasing occupancy rates, and compare options and ways to deal with the increases in perhaps a more cost effective manner.

Wouldn't it be smart to have as an end goal to figure out if it might be possible with increased efficiencies in our Sheriff's office, in the jail, and in the Prosecutor's office to reduce the number of Jail beds used? How could that happen? That perhaps would change the growth rate and the demand for building a larger Jail, and it could actually help our taxpayers save money and capital costs right when our country is facing a depression, and severe losses of state and federal tax revenue due to austerity measures and other cutbacks.

Could this be included in this EIS report – it certainly has a huge human environmental impact, and a huge fiscal impact.

SECTION 9
Community Groups to include to Explore Alternatives

According to the NEPA, several other community organizations have a direct interest in this project and might be wisely included in the process of looking for alternatives to this project. Whatcom County has a great list of non-profit agencies, and we would like to nominate several who might be interested in working with this process to find alternatives. This is our short list, and there are many others:

- The ReEntry Coalition of Whatcom County
- Opportunity Council
- ReUse Works
- Whatcom Dispute Resolution Center
- Peace and Justice Center
- Homeless Coalition
- Whatcom County Health Dept.
- Bellingham Housing Authority
- Whatcom County Health Department
- St Lukes Foundation
- The Ferndale Double Dome Aquatic Center
- Lummi Nation
- Lummi Restorative Justice Project
- Nooksack Nation
- Seattle LEAD program, spearheaded by Dan Satterburg, King County Prosecutor

Facts & Report to Farbstein

October 12, 2011

TO: Jay Farbstein, AIA
Consultant for Jail Planning Task Force

FROM: Whatcom County ReEntry Coalition
Joy Gilfilen,President
360-739-7493
joy@joygilfilen.com

RE: Request that the jail planning process includes a relevant financial, social and community financial impact analysis of any expenditure that increases consumption of jail services in our community, and that the ReEntry Coalition and the community be invited to provide alternative recommendations in the deliberation process.

The Coalition has just completed hosting four public forums, sponsoring a recently completed Community Mastermind Conference, and had done several months of intense interviewing of dozens of people including officials and organizational heads in Whatcom County about reentry issues. We've been seeking out solutions, ideas and resources that can ease the socio-economic and personal stressors that incarcerated people deal with. Along the way we invited a lot of open dialog about all the issues facing people on any level, and we have gotten in touch with many very elemental things in our community.

The Whatcom County ReEntry Coalition is acutely aware of what is happening with people who are attempting to reenter society as solid citizens, and the ripple effects on their families when they fail, and the costs to taxpayers when they recidivate and start the cycle over again, accelerating the destruction of the social fabric of our community.

Over the past few years we have been interviewing people on all sides of the issue looking at the ripple effects of incarceration, at the root causes, and for solutions to the extreme challenges we all are facing in to today's marketplace. We have uncovered some extremely uncomfortable issues and challenges that every community in America must face as we choose where to spend our taxpayer dollars in today's market.

1) **Lack of Revenue to pay for any expanded jail services:** The middle class is shrinking at record rates, and small businesses are faltering in record numbers. This means that our taxpayer base is shrinking and that the middle class will not be able to continue to boost tax revenues to the city, county, state and federal governments. Our economy is faltering with millions of middle class facing bankruptcy, foreclosures and complete upheaval in entire industry segments.

2) **Excessive consumption of expensive jail services:** Our prison industry is glutted with a 293% growth rate over the past 30 years, when our population has only grown by 30%. The prison industry is the higher end consumer of tax dollars. It is costing $30-50,000 a year to incarcerate one person for one year. That means that it takes 12 to 14 people working at $24,000 a year jobs to pay the tax bill for one inmate. The point of earliest intervention to stop rising prison rates is at our jails, and before that at our schools and families.

3) **Our Whatcom County law and justice system is consuming 64-70% of Whatcom County taxpayer dollars.** This is unsustainable, and must be reviewed for logic, common sense, and viability.

What are the other services in the county that are suffering from overconsumption of jail and law and justice services? What is the root cause of the problem, and how else can we solve it?

4) **Severely Reduced Social services, education, rehabilitation, recovery services.** The dramatic tax cuts have forced state and federal cutbacks in services, severely handicapping our capacity to solve the problem at a government level. Right now in Washington State the Governor has called for another $2 billion in budget cuts. Where is it going to come from?

Here are two news pieces that illustrate the size of the problem – just from an economic impact perspective, not even addressing the ripple effect on social issues, justice, honor and respect of our people.

1) **CBS News released a 60 Minutes documentary in June, 2011** illustrating the size of challenges. http://www.cbsnews.com/video/watch/?id=7358670n&tag=contentMain;contentBody. They discovered that according to the Brookings Institute that 25% of today's children in America will be living below the poverty line by 2012. They are calling this generation the HardTimes Generation. Right now in Orlando, Florida – where Disneyland is popular, school buses must stop at dozens of "cheap hotels" to pick up volumes of their children living in poverty. An excerpt from the article about the 13 minute video reads like this:

"Unemployment improved a bit last month but it is still nearly nine percent and the trouble is job creation is so slow, it will be years before we get back the seven and a half million jobs lost in the Great Recession. American families have been falling out of the middle class in record numbers. The combination of lost jobs and millions of foreclosures means a lot of folks are homeless and hungry for the first time in their lives.

One of the consequences of the recession that you don't hear a lot about is the record number of children descending into poverty.

The government considers a family of four to be impoverished if they take in less than $22,000 a year. Based on that standard, and government projections of unemployment, it is estimated the poverty rate for kids in this country will soon hit 25 percent. Those children would be the largest American generation to be raised in hard times since the Great Depression.

In Seminole County, near Orlando, Fla., so many kids have lost their homes that school busses now stop at dozens of cheap motels where families crowd into rooms, living week to week."

2) **Washington State Budget and Policy Center article: Poverty skyrockets while more cuts loom** (See attached article). This is an excerpt:

Official poverty estimates released today by the U.S. Census Bureau show catastrophic growth in poverty in Washington state. The worsening poverty statistics were released just as Governor Gregoire called upon the legislature to slash $2 billion in funding for health care, child care, and education investments during a 30-day special session to begin on November 28th.

Some key numbers for Washington state
- Nearly 890,000 people in our state now live below the federal poverty line. For a family of four, that means surviving on less than $23,000 a year.
- Between 2009 and 2010, 84,000 more Washingtonians slipped into poverty.

- Over 33,000 more children are living in poverty, a jump from 16 percent to 18 percent between 2009 and 2010.

During the same period, median household income in Washington state declined by nearly $2,000 to $55,631 from $57,416 (after adjusting for inflation).

3) **According to our own Food Bank Manager**, speaking at the Environmental Heroes dinner a couple weeks ago, 1 in 6 households in Whatcom County can be seen going through the Food Bank lines weekly to receive food for their families.

The bottomline, it that is is not affordable, responsible, accountable, nor cost effective in invest in any expensive, expanded incarceration platforms, except as absolutely necessary when we need to be investing more of our dwindling tax dollars to address the roots of the problem…our reentry issues, our reducation and job reskilling and redirection issues, our prevention and early intervention solutions. These solutions give a positive return on investment. Terry Weber, from Pioneer Human Services has provided an email to us with many resources to consider when looking at financial projections. See attached, and we will forward the email as well so you can check the hyper links.

Our community must go back to the drawing board to examine the roots of our systems for systemic flaws, and to reexamine every expenditure we make for our community. We must examine them from several directions:

1) **What is our vision for our community relative to our correctional attitude?** Are we going to support a penalty based jail system that is expensive and is producing high recidivism rates? Or will we have the political and fiscal will to going to work to rebuild our systems to reflect corrections and rehabilitation so that we can redirect people out of the system to become taxpaying citizens, thereby expanding our tax base, and revitalizing and rebuilding our community quality of life?

2) **What is our goal for reducing consumption of jail services, rather than expanding them?** How could it be possible to reduce the jail population by 60-80% (or to reduce the time spent in jail that it takes to create a correction for the offender), thereby reducing the budget share of the total county budget? According to our county sources, that seems to be the actual amount of people who are incarcerated who are illiterate, mentally ill, homeless, or dealing with some level of alcohol or drug issues – so what else could we do that would be far less expensive, and more effective?

3) What is the **real internal rate of return** especially in light to todays economic climate (and relative to future projections) to the taxpayers when we invest in the jails as different from investing in schools, education, prevention, diversion and other choices?

4) **What else can we do to increase the Quality of Life for people in Whatcom County?** How can we reduce expenses and yield a better return on investment to our community?

5) **If government must be reduced, then what are the opportunities that are rising?** When other systems are decomposing, what is the composing process? What is the expanding opportunity for enterprising ingenuity that is based on regeneration, revitalization, sustainability? How can we invent new ways to support the lower levels of our community to restore their own honor, to provide them a right to work and to rebuild right livelihood for themselves?

The Whatcom County ReEntry Coalition has been working on solutions. We have dozens of organizations in Whatcom County that could use community and budgetary support to redirect people out of the prison system.

We have visions of the ReStoreALife Center, of community facilities that are self-sustainable, that encourage entrepreneurism, self-reliance, community sustainability. Why not consider them as part of the Jail Planning process?

We agree that the current jail needs upgrading. Our request is that we, the community, the Jail Planning Task Force, and the Whatcom County Council take the time to stop, look and listen before we make decisions about the size, scope and scale of the jail. Alternatives, all of them, must be considered. This is not only humanitarian, it is common sense given our current market conditions. It is good business and it is the right thing to do. The community is ready to participate.

The Coalition has spent several years gathering information, conducting interviews with people on all sides of the issues. We have attached a few key pieces of information for your perusal, and there is much more to come as a result of the recent conference. We request the opportunity to present them as a part of the public process, and will forward more material as soon as it is possible to do so.

In summary, please do a real world financial impact analysis as part of the pre-planning process, and consider the community resources that are available to find other solutions.

All the attached documents below were submitted to Jay Farbstein, another jail planner they hired during the Jail Planning Task Force process. He did not include any of this in his analysis and recommendations to the Task Force Members.

Bellingham Herald Article: Posted on Thursday, Sep. 29, 2011

WHATCOM VIEW: ReEntry Coalition meeting to help former prisoners find jobs, repair lives

By JOY GILFILEN

ReEntry. When I first heard the word, I was invited to a brainstorming meeting for the Whatcom County ReEntry Coalition. The invitation was from an executive recruiter for professionals, so I assumed it was about displaced business professionals re-entering society following industry upheavals.

Wrong. That was the wrong end of society. This ReEntry conversation was about prisoners and people who are at risk trying to re-enter society after prison, after recovery, after they had been displaced by either misfortune or mistake.

Wow. What a shock. I listened to what the challenges were. I was stunned. Not only did these at-risk people have a tough time because of their history, they had lost connection with the speed of change, didn't know technology and were completely behind in functional literacy skills.

I could see limited potential for any of these people to catch up. Even if they were professionals and skilled and bright, their capacity to catch up and to get restored back into our emerging society as it went racing by was virtually impossible – for many reasons.

This was heartbreaking for all of us. It was not sustainable for our community. It was not healthy or honorable and didn't work. I made a decision to help find solutions and became President of the Coalition.

Here's just a few challenges I found:

1) Limited employment: With high unemployment rates, why would employers hire a felon or people with a record, when there were people available without a record?
2) Limited Current and Relevant Job Skills: Incarcerated people lose connection and touch with our high speed world.
3) Functional Literacy: Many people leaving prison now are handicapped by not working, not caring for themselves, being shut in and told what to do. They need retraining just to function.
4) Illiteracy, mental illness, PTSD, Trauma and Substance Abuse: Many went into the system because they were unable to handle stress, and by the time they come out of prison they are worse than they were before. They simply cycle back in.
5) Homelessness and lack of family support: Most reentering citizens have no home, no resources, little connection to their family. How can they get to work, conduct business, do anything without stability? They end up victimized.
6) Lack of ReEntry Services: Due to cutbacks in social services, and a lack of cohesive solutions, there are few consistent programs to help people reenter successfully. Many non-profits are doing their best to fill in the gaps and it is not enough to meet demand.
7) Washington State ID: Many people with felonies are released without proper ID and without the cash to do simple business. Our state releases people with a Washington State Offender Badge that lists their prison number and their picture. It is bright green, and is not useful for renting a home, cashing a check, buying medication, or transacting business of any kind. How is that useful? Please check out WhatcomREC.org to see what we are doing about this.

The problem is that these issues ripple out to affect our entire society in compounding waves. Whatcom County spends 64 -70% of our taxes on law and justice costs. The secondary costs to our social services for the family left behind starts escalating.

This is not a good investment of our money, and it is not healing our community. There are many, many solutions that could be implemented to cut costs and break the cycle of destruction such as mental health court, restorative justice, job re-skilling platforms, new recovery programs and more.

Join us at the Community Opportunity Visionary Mastermind Conference at the Bellingham High School on Saturday, Oct 1, from 8:30 to 5 PM to talk about solutions. It is a suggested donation event. On Saturday evening at 7 PM there is a Vitality Concert to promote change and new thought thinking. Help us understand, adapt and change to meet the needs of people today. The world is not what it used to be.

Joy Gilfilen is the President of the Whatcom County ReEntry Coalition. Joy can be reached at joy@unitingCreatives.com or at 360-739-7493.

Washington State Budget and Policy Center article:

http://budgetandpolicy.org/schmudget/poverty-skyrockets-while-governor-calls-more-cuts

Poverty skyrockets while more cuts loom

Posted by Lori Pfingst at Sep 22, 2011 04:05 PM | Permalink

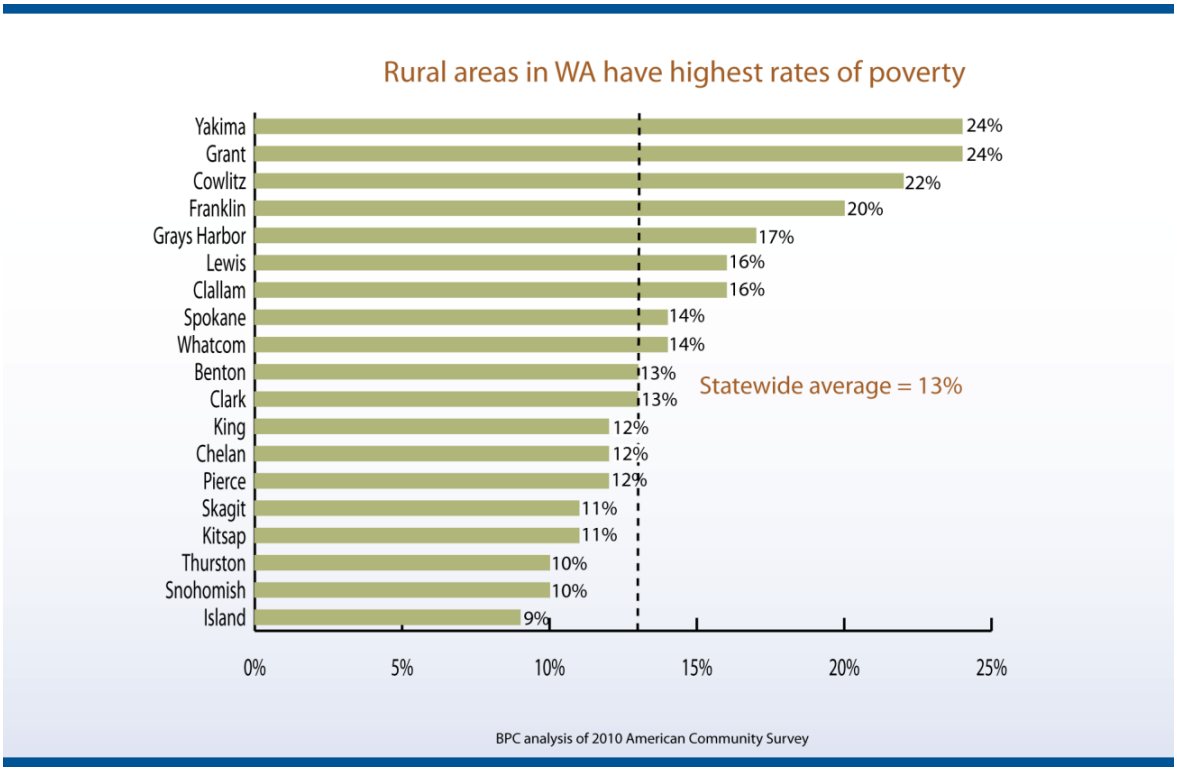
Official poverty estimates released today by the U.S. Census Bureau show catastrophic growth in poverty in Washington state. The worsening poverty statistics were released just as Governor Gregoire called upon the legislature to slash $2 billion in funding for health care, child care, and education investments during a 30-day special session to begin on November 28th.

Some key numbers for Washington state

- Nearly 890,000 people in our state now live below the federal poverty line. **For a family of four, that means surviving on less than $23,000 a year.**
- Between 2009 and 2010, 84,000 more Washingtonians slipped into poverty.
- Over 33,000 more children are living in poverty, a jump from 16 percent to 18 percent between 2009 and 2010.
- During the same period, median household income in Washington state declined by nearly $2,000 to $55,631 from $57,416 (after adjusting for inflation).

Poverty hurts our whole state

While every corner of our state is impacted, counties with large rural populations and children are among the most vulnerable: Yakima, Grant, Cowlitz, and Franklin counties have the highest rates in the state, with at least one in five residents living in poverty;



Deep Poverty on the Rise

While thousands of new Washingtonians fell into poverty last year, the situation also become much worse for those already struggling to make ends meet. The number of people living in deep poverty – with incomes below $12,000 a year (for a family of four) – now account for 45 percent of all people living in poverty. This rise in deep poverty will have significant, long-term negative consequences on Washington's children, families, and communities, as well as our labor market and future economic potential.

Public economic structures more important than ever

Washington can, and should, invest in struggling families to mitigate the impact of the economic downturn and ensure our future prosperity. This means we must adopt sensible revenue increases in order to maintain the public health, safety, child care, education, and other systems that form the foundation of our state economy. Yet, policymakers continue to move our state in the opposite direction making unprecedented cuts to these and other public structures that would ignite the economy and promote job creation.

We need a new strategy for developing a state budget that will protect Washington from the economy and make the necessary investments to promote jobs. When the legislature convenes in November , it is essential that they consider new revenue to make the vital investments needed to put Washington on a stronger path to prosperity.

Resources from Terry Weber, Pioneer Human Services:

Here is a copy of an email I just received from Terry Weber (on short notice) one of our speakers and an attendee at the Community Opportunities Visionary Opportunities Conference held in Bellingham, October 1, 2011. On short notice, he provided many links about the failed Thurston County Jail, links to financial documents and resources that show how investing in our community directly pays the community back in reduced costs of incarceration, and much more. I will forward this email with all the hyperlinks working so it is easier for you to peruse.

show details 10-12-2011

Terry Weber via joygilfilen.com to joy

Due to the short notice this is what I was able to gather about some of the challenges around the Thurston County Jail, which is now vacant for the lack of money to operate it:

http://www.theolympian.com/2011/07/07/1715400/citizens-were-kept-in-the-dark.html
http://www.theolympian.com/2011/04/16/1618379/why-do-we-need-two-new-jails.html
http://www.theolympian.com/2011/05/31/1670064/commissioners-wise-to-fund-study.html
http://www.theolympian.com/2011/05/24/1661945/county-to-hire-consultant-to-study.html
http://www.theolympian.com/2011/03/11/1574673/way-to-use-jail-sought.html

Franklin County Jail http://www.theolympian.com/2011/10/04/1824953/officials-aim-to-show-need-for.html http://www.theolympian.com/2011/09/29/1819145/franklin-county-officials-want.html

Pierce County Jail http://www.thenewstribune.com/2008/02/20/288070/staffing-shortages-plague-pierce.html
http://www.thenewstribune.com/2007/07/22/115699/is-it-time-to-build-another-jail.html

Spokane – a jail site talking about programming…http://www.spokanecounty.org/jep/content.aspx?c=1790

Model alternatives instead of incarceration http://www.delanceystreetfoundation.org/aboutus.php
http://www.pioneerhumanservices.org/aboutus.html

Ave cost of incarceration for DOC per inmate /$34,615 per year http://www.doc.wa.gov/aboutdoc/docs/msCostOfIncarceration.pdf

Washington State Institute of Public Policy

Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates http://www.wsipp.wa.gov/pub.asp?docid=06-10-1201 Exhibit 4 is the initial report to the legislature in 2007 that identifies alternatives and benefits minus costs – you can see the value of alternative programs and working with youth is especially cost effective – the more resources you can provide to support alternative sentencing programs and focus on people prior to entering the revolving door on the jail system until the graduate to prison, the more ROI

Return on Investment: Evidence-Based Options to Improve Statewide Outcomes: http://www.wsipp.wa.gov/pub.asp?docid=11-07-1201

Recently posted and a quick read (7 pages) with results for many options but I want to identify Community Employment Training/Job Assistance near the bottom of page 4 reflecting the project we are working on at Pioneer Human Services. http://www.wsipp.wa.gov/rptfiles/11-07-1201.pdf

Monetary Benefits
Column 1 – Total benefits $4,641 = stems from reduced crime, impact on labor market/health care benefits
Column 2 – Taxpayer $1,104 amount expected to be received by taxpayers
Column 3 - Non-taxpayer $3,537 amount accrued to others not victimized by the avoided crimes

Costs
Column 4 – $132 Cost per participant to implement in Washington state

Summary Statistics
Benefits minus costs (net present value)
Column 5 - $4,509 benefit to cost summary
Column 6 - $35.13 benefit to cost ratio (benefits divided by costs) for every $1 invested there is a $35.13 ROI – **can a jail produce that?**
Column 7 - Rate of return on investment was not computed due to an inability to be reliably estimated
Column 8 – 100% Measure of Risk (odds of a positive net present value) the "program has 100% chance of producing benefits that exceeds costs"

You can see that there are many alternative sentencing programs that produce a positive ROI rather than incarcerating someone in jail.

Court Navigator - $38,000 per year
Most people get into the system and due to economic status, lower education attainment (jails expansion have been based on the drop-out rate) and as a result cannot navigate the system to get out. I provided a Welfare to Work Non-custodial Parent Offender program in partnership with Tacoma municipal Court and the Division of Child Support in 2000-2003.

By creating and implementing a court navigator for our program, we reduced incarceration rates and recidivism rates significantly by providing initial risk assessments, linking people to community resources, services and programs to address the root cause while providing access to case management as a Central Point of Contact (CPOC) between treatment providers and the courts, and assisting participants with job search and job ready services, training and retention services.

We had a 77% success rate of people obtaining employment and retention to obtain $.50 wage increase within 6 months, becoming tax and child support paying citizens with increased family reunification. The amount of child support claimed by participants neared $1 million and courts costs and fines were paid as well.

The cost of a single staff with access to Community Case Management (CCM) is estimated to be $38,000 per year with Benefits. The courts recognized our program as the single most valuable asset to them and

Assigned Council by streamlining the court processes, reducing court monitoring calendars, nearly eliminating violations for failure to comply with court orders and re-incarceration rates for nearly 200 participants was less than 2%.

I created and implemented the Get Employed Today program in the Thurston County Corrections Facility in 2005 and after 2 years of grant funding, Thurston County continues to pay for the program to provide job search ready and job ready programming in the pods and for the work release due to the reduced return rate of inmates.

There are many resources available as alternatives to incarceration as well as providing access to treatment in the community at a cost of $2,102 per person for a return on investment of $7.35…I am sure if the jail consultant provides the cost per ADP (Average Daily Population) it will be in the thousands and that is not an ROI…

There is so much more that can be done if a community invests in the community…incarceration is not an answer; I was in DC for the Serious Violent Offender Reentry Initiative and the keynote speaker was amazed that our nation would continue to invest in a broken system…corrections does not work; interventions and opportunities do. Your community must reinvest in the community. The few jobs created by building a new jail and staffing it with more corrections offices only contributes to the problem…not the solution. Punishment does not teach anyone anything except to be better at breaking the law…people need the tools to become better citizens.

More resources are available at:

PEW

- One in 31: The Long Reach of American Corrections (2009)
- One in 100: Behind Bars in America (2008)
- Strengthen Community Corrections (2008)

I hope this helps

Terry Weber

Workforce Development Manager
Pioneer Human Services
7440 W. Marginal Way S.
Seattle, WA 98108
206.766.7033
www.pioneerhumanservices.org

"Noble Cause Corruption Must Stop"

I swear that the information contained in this report is accurate to the best of my knowledge. In Summary, I believe you will find in Addendum 1, 2, and 3 plenty of evidence that shows how our elected officials seem to be running a Con Game using tax money. We've trusted them and given them many chances to self-correct. They are not listening. They obscure, mislead and lie to us in public. They have breached their oaths of office. They manipulate campaigns. Taxpayers are done paying the bills.

Millions of tax dollars have been spent. People have been harmed. Thousands of volunteer hours of time, resources, ideas and input from the taxpayers were given to promote better practices. There has been little return on that investment of time and trust.

Taxpayers were marginalized and their concerns were sidelined as "outside the scope" of planning to build the big jail. Evidence in Addendum 1, 2 and 3 clearly shows the citizens how the scam works. It is time to stop tricking people into funding their own self-destruction.

This is a blatant "misuse of power, money and privilege".
Citizens have discovered the game. It is over.
'Noble Cause Corruption' has been identified and tracked.

Voters already said "NO"!

In 2016, the officials are still not listening – they are planning to run the tax to market again in a few months.

Investigators, please do your part. It is time to stop taxpayer abuse so that we can put our citizens back to work again in Whatcom County.

Thank you for your time,

Joy Gilfilen, Taxpayer and Citizen

WHATCOM COUNTY PROSECUTING ATTORNEY
DAVID S. McEACHRAN

CHIEF CRIMINAL DEPUTY
Eric J. Richey

ASST. CHIEF CRIMINAL DEPUTY
Warren J. Page

CRIMINAL DEPUTIES
David A. Graham
James T. Hulbert
Jeffrey D. Sawyer
Shannon Connor
Dona Bracke
Nathan E.Deen
Jonathan Richardson
Christopher D. Quinn
Brandon Waldron
Melissa Stone
Kellen Kooistra
Evan P. Jones
Caitlin R. McGrane

Whatcom County Courthouse
311 Grand Avenue, Suite 201
Bellingham, Washington 98225-4079
(360) 778-5710

CHIEF CIVIL DEPUTY
Daniel L. Gibson

ASST. CHIEF CIVIL DEPUTY
Angela A. Cuevas

CIVIL DEPUTIES
Karen Frakes
Royce S. Buckingham
Elizabeth L. Gallery

CIVIL SUPPORT ENFORCEMENT DEPUTY
Dionne M. Clasen

APPELLATE DEPUTIES
Kimberly Thulin
Hilary A. Thomas

ADMINISTRATOR
Kathy Walker

December 17, 2015

To: The Public Disclosure Commission (PDC)

From: Royce Buckingham

Re: Whatcom County's response to PDC staff inquiries re: Complainant Jehn's additional materials.

Dear Staff,

Enclosed, please find Whatcom County's response to the PDC's further inquiries regarding Whatcom County's October 2015 fact sheet mailing.

Thank you,

Royce Buckingham
Deputy Civil Prosecutor for Whatcom County
360-778-5710

PROCEDURAL POSTURE

The PDC originally received a number of complaints in this matter. PDC staff reviewed the complaints and submissions, wrote a detailed report, and recommended dismissal at the December 3, 2015 initial hearing.

On the eve of that initial hearing, complainant Jehn and complainant Gilfilen submitted additional materials to the PDC without notice to Whatcom County. A member of the Commission then expressed concern and moved that the matter be set over for a formal hearing. Complainant Jehn was then allowed to provide further new information via phone. The motion passed, and a new date was set in January, 2016.

After the initial hearing, Whatcom County was provided complainant Jehn's submissions. The submissions were contractor notes from two meetings.[1]

Whatcom County is now being given an opportunity to respond. PDC staff emailed Whatcom County the following questions on December 3, 2015:

> PDC staff does want to receive a copy of all of the Meeting Notes between DLR Group and Whatcom County from June through November 2015. If they are not in the County's possession, can you get them from DLR Group and forward to me or will I need to contact DLR Group directly?
>
> In addition, I want information about the survey work that was conducted, including, but not limited to, the final survey results. Who conducted the survey work, and who can I talk to about the survey work?

[1] These two items had been provided to jail opponents by Whatcom County on 11/20/15 via public disclosure, two weeks prior to the hearing. The disclosure contained approximately 192 emails and attachments. (Exhibit 9). Complainant alleges that the County took actions contained in the two items, but did not submit the bulk of the emails, which show the County did not take those actions, as explained below.

COUNTY RESPONSE

Enclosed are (1) all existing meeting notes between DLR and Whatcom County, along with correspondence from DLR identifying (2) which phone calls/meetings generated no notes, and (3) which proposed meetings were cancelled.

Also included are all County emails provided to jail opponents as the result of the public disclosure request for correspondence related to the jail mailer. Approximately 192 emails were provided. Again, it appears that the complainant selected and submitted two items from these emails—contractor notes from two early meetings regarding *proposals* by DLR.

Subsequent emails show that these proposals by DLR were rejected by Whatcom County. Complainants did not submit these subsequent emails. This submission should complete, clarify, and correct the record.

MEETING NOTES

Two in-person group meetings from DLR's proposed calendar were actually held. Those occurred on June 2 and July 3. Meeting notes from those two meetings are attached, including DLR's proposed calendar. (Exhibits 1, 2).

Other dates for web-based or phone contact between Whatcom County and DLR were proposed bi-weekly and labeled "Exec. Team Check In" on DLR's proposed calendar. These were proposed by DLR for: July 20, August 3, 17, 31, September 14 and 28. The results of these six proposed check-ins are described in Exhibit 3, summarized as follows:

- July 20 call was a two-person call between Erica Loynd at DLR and Tyler Schroeder of Whatcom County. "That meeting confirmed that the County would not proceed with the survey and closed that action item."
- August 3 call was cancelled.
- August 17 call was between Erica Loynd at DLR and Tyler Schroeder of Whatcom County. This two-person call "confirmed the schedule of the outreach efforts."
- August 31 call was cancelled.
- September 14 and 28 calls were between Erica and Tyler. Erica reviewed Tyler's comments on the proposed mailer.

No notes were generated from any of these two-person calls. One call included Justin Stranzl to "confirm the information we gathered from the PDC." (Exhibit 3).

SURVEY

DLR's proposal to do a survey was rejected by Whatcom County. (Exhibit 3).

ADDITIONAL PDC QUESTIONS

On December 14, 2015, PDC staff added the following questions:

> Thank you. I would like to speak directly with Justin Stranzl, with DLR Group, about his September 2, 2015 conversation with PDC Filer Assistance Specialist Chip Beatty. Can you facilitate that conversation or should I contact DLR Group directly? This conversation was summarized in an October 26, 2015 letter from William Valdez to Tyler Schroeder that Whatcom County included as Exhibit A when it responded to the complaints.

Whatcom County supplied direct contact information for Justin Stranzl to Phil Stutzman on December 15, 2015 (Exhibit 5).

> Another area I am investigating is Whatcom County's outreach to the community about the proposed ballot proposition during the months leading up to the election. For the period June 2014 through the election, please provide a complete list of speaking engagements, including the group spoken to, the speaker or speakers and support staff attending, the date of the speaking engagement, and who initiated the contact (from Whatcom County or from the group). Also, please provide copies of all emails sent and received between Whatcom County and community groups about proposed speaking engagements. Thank you.

Jack Louws and Bill Elfo are providing the requested details and narratives. Additionally, our technology department has done a search for any emails. (Exhibit 6). A response from Jack

Louws is attached (Exhibit 7), including his emails.[2] The County will forward Bill Elfo's narrative response as soon as it is completed.

DLR PROPOSALS

REJECTED BY WHATCOM COUNTY

Please note that the new information submitted by the complainant primarily consisted of proposals by contractor DLR contained in DLR's notes and calendar from initial meetings in June and July of 2015.

However, Whatcom County rejected all of the following proposals by DLR:

- Whatcom County rejected the DLR proposal of two mailers. Whatcom County only created one mailer, as allowed by PDC guidelines. As proof, please note that Whatcom County only produce one mailer. (*see also* Exhibit 8).
- Whatcom County rejected the DLR proposal of doing a survey. (Exhibit 3)
- Whatcom County rejected the DLR proposal of DLR-coordinated visits to community meetings. The County officials' disclosures of meetings actually attended show that DLR did not coordinate them. (Exhibit 6, 7, Bill Elfo's submission forthcoming).
- Whatcom County rejected the DLR proposal that the mailer have a "message" or contain the language: "Safe Home. Safe Community. Vote Yes for the Jail." (*See* final mailer, which contains no such language).
- Whatcom County rejected DLR's calendar characterization of the Public Outreach as "Campaigning." Per a quick review of approximately 192 emails and attached memos (Exhibit 9), no Whatcom County employee or official ever referred to distribution of the mailing as "campaigning."[3]

[2] Note that the events attended by Jack Louws do not coordinate with DLR recommended events. Jack Louws has included his own calendar so that the PDC may see all of his scheduled activity from June through November of 2015.

[3] Note that the word "campaign" is a commonly used business term for public outreach and PR, which are not prohibited. It is unknown whether the single instance of the word "campaigning" used by DLR on a calendar meant that DLR considered their proposed activities a "public outreach campaign" (not prohibited), a "PR campaign" (not prohibited), a "business campaign" (not prohibited), or an "election campaign" (prohibited). Regardless, DLR's intent is not at issue. Whatcom County did not participate in any "election campaigning," and, in fact, actively avoided it.

As an independent contractor, DLR *proposed* a number of actions. Complainants offered DLR's notes regarding these proposals on the eve of the hearing as proof that Whatcom County took those actions. To the contrary, Whatcom County researched the legality of these proposals and rejected all that did not meet PDC guidelines. The only DLR proposal Whatcom County followed was the single mailer, which Whatcom County was advised by the PDC was allowed. (Exhibit 8). After the content of the mailer was proposed by DLR, the mailer was also edited internally by Whatcom County to ensure compliance.

IN SUM

In sum, Whatcom County understood that the County (not its contractor, DLR) would be responsible for the actions it took. This is exactly why the County reviewed and rejected the above-listed proposals by its contractor. The County also understands, and wants to be clear, that the County is not responsible for contractor-proposed actions the County did not take.

The PDC staff is welcome to speak to County employees regarding any issues regarding the mailer. My suggestion is to start with Tyler Schroeder, as he is the most knowledgeable. Mr. Schroeder's email is tschroed@co.whatcom.wa.us . His phone number is (360)778-5200.

Sincerely,

Royce Buckingham

Civil Deputy Prosecuting Attorney for Whatcom County

Meeting Notes

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

Meeting Date	6/3/2015
To	Tyler Schroeder
From	Erica Loynd
Location	Whatcom County Executive's Conference Room
Project	Whatcom County Adult Corrections Facilities and Sheriffs HQ
Project No.	73-15102-01
Attendees	Jack Louws, Whatcom County Executive Tyler Schroeder, Whatcom County Special Projects Manager Sheriff Bill Elfo, Whatcom County Sheriff Office Jeff Parks, Whatcom County Sheriff Office Dan Gibson, Whatcom County Prosecuting Attorney Erica Loynd, DLR Group Justin Stranzl, DLR Group Bill Valdez, DLR Group Lori Coppenrath, DLR Group
Purpose	Public Outreach Kick Off

Notes

	Action
There are added benefits to a sales tax vs. property tax such as tourist and commuter taxes included in paying for the measure and the taxes are not centered on property tax payees only. The logistics of the technical working of the sales tax measure such as expiration dates, etc. are important to confirm and communicate to the people.	
Messaging needs to include information on the consequences if the measure does not pass. The outreach shall provide a clear idea of what will occur if the jail does not get built, but not use fear or threat approaches. Items include the financial impact, overcrowding limitations, raised cost/inmate (higher capital costs), and ongoing facilities maintenance of an aging building. These impacts cannot be "bluffed."	Bill Elfo shall describe consequences and provide full description for literature and message.
Sheriff Elfo has been determining a Plan B approach that would be required if the measure does not pass. • The County jail is required to meet regulated life safety conditions for the County needs. • Cities may be required to find alternative solutions at their own cost if this measure does not pass. • Population cap may be required to ensure the building is able to be maintained and not over-stressed by overpopulation.	
Bellingham Herald offered the opportunity for OpEd pieces over the next few months. Sheriff Elfo shall prepare a document for next issue on Friday 6/12.	Sheriff Elfo to write OpEd.

ATTACHMENT 1

Justin Stranzl detailed the "20-60-20 approach" where typical populations have approximately 20% of votes that say yes, and 20% that say no regardless of the literature or information provided. Sixty % may be predisposed but are willing to listen to each stance. These are the people who need to be talked to.

Upcoming Schedule Topics:
19 weeks until October 16 (ballots are released) – Public Outreach work shall be complete.

Bi-weekly leadership team meeting – Review with staff and County administration

- Work to create a mailer and make the unified voice.

Tyler Schroeder shall identify potential local communication companies to help with the outreach to be a sub-consultant to DLR Group. — Tyler Schroeder

Whatcom County shall confirm the appropriate communication the team may have with the PAC following the issue being confirmed on the ballot based on voter outreach regulations.

Sheriff Elfo is the lead decision-maker from the County team for the campaign. He will identify the key players that shall create the PAC. Tyler shall remain the point of contact to DLR Group. Tyler shall address responses to taxes questions, and Sheriff Elfo will address responses to operations.

Justin Stranzl

Items that may be used to get the message out include direct mailer or trifold (similar to mailer for Skagit County), direct meetings with local organizations such as Rotary and Chamber of Commerce. DLR Group shall provide information and arrange a scientific survey of topics and messages to be called to likely voters with a varied demographic. Calls shall be made by survey callers (not automated messages).

DLR Group
Seattle, Washington
o: 206/461-6000 f: 206/461-6049

Action Items	Next meeting in approximately two weeks. At this meeting ... DLR Group shall provide: • Draft questions for survey • DLR Group workplan of included scope • Master calendar with all dates and issues of when needs to be complete • Checklist items to do – confirmation items have completed Whatcom County shall provide: • Itemized list of the consequences if measure does not pass • Identify communications consultant (attend meeting if available and set up) • Confirmed go ahead from all cities (expected by June 17). • Names of potential PAC co-chairs • Any public meetings that are available to be attended by leadership team shall be confirmed and attended prior to next meeting.
cc	Attendees

DLR Group
Seattle, Washington
o: 206/461-6000 f: 206/461-6049

Meeting Notes

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

Meeting Date	July 2, 2015
To	Tyler Schroeder
From	Erica Loynd
Location	Whatcom County Executive's Conference Room
Project	Whatcom County Adult Corrections Facilities and Sheriffs HQ
Project No.	73-15102-01
Attendees	Jack Louws, Whatcom County Executive Tyler Schroeder, Whatcom County Special Projects Manager Jeff Parks, Whatcom County Sheriff Office Erica Loynd, DLR Group Justin Stranzl, DLR Group
Purpose	Public Outreach Progress Meeting

Action

Notes

Calendar of events was reviewed. Sheriff and County Executive have been attending community meetings as they come up to share the information. Community organizations shall be updated for all months of the calendar as a resource to anyone that intends to attend meetings. Updated calendar with deadlines for measure are added to calendar attached to these minutes to reflect new information. City groups shall also be included (approximately 6-8 per month).

Physical mailers will be provided to voters in two mailers. Mailers will be similar in appearance. Mailers will use information from survey as to the topics most relevant to the voters. Layout from Skagit County mailer is acceptable format.

Initial message for the mailer may be "Safe Home. Safe Community. Vote Yes for the Jail."

Whatcom County executive team will continue collaboration with Bellingham Herald.

Scope of work for additional community consultant shall not be pursued at this time.

Survey questions shall be revised to respond to Whatcom County issues. Questions shall have a maximum of 4-5 options to choose between. Information that is requested in particular:

- Are you a resident of Bellingham or not?
- Prioritize the issues of programs & services (essential treatment, mental health, chemical health, diversion), Safety for staff and inmates, space/capacity, and modern/efficient design.
- Are you supportive of the measure if Bellingham doesn't fully participate in the jail?

ATTACHMENT 2

- Discuss property tax vs. sales tax.

Survey will take 3-6 weeks to complete and provide final report. Design and message of mailer will occur immediately following. Questions shall be confirmed by July 10 to start survey on July 14.

Action Items	Next phone call meeting is scheduled for July 20. Biweekly meetings will be confirmed if necessary.	
	Survey Questions to WC by July 10.	Justin Stranzl

cc: Attendees
Sheriff Bill Elfo
Dan Gibson
Bill Valdez

DLR Group
Seattle, Washington
o: 206/461-6000 f: 206/461-6049

June 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE

June 2015

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 31 - Jun 6	May 31	Jun 1	2	3 EXEC. TEAM KICKOFF MEETING	4	5	6
Jun 7 - 13	7	8 BELLINGHAM	9 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	10 ROME GRANGE	11 B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE	12 B'HAM C.O.C. BFAST HAYNIE GRANGE	13 LAUREL GRANGE
Jun 14 - 20	14	15 BELLINGHAM	16 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	17 INTERLOCAL CONFIRMED FERNDALE C.O.C. LUNCH	18 B'HAM SUNRISE WC NORTH	19	20
Jun 21 - 27	21	22 BELLINGHAM	23 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB B'HAM C.O.C. LUNCH	24 B'HAM ELKS	25 B'HAM SUNRISE WC NORTH B'HAM LIONS	26	27
Jun 28 - Jul 4	28	29 BELLINGHAM	30 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB KING MOUNTAIN	Jul 1	2	3	4

July 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
NEIGHBORHOOD

EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jun 28 - Jul 4	Jun 28	29	30	Jul 1 LUMMI ISLAND GRANGE	2 B'HAM SUNRISE WC NORTH N. B'HAM GRANGE HOPEWELL GRANGE EXEC. TEAM CHECK IN (IN PERSON)	3	4 B'HAM C.O.C. 4TH OF JULY
Jul 5 - 11	5	6 BELLINGHAM	7 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	8 ROME GRANGE FAIRHAVEN	9 B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE FAIRHAVEN	10 HAYNIE GRANGE QUESTIONS CONFIRMED	11 LAUREL GRANGE
Jul 12 - 18	12	13 BELLINGHAM SURVEY BEGINS	14 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB SUNNYLAND	15 FERNDALE C.O.C. LUNCH	16 B'HAM SUNRISE WC NORTH ROOSEVELT	17	18
Jul 19 - 25	19	20 BELLINGHAM EXEC. TEAM CHECK IN (WEBEX)	21 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	22 SOUTH	23 B'HAM SUNRISE WC NORTH B'HAM LIONS B'HAM ELKS	24	25
Jul 26 - Aug 1	26	27 BELLINGHAM	28 BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB BIRCHWOOD (TBC)	29	30 B'HAM SUNRISE WC NORTH	31	Aug 1

August 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7/26 - 31	Jul 26	27	28	29	30	31	Aug 1
			BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB				
8/2 - 7	2	3	4	5	6	7	8
		BELLINGHAM EXEC. TEAM CHECK IN (WEBEX) SURVEY ENDS	PAMPHLET DESCRIPTION DUE LETTERED STREETS	LUMMI ISLAND GRANGE	B'HAM SUNRISE WC NORTH N. B'HAM GRANGE HOPEWELL GRANGE		LAUREL GRANGE
8/9 - 14	9	10	11	12	13	14	15
		B'HAM CITY COUNCIL RESOLUTION BELLINGHAM	BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	ROME GRANGE BARKLEY FAIRHAVEN	B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE SAMISH	INTERLOCAL COMMITTMENTS HAYNIE GRANGE	
8/16 - 21	16	17	18	19	20	21	22
	BELLINGHAM (MON.)	EXEC. TEAM CHECK IN (WEBEX) COMMITTEE FORMS DUE	BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB		B'HAM SUNRISE WC NORTH ROOSEVELT		
8/23 - 28	23	24	25	26	27	28	29
		BELLINGHAM REPORT COMPLETE	BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB		B'HAM SUNRISE WC NORTH B'HAM LIONS B'HAM ELKS		
8/30 - 9/4	30	31	Sep 1	2	3	4	5
		BELLINGHAM EXEC. TEAM CHECK IN (WEBEX) - MAILER DESIGN OPTIONS					

September 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

September 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October 2015

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug 30 - Sep 5	**Aug 30**	**31**	**Sep 1** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**2** LUMMI ISLAND GRANGE	**3** B'HAM SUNRISE WC NORTH N. B'HAM GRANGE HOPEWELL GRANGE EDGEMOOR	**4**	**5** LAUREL GRANGE
Sep 6 - 12	**6**	**7** BELLINGHAM	**8** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**9** ROME GRANGE FAIRHAVEN	**10** B'HAM SUNRISE WC NORTH B'HAM LIONS TEN MILE GRANGE FAIRHAVEN	**11** HAYNIE GRANGE MAILER #1 MAILED	**12**
Sep 13 - 19	**13**	**14** EXEC. TEAM CHECK IN (WEBEX) MAILER DESIGN CONFIRMED BELLINGHAM	**15** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB PUGET	**16**	**17** B'HAM SUNRISE WC NORTH B'HAM LIONS B'HAM ELKS ROOSEVELT	**18**	**19**
Sep 20 - 26	**20**	**21** BELLINGHAM	**22** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB	**23**	**24**	**25**	**26**
Sep 27 - Oct 3	**27**	**28** EXEC. TEAM CHECK IN (WEBEX) BELLINGHAM	**29** BELLINGHAM BAY MOUNT BAKER B'HAM KIWANIS CLUB KING MOUNTAIN (TBC)	**30** PUBLISH NOTICE OF NOV. G.E.	**Oct 1**	**2**	**3**

October 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE
EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

October 2015

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Sep 27 - Oct 3	Sep 27	28	29	30	Oct 1	2	3
Oct 4 - 10	4	5	6	7	8 FAIRHAVEN	9 MAILER #2 MAILED	10
Oct 11 - 17	11	12	13	14 COLUMBIA FAIRHAVEN	15 ROOSEVELT	16 **BALLOTS ISSUED**	17
Oct 18 - 24	18	19	20	21	22	23	24
Oct 25 - 31	25	26	27	28	29	30	31

CAMPAIGNING IS COMPLETE.

NO ADDITIONAL EVENTS.

November 2015

ROTARY
KIWANIS
CHAMBER OF COMM.
GRANGE

EXECUTIVE TEAM
BALLOT MEASURE
SURVEY

November 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 1 - 7	Nov 1	2	3	4	5	6	7
			VOTING DAY!				
Nov 8 - 14	8	9	10	11	12	13	14
Nov 15 - 21	15	16	17	18	19	20	21
Nov 22 - 28	22	23	24	25	26	27	28
Nov 29 - Dec 5	29	30	Dec 1	2	3	4	5

Whatcom County ACFSHQ Public Outreach
73-15102-01

Note: Input fields highlighted in blue.

DLR Group Team (Region)	Role	Initials	Hourly Rate
Bill Valdez	CL	BV	$235
Erica Loynd	PM	EL	$175
Justin Stranzl	PD1	JS	$175
Lori Coppenrath	PD2	LC	$175
Matt Virkler	AR1	MV	$175
Virginia Bosworth	AR2	VB	$115
Name7	AR3	GG	$0
Name8	ID1	HH	$0
Name9	LA1	II	$0
Name10	CE1	JJ	$0
Name11	CE2	KK	$0
Name12	SE1	LL	$0
Name13	SE2	MM	$0
Name14	ME1	NN	$0
Name15	ME2	OO	$0
Name16	EE1	PP	$0
Name17	EE2	QQ	$0
Name18	RBM	RR	$0
Name19	QA	SS	$0
Sabrina Ames	AA	SA	$90

Construction Budget	**$0**
Total Gross Fee	**$86,138**
Consultants	
Communication Consultant	$0
Survey Consultant	$13,000
Consultant No. 3	$0
Consultant No. 4	$0
Consultant No. 5	$0
Consultant No. 6	$0
Consultant No. 7	$0
Consultant No. 8	$0
Consultant No. 9	$0
Consultant No. 10	$0
Consultant No. 11	$0
Consultant No. 12	$0
DLR Group Net Fee	**$73,138**
Estimated Average Hourly Rate	$175
DLR Group Net Hours	**418**

Percentage Fee Breakdown

	PD	SD	DD	CD	BN	CA	PO	TOTAL
Project Management	60.00%							**60.00%**
Programming	10.00%							**10.00%**
Civil Engineering	0.00%							**0.00%**
Landscape Architecture	0.00%							**0.00%**
Interior Design	0.00%							**0.00%**
Architecture	25.00%							**25.00%**
Structural Engineering	0.00%							**0.00%**
Mechanical Engineering	0.00%							**0.00%**
Electrical Engineering	0.00%							**0.00%**
Construction Administrator	0.00%							**0.00%**
Administrative Assistant	5.00%							**5.00%**
TOTAL	**100.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**0.00%**	**100.00%**
TOTAL FEE	**$73,138**							**$73,138**

Hours Breakdown

	PD	SD	DD	CD	BN	CA	PO	TOTAL
Project Management	251							**251**
Programming	42							**42**
Civil Engineering	0							**0**
Landscape Architecture	0							**0**
Interior Design	0							**0**
Architecture	104							**104**
Structural Engineering	0							**0**
Mechanical Engineering	0							**0**
Electrical Engineering	0							**0**
Construction Administrator	0							**0**
Administrative Assistant	21							**21**
TOTAL HRS	**418**	**0**	**0**	**0**	**0**	**0**	**0**	**418**
TOTAL FTE	**0.5**							

	PD	SD	DD	CD	BN	CA	PO
Project Duration (Weeks)	22						

Project Work Plan - Summary

Whatcom County ACFSHQ Public Outreach

DLR Group Project No. 73-15102-01

DLR Group

Client:	Whatcom County
Project Size (SF):	Total Program SF (no commas)
Total Project Budget:	Total Project Budget (no $ or commas)
Project Type:	Project Type
Project Description:	Project Description

BUDGETED Hours:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	TOTAL 357
CL	PM	PD1	PD2	AR1	AR2	AR3	ID1	LA1	CE1	CE2	SE1	SE2	ME1	ME2	EE1	EE2	RBM	QA	AA	
BV	EL	JS	LC	MV	VB	GG	HH	II	JJ	KK	LL	MM	NN	OO	PP	QQ	RR	SS	SA	
203	110	127	170	179	115	0	0	0	0	0	0	0	0	0	0	0	0	0	80	$63,795

Total Hours per Staff:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	357

Project Phase	*Duration:*	*DUE Date:*	*TOTAL Hrs:*
PRE DESIGN	22 Weeks	10/16/2015	357

Total Workplan Net Fee Reqd:	*Total Workplan Hours Reqd.*
$63,795	357

Total Contract Net Fee:	*Total Budgeted Hours:*
$73,138	418

Project Work Plan - Pre Design

Whatcom County ACFSHQ Public Outreach

DLR Group Project No. 73-15102-01

DLR Group

Client: Whatcom County
Project Size (SF): na
Total Project Budget: na
Project Type: na
Project Description: na

BUDGETED Hours:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	357
CL	PM	PD1	PD2	AR1	AR2	AS2	ID1	LA1	CE1	CE2	SE1	SE2	ME1	ME2	EE1	EE2	RBM	CA	AA	
BV	EL	JS	LC	MV	VB	GG	HH	II	JJ	KK	LL	MM	NN	OO	PP	QQ	RR	SS	SA	
235	175	175	175	175	115	0	0	0	0	0	0	0	0	0	0	0	0	0	90	
1.5	1.5	1.5	1.5																	6
	1.5	1.5																		3
4	7	7	4																	22
6	9	20	6																	41
1																				1
4			8																	12
20	2		2																	24
		8																		8
2	6	16	2																	28
1	4	1		24																30
1	6	1			16															24
	1	1			2															5
																			1	5
8	70	70																	5	153
																				0
																				0
																				0
																				0
235	175	175	175	175	115	0	0	0	0	0	0	0	0	0	0	0	0	0	90	

Project Phase	Duration:	DUE Date:	TOTAL Hours:
PRE DESIGN	22 Weeks	10/16/2015	357

MEETINGS:
- 6 Kickoff meeting - On 6/3/2015
- 3 Outline meeting on 7/2/2015 - in Bellingham
- 22 Bi-weekly coordination meeting - Web based conference call
- 41 Windshield time - Travel to Bellingham

Interlocal Reconciliation - Configuration for ~400 beds
- 1 Review meeting
- 12 Program Analysis for facility with up to 400 beds
- 24 Cost estimate reconciliation

SURVEY
- 8 Coordinate professional survey
- 28 Provide options and questions to survey consultant for review and development of survey

MAILERS
- 30 Develop branded handout and mailings for publicity
- 24 Graphic assistance - Renderings or imagery for handouts
- 5 Printing assistance of mailers

GENERAL
- 153 Ongoing coordination with Whatcom County

Total Hours per Staff:

48.5	110	127	23.5	24	18	0	0	0	0	0	0	0	0	0	0	0	0	0	6	357

Total Hours per Week:

2	5	6	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Total Workplan Net Fee Req'd:	Total Workplan Hours Req'd:
$63,795	357

Total Net Fee Budgeted on PIF:	Total Hours Budgeted on PIF:
$73,138	418

Royce Buckingham

From:	Tawni Helms
Sent:	Thursday, December 03, 2015 4:08 PM
To:	Mark Burnfield
Cc:	Tyler Schroeder
Subject:	FW: Public Discloure Request

Mark,

I contacted Erica Loynd with DLR to inquire if they had recorded any minutes for the meetings (phone calls) as requested by Mr. Jehn.

Please see the information below.

Thanks,

Tawni Helms, PHR
Administrative Coordinator
Whatcom County Executive Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
360-778-5208

"My wish for you is that you continue. Continue to be who and how you are, to astonish a mean world with your acts of kindness..." ~Maya Angelou

Disclaimer: Public records and documents are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

From: Loynd, Erica [mailto:eloynd@DLRGROUP.com]
Sent: Thursday, December 03, 2015 4:02 PM
To: Tawni Helms
Cc: Tyler Schroeder
Subject: RE: Public Discloure Request

Yes, there was a call on July 20. There are no notes from that meeting, but looking back at my email it is in line with the closure of the survey work. That meeting confirmed that the County would not proceed with the survey and closed that action item.

Thanks,
Erica

From: Tawni Helms [mailto:THelms@co.whatcom.wa.us]
Sent: Thursday, December 03, 2015 3:58 PM
To: Loynd, Erica
Cc: Tyler Schroeder
Subject: RE: Public Discloure Request

Thank you Erica.
Did a phone call take place on July 20? If so, were there any minutes taken?

Best,

ATTACHMENT 3

Tawni Helms, PHR
Administrative Coordinator
Whatcom County Executive Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
360-778-5208

"My wish for you is that you continue. Continue to be who and how you are, to astonish a mean world with your acts of kindness..." ~ Maya Angelou

Disclaimer: Public records and documents are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

From: Loynd, Erica [mailto:eloynd@DLRGROUP.com]
Sent: Thursday, December 03, 2015 3:55 PM
To: Tawni Helms
Cc: Tyler Schroeder
Subject: RE: Public Discloure Request

Hello Tawni,
You are correct, there are no meeting notes or minutes for these phone conversations. The reservation was a phone call between Tyler and myself on our calendars to ensure that we could check in and make sure the work was on track. When there was no updates between Tyler and I, we cancelled the phone call. I believe one of the calls we included Justin Stranzl with my team to confirm the information we gathered from the PDC.

Looking back in my emails, the phone calls on August 3 and August 31 were cancelled. The phone call on August 17 confirmed the schedule of the outreach efforts. During the phone calls on September 14 and September 28, Tyler and I reviewed his comments on the informational mailer. No follow up notes were taken during these phone calls.

Please let me know if there is anything else I can help you.
Thank you
Erica

From: Tawni Helms [mailto:THelms@co.whatcom.wa.us]
Sent: Thursday, December 03, 2015 3:35 PM
To: Loynd, Erica
Cc: Tyler Schroeder
Subject: Public Discloure Request

Good afternoon Erica,

The County received a PDR request yesterday for minutes of Executive Team meetings with DLR. When searching our files we found no minutes for Executive Team meetings scheduled for the following dates:

July 20
August 3
August 17
August 31
September 14
September 28

After finding no minutes I searched our calendar and found no DLR meetings scheduled on those dates. Since yesterday's initial request it's come to our attention the meetings were shown on the calendar prepared by DLR. Those meetings were scheduled as placeholders for bi-weekly check-ins. I recall several of those meetings were canceled. Did

you record any minutes for those calls that did occur? Please identify which meetings/phone calls took place and if you took any minutes.

Thanks for your help,

Tawni Helms, PHR
Administrative Coordinator
Whatcom County Executive Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
360-778-5208

"My wish for you is that you continue. Continue to be who and how you are, to astonish a mean world with your acts of kindness..." ~ Maya Angelou

Disclaimer: Public records and documents are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

Royce Buckingham

From:	Royce Buckingham
Sent:	Tuesday, December 15, 2015 9:58 AM
To:	PDC Support (pdc@pdc.wa.gov); 'jstranzl@dlrgroup.com'
Cc:	Jack Louws; Daniel Gibson; Tyler Schroeder
Subject:	RE: PDC - Whatcom County Officials: Alleged use of public facilities to promote Propositon 2015-1 (Whatcom County Jail Ballot Measure)

Phil,

Here is Justin Stranzl's contact information (see below).

I've cc'd him on this email and spoken with him to let him know you will be calling. He is happy to speak with you, but wishes to notify his supervisor before doing so. You are welcome to ask Justin any questions you have. If any new concern arises from that conversation, or the information is different from Mr. Valdez's rendition, please disclose it to me so that I have notice of it.

Thank you,

Royce Buckingham
Civil Deputy Prosecutor for Whatcom County
rbucking@co.whatcom.wa.us
360-778-5710

From: Tyler Schroeder
Sent: Tuesday, December 15, 2015 8:24 AM
To: Royce Buckingham
Cc: Jack Louws; Daniel Gibson
Subject: FW: PDC - Whatcom County Officials: Alleged use of public facilities to promote Propositon 2015-1 (Whatcom County Jail Ballot Measure)

Royce,

Here is Justin's contact information;

Justin Stranzl, LEED AP
Business Development | Associate
jstranzl@dlrgroup.com

DLR Group
Architecture Planning Interiors
o: 503-274-2675 | m: 503-750-3471
421 SW Sixth Avenue, Suite 1212 Portland, OR 97204-1613
Find us at: dlrgroup.com | Facebook | Twitter

Feel free to call him to discuss the request and/or forward this information on to Phil at the PDC.

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

ATTACHMENT 5

Royce Buckingham

From: PublicRecordsOfficer
Sent: Thursday, December 17, 2015 11:22 AM
To: Royce Buckingham
Subject: Searches for PDC request

Royce,

I conducted a search of the email system for "all emails sent and received between Whatcom County and community groups about proposed speaking engagements". I used the keywords "speak", "attend", "appear" and "presentation" for the search. I then went through the resulting emails looking for references to presentations regarding the proposed jail.

I found two emails each for Sheriff Elfo and Executive Louws that were responsive to the request. Copies of the Louws emails were provided to you by his office and I will deliver copies of the Elfo emails.

Mark Burnfield, CPRO
Public Records Officer
Whatcom County
311 Grand Ave., Suite B-04
Bellingham, WA 98225
360-778-5233

ATTACHMENT 6

Mark Burnfield

From: Bill Elfo <belfo@co.whatcom.wa.us>
Sent: Tuesday, August 11, 2015 10:31 AM
To: programs@thewillowsbellingham.com
Cc: Dawn Pierce
Subject: FW: New Jail Presentation @ The Willows

Sierra, thank you for your kind invitation and I look forward to meeting your residents; I am just awaiting some September meeting schedules to be finalized and will call you back in a day or two. Thank you again! Bill

Sheriff Bill Elfo
Whatcom County Sheriff's Office
311 Grand Avenue
Bellingham, Washington 98225
(360) 676-6650
"Dedicated to making Whatcom County the safest in the State through excellence in public safety."

From: Sheriff
Sent: Saturday, August 08, 2015 3:36 PM
To: Bill Elfo
Cc: Jeff Parks; Wendy Jones
Subject: FW: New Jail Presentation @ The Willows

Sheriff –
This came in to the general Sheriff email.
Please let me know whether or not you are interested in giving a short presentation so we can respond.
Thank you.
Dawn

From: Programs at The Willows [mailto:programs@thewillowsbellingham.com]
Sent: Saturday, August 08, 2015 2:04 PM
To: Sheriff
Subject: New Jail Presentation @ The Willows

Hello Sheriff Elfo,
I am the Programs Coordinator at The Willows retirement apartments here in Bellingham. I am contacting you to see if you might be interested and available to come to our facility to give a short presentation about the plans for the new Whatcom County jail.

A large part of my job is providing our residents with opportunities to interact with and participate in the larger Bellingham community. This summer, I've initiated a program called Current Events where local community members and professionals come to The Willows to share their expertise about a specific subject or event. So far, we've had programs about the Bellingham Public School District's Bellingham Promise, honoring end-of-life care decisions within

Mark Burnfield

From: Bill Elfo <belfo@co.whatcom.wa.us>
Sent: Monday, August 17, 2015 2:53 PM
To: Bill Elfo
Subject: Fwd: Willows Presentation

Sent from my iPhone

Begin forwarded message:

> **From:** Programs at The Willows <programs@thewillowsbellingham.com>
> **Date:** August 16, 2015 at 4:23:07 PM PDT
> **To:** <belfo@co.whatcom.wa.us>
> **Subject: Willows Presentation**
>
> Good morning Sheriff Elfo,
>
> This is Jen, Sierra's assistant at the Willows. We came up with some dates for your presentation on the new Whatcom County Jail topic. We hope any of these will work with your schedule:
> Tues. Sept. 1 afternoon
> Wed. Sept. 2 afternoon
> Wed. Sept. 9 late morning/early afternoon
> Sat. Sept. 12 late morning/early afternoon
> Tues. Sept. 22 afternoon
>
> I hope we can connect on one of these dates. Please let us know asap. We are printing our September calendar and newsletter this week.
> Thank you for your time!
>
> Jen

PDC Response 12/15/2015

From: County Executive Jack Louws

To: Royce Buckingham

In response to the PDC complaints, and the inquiry of information from Phil Stutzman of the PDC, this is my response statement including relevant backup information that I found pertaining to speaking engagements.

As county executive, I spoke to community groups 6 times between June 1, 2015 and November 3, 2015 that included discussions concerning the jail.

On June 3, Mayor Kelli Linville of Bellingham and I had a "State of the City and County" event hosted by the Bellingham Chamber. This event was organized by the Chamber starting in the fall of 2014. See attached speech outline. I spoke on general county issues including the jail proposal. No county staff attended with me.

On July 2, I spoke at the Semiahmoo Men's Breakfast Club. Martin Conyac of the club was the meeting organizer. See attached for the requested topics of interest. I spoke about many general county issues including the jail proposal. No county staff attended with me.

On August 5, I spoke at the Lynden Noon Kiwanis. Marv VanderPol of the club was meeting organizer. I spoke on general county issues including the jail proposal. No county staff attended with me.

On August 27th, I spoke at the Democratic Central Committee. This was organized by the Democrats. They asked me to provide a pro statement for the jail. I articulated that in my official capacity I could articulate the facts, and I only asked them to be informed and to vote. The Sheriff was in attendance with me, but he did not speak. Please review the attached comments that were read verbatim at the meeting.

ATTACHMENT 7

On September 9, I spoke at the Lynden Morning Kiwanis. Ed Hinkle of the club was the organizer. I spoke on general county issues including the jail proposal. No county staff attended with me.

On September 19, I spoke at the Republican Central Committee meeting. Event was organized by the Republicans. See attached statement read at the Democratic Central Committee. I followed the same script. The Republicans did have a candidate portion of their meeting that I was unaware of until I arrived at meeting. No county staff attended with me.

As Mayor of Lynden and now as Executive, I have traditionally spoken before the Kiwanis groups in the past. I have also spoken to the Semiahmoo Men's Club before. These speaking engagements were initiated and organized by the groups, and my pattern is to jot down a few notes and speak to the members for a few minutes, and then open my time up to answer questions.

Starting in September, I was invited and attended quite a number of community forums hosted by community groups as a candidate for election. My opponent Joy Gilfilen attended these events, also.

Please note that my calendar (see attached) is a compilation of meetings organized by my staff and me, or are placed in the calendar by e-invitation by my wife Cindy. Many events are reoccurring or used as placeholders, therefore conflict with other events. My habit has been to use the phrase OOO_NCB (Out of Office – Not County Business) on calendar events that are not county related, such as personal business, vacation, family gatherings or campaign events. This system, although not perfect, is needed to keep my time organized.

Also, I am a member of the Northwest Business Club and Bellingham City Club; therefore their meetings are listed on my calendar. I did not speak at them, other than at the Northwest Business Club on October 14th as a candidate, which is identified in the calendar as a non-county event.

Jack Louws

Subject:	Semiahmoo Men's Breakfast Club
Location:	Semiahmoo Golf & Country club
Start:	Thu 7/2/2015 7:30 AM
End:	Thu 7/2/2015 9:00 AM
Recurrence:	(none)
Organizer:	Jack Louws

Contact is Martin Conyac – 371-7568
Location will be the Semiahmoo Golf and Country Club.

Would like you to speak about current hot topics in the County including the Jail and related taxation, what's going on with the Port of Bellingham, and the County's position on the Gateway Pacific Terminal. This is an informational meeting only. If you wish to do a power point, bring the laptop and projector and they will provide a screen.

ls

Jack Louws

Subject:	Lynden Noon Kiwanis meeting
Location:	Fairway Cafe, 1726 Front Street, Lynden
Start:	Wed 8/5/2015 11:45 AM
End:	Wed 8/5/2015 1:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Jack Louws
Required Attendees:	Cindy Louws <mygardenart@gmail.com>
Call Handling Mode 2:	2

Marv Vanderpol requesting you and Cindy to attend the Lynden Noon Kiwanis meeting for lunch on August 5th 12p-1p, arriving at 11:45. Requesting you give a brief update on current events. Mr. Vanderpol can be reached at 739-8178.

Regular Meeting

Location
Fairway Cafe -
1726 Front Street
Lynden, WA, 98264
United States

Date
Wednesday - August 5, 2015 - 12:00 PM to 1:00 PM

/SK

Jack Louws

Subject:	kiwanas lynden ed hinkle
Start:	Wed 9/9/2015 6:45 AM
End:	Wed 9/9/2015 8:15 AM
Recurrence:	(none)
Organizer:	Jack Louws

Jack Louws

Subject:	Rebuplican meeting to present jail proposal in officual capacity as exec with Shriff Bill
Location:	Meridian High School
Start:	Sat 9/19/2015 10:00 AM
End:	Sat 9/19/2015 11:30 AM
Recurrence:	(none)
Organizer:	Jack Louws

Arden Landry

From: Guy Occhiogrosso <Guy@bellingham.com>
Sent: Thursday, September 11, 2014 5:01 PM
To: Shelli Jones
Cc: Blamey, Sophia B.; Linda Salas; Arden Landry
Subject: RE: State of the City/County Addresses

Sophia, Linda, & Arden,

Could you help us coordinate Kelli and Jack's schedule for this event in early 2015?

Thanks!

Guy Occhiogrosso
President & CEO
Bellingham/Whatcom Chamber of Commerce & Industry
guy@bellingham.com | D: (360) 746-0738

Sign up for our free newsletter!

From: Shelli Jones
Sent: Thursday, September 11, 2014 4:59 PM
To: Guy Occhiogrosso
Subject: State of the City/County Addresses

Hi Guy,
Will you please forward a message to the people responsible for the Mayor and County Executive's schedule so we can coordinate a joint State of the City / State of the County Address similar to the one we did last year for our Chamber Speaker Series?
Ideally, we'd like the event in January 2015 if possible. Otherwise, March 2015.
Thank you!

Shelli Jones
Marketing Coordinator
Bellingham/Whatcom Chamber of Commerce & Industry
119 N. Commercial Street, Suite 110
Bellingham, WA 98225
360-734-1330
http://www.bellingham.com

WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Ave. Suite #108
Bellingham, WA 98225

Jack Louws
County Executive

State of the County – Chamber Address, Jun 3, 2015

Good afternoon. **Welcome and thanks:**

- **Chamber members, my fellow elected officials, and citizens.** It's my pleasure to be before you today to talk about the state of our county. I'd like to briefly review our accomplishments; then look at challenges and opportunities for the future.
- **Acknowledge Chamber staff** that makes these events possible. This forum for discussion and information sharing is vital and serves the County well, and we appreciate the staff who organizes the event.
- **Thank Bellingham Golf and Country club staff.** Having attended many events in this venue over the years, as I'm sure all of you have, we are quite fortunate to have this beautiful room, excellent service and good food available to us each time, and today is no exception.

The County has accomplished much over the last year:

- **Emergency Medical Services:** We continue to look for ways to maximize efficiency and bring costs down in our Emergency Medical Services system. The Fire District #7 Emergency Medical Services unit was fully integrated into the county-wide system. The EMS Emergency Oversight Board and Technical Advisory Board are working to consider future funding options for their operations. This funding challenge will need to be dealt with next year.
- **4th Superior Court judge** – state approved, a great thing for Whatcom County, and that meant remodeling the courthouse to accommodate our Superior Court Judge Rachel Montoya-Lewis's courtroom. This was completed in time for her to begin hearing cases in January.
- **Mental Health Court - began this past January** operating in Whatcom County District Court and the Bellingham Municipal Court. The program offers a comprehensive set of services designed to stabilize the symptoms of mental illness and provide recovery support to sustain

stable mental health and a better life for participants. The extent of these services is not provided in this manner in any other program and the success so far is very encouraging. We have participants who are achieving successes in their personal lives that were previously not attainable by them.

- **Information Technology has completed redesigning and upgrading our county data network** to improve security and stability, preparing for the implementation of the new telecommunications system. The new telecommunications system project is extremely active right now involving all of the county departments and it is scheduled for completion prior to year end.
- **The new County website** went live in March. This website reinforces our commitment to provide better access to our citizens for information.
- **A new recording system is contracted for**, and will be implemented in the Auditor's Office later this year.
- **Public Works projects** in the past year include the replacement of the Potter Road Bridge on the South Fork of the Nooksack River. Stormwater facilities and a channel restoration project were constructed at Coronado and Fremont Streets in Geneva to reduce phosphorus entering Lake Whatcom, and new flood control levee and habitat restoration were constructed in Canyon Creek near Glacier.
- **Lake Whatcom:** In conjunction with the City of Bellingham and Lake Whatcom Water & Sewer District, a five-year, $47million work plan was prepared and approved for protecting Lake Whatcom.
- **Human Resources completed the turnover report** last week and it shows that the net turnover/separation rate dropped below 7% in 2014 which indicates stability in our workforce. Also, recruitment activity year to date has doubled and we've welcomed some great new talent to our organization.
- **Reconveyance:** The Parks Department is currently planning for the future use of the reconveyance lands, and park facility reservations are now available on line.
- **Juvenile Court Success:** Of significant note, not necessarily realized in just the past year – our juvenile court is seeing a marked reduction in offenders. In 1999, there were 1,927 arrests with a 10-17 population (the age group most likely to be referred to juvenile court) of 1,922. The most recent arrest data indicate 606 arrests and a 10-17 population of

1,925. More juveniles are being diverted than are being charged. The success of this can be attributed to our use of a validated risk assessment tool, employment of evidence based programs in conjunction with a balanced and restorative approach to dealing with youthful offenders.

2015/16 Projects and Programs that are underway include:

- **Planning and Development Services multi-year plan to update the Whatcom County Comprehensive Plan** and conduct the urban growth area (UGA) review by June 30, 2016, as required by the Growth Management Act. This task is on track due in large part to the collaborative work being accomplished by the County and the Cities.
- **Critical Areas Ordinance Update is proceeding** within time frame and budget. The Administration anticipates that the Council will hold hearings in April of next year, meeting the deadline of June 2016 adoption.
- **New Code Enforcement Ordinance is being drafted** for review by Council that consolidates land use, critical areas (excluding shorelines) and life safety codes. This new ordinance, if adopted, will streamline and clarify the enforcement process and penalty assessments.
- **Open Government Training Program in place.** A system has been set up to provide and track the County's Open Government Training Program for roughly 350 board, commission, council, and committee members.
- **Major public works projects being completed this year** include traffic safety improvement on Slater Road at Imhof and Ferndale Road intersections. Turn lanes will be installed. The Portal Way Bridge at Dakota Creek will be upgraded for seismic retrofits and the Slater Road Bridge over the Nooksack River will be repaired and repainted.
- **Lake Whatcom Boulevard between Cable Street and Strawberry Point in the Lake Whatcom watershed will be resurfaced.** Further improvements are planned in 2016 to upgrade that area's stormwater system. Also, a new stormwater facility will be constructed along North Shore Drive to infiltrate runoff and reduce phosphorus from approximately 80 acres of residential and forested land near Academy Road.

- **Significant technology projects are slated for the next two years**, including new stormwater asset management software in Public Works for the National Pollutant Discharge Elimination System Phase II compliance; replacement of our permit system in Planning and Development Services; and modernizing case management systems for the Prosecuting Attorney's Office, Juvenile Court and District Court Probation.
- **Assessor's Office has moved the Countywide GIS Parcel Map Project to high priority.** This is the integral cornerstone to a multi-departmental unified Land Record System. A workgroup of Assessor's Office and Administrative Services Information Technology staff have begun pilot project design and implementation. The enhanced utility of a high quality digital land parcel map will be available for use in every county department.

Future Initiatives include:

- **Consolidation of County staff into county owned facilities in the downtown core** continues. In the short term this includes the final renovation of the Civic Building starting this year.
- **County Courthouse envelope replacement will need to be completed.** I anticipate this will be in 2020 to 2021.
- **New Jail:** The need for the new jail has been determined, and I'm hopeful that the opportunity will be given to the voters to decide if it is time to fix a long-term problem.

Financial Status:

- **Financial Status is best described as stable.** Revenues and expenses are tracking close to projections for the first few months of this year. The reduction in Canadian visitors will have an impact on our sales tax collection, but we will not experience as big a decrease as the cities, as our sales tax revenue is not as heavily dependent on retail.
- **State Budget Adoption Wait:** In what has become a yearly concern, we are waiting for the State to adopt their budget so we will know the status of liquor and marijuana tax funds, human services and criminal justice funds, and road, building and environmental funds.

- **Federal Government SRS/PILT:** Coupled with this is the ongoing challenge from the Federal Government concerning funding Secure Rural Schools and Payment in Lieu of Taxes. It may be necessary later this year to make slight budget adjustments in our 2015/2016 Biennial budget.

Summary

- We have moved forward on some very large initiatives. That work will continue. Our superb staff is busy and engaged, along with committed community members on all of our boards and commissions. I appreciate the council's commitment and direction as we work together to build an excellent quality of life for everyone in Whatcom County. Thank you for allowing me to present the State of the County to you today.

Democratic Statement – August 27, 2015

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs. If Proposition #1 passes, the County will build a replacement jail on LaBounty Road in Ferndale.

The proposition before County voters would add sales and use tax at the rate of 0.2% (20 cents on a $100 purchase) for construction and operation of jail facilities, adult corrections programs and inmate mental health programs.

The planned replacement jail incorporates design features and systems to maximize safety, security and operational efficiencies. The new Jail provides for educational and treatment programs to prevent recidivism, including a separate specialized mental health and substance abuse unit. The replacement jail site is centrally located and accommodates incremental expansion for future needs.

The current jail has been overcrowded and in disrepair for many years. Without this replacement jail the Sheriff has said; "*As Sheriff, I have a legal and moral obligation to operate the jail in a safe, constitutional and humane manner. The result of not replacing the main jail or incurring more years of delay will require investing millions more to stabilize and remodel the structurally flawed and inadequate facility. It will also require that the jail population be lowered, affecting the county's ability to continue meeting the jail needs of cities and tribes and will likely lead to a fragmented system of providing jail services in our community."

The County and the small cities have agreed to a financing plan and operating agreement to accomplish their desire of a replacement jail using the sales tax revenue if the proposition passes. Bellingham has chosen not to participate in the financing plan and operating agreement, therefore the jail will be smaller, and Bellingham will be responsible to provide alternate housing including corresponding mental and physical health care for their legally responsible misdemeanants. Please note that Bellingham will retain 100% of their share of the sales tax revenue to fund their correctional needs, as they are not party to the agreement.

Whatcom County and the cities are at a critical juncture. The path laid out by the Sheriff has been determined by the Jail Planning Task Force and the County Council as not the preferred option, as it does not solve the housing and program space issues critical to our success in providing alternative programming and health care for our inmates. This option will reduce inmate capacity for the cities and tribes, and all improvements and alternatives will be financed without new revenue. The replacement jail option provides for all the space needs required to augment programs to reduce recidivism for all the felons and many misdemeanants in Whatcom County, and solves the ongoing challenge of a jail in disrepair. This is accomplished with new revenue needed to build and operate the replacement jail.

The voters of Whatcom County are asked to engage in this discussion, and to Vote on November3rd.

*Bellingham Herald Editorial June 13, 2015

June 01, 2015 - June 07, 2015

June 2015

SuMo	TuWe	Th	Fr	Sa
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14 15	16 17	18	19	20
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July 2015

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19 20	21 22	23 24	25	
26 27	28 29	30 31		

Monday, June 01

- ☐ Golf Weekend (Chelan) - Cindy Louws
- **8:00am - 5:00pm OOO - NCB**

Tuesday, June 02

- ☐ 6:00am Golf Weekend (Chelan) - Cindy Louws
- **9:00am - 9:45am Monthly meeting Jack/Jon** (Jack's office) - Jack Louws
- **11:00am - 11:30am Bob Busch - Lummi Ferry Committee**
- **2:00pm - 2:30pm Diane Kamionka - NW Innovation Resource Center activities** (Jack's Office)
- **3:00pm - 3:30pm Kathy Seaman** (Jack's Office)

Wednesday, June 03

- **7:30am - 8:00am Tyler's birthday**
- **9:00am - 11:00am DLR Public Outreach Meeting** (RM-EX_ConferenceRoom) - Tawni Helms
- **11:30am - 12:00pm Travel**
- **12:00pm - 2:00pm Chamber Luncheon - State of the County/City with Kelli Linville** (Bellingham Golf and Country Club) - Jack Louws
- **2:00pm - 2:15pm bill elfo**
- **3:00pm - 3:30pm Malcolm Oliver** (Jack's Office)

Thursday, June 04

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **8:30am - 9:00am *Employee Anniversaries - see below**
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:30am - 12:00pm Sandy Korthius coming to office to meet staff, tour and meet with Executive** (RM-EX_ConferenceRoom) - Arden Landry
- **1:00pm - 5:00pm hold**

Friday, June 05

- ☒ **8:00am - 9:00am LSC Conference Call** (800-356-8278 code: 166384) - Josh Weiss
- **8:30am - 10:00am Department Head/Elected Officials Meeting** (Conference Room 514) - Linda Salas
- **10:00am - 1:30pm Lummi First Salmon Ceremony** (Lummi Nation School) - Jack Louws
- **1:30pm - 3:00pm Meet Tracy Jorgensen - Exec secretary candidate** (Our office) - Arden Landry
- **6:30pm - 8:30pm Anna's Graduation Party** (Garden Drive) - Cindy Louws

Saturday, June 06

- **10:00am - 10:30am Arrive at Parade site between 10 and 10:15**
- **11:00am - 1:00pm Optional: Lynden Farmer's Day Parade** (Lynden) - Jack Louws
- **2:00pm - 5:00pm Julia's Grad party** (Morrris) - Cindy Louws

Sunday, June 07

June 08, 2015 - June 14, 2015

June 2015

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July 2015

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5	6 7	8 9	10	11
12	13 14	15 16	17	18
19	20 21	22 23	24	25
26	27 28	29 30	31	

Monday, June 08

- **7:30am - 8:00am Tawni's last radiation day**
- **8:00am - 8:30am Arden OOO**
- **9:00am - 9:45am Monthly Meeting Jack/Jon** (Jack's office) - Jack Louws
- **10:15am - 11:00am Performance Review Prep -Mike Russell** (Write Mike's perf review)
- **11:00am - 12:00pm Performance Review - Mike Russell** (Jack's Office) - Jack Louws
- **2:00pm - 2:30pm EWRCC - LEED Construction and Accreditation** (Jack's Office) - Jack Louws
- **3:30pm - 4:15pm Regina Delahunt - Health Department Reorganization** (Jack's Office) - Jack Louws

Tuesday, June 09

- **9:30am - 10:00am Natural Resources Committee**
- **11:00am - 12:00pm Finance & Admin Serv Committee**
- **1:30pm - 2:30pm Public Works Health and Safety committee**
- **3:00pm - 4:00pm Planning and Dev. Committee**

Wednesday, June 10

- **10:00am - 10:30am IT Manager Meeting** (Jack's Office) - Jack Louws
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **11:30am - 1:30pm NW Business Club** (Elks Lodge - 710 South Samish Way)
- **1:00pm - 2:00pm PUD Strategic Planning** (RM-PW_Civic2ndFloorConferenceRoom) - Jon Hutchings
- **3:00pm - 3:30pm DNR Timber Counties** (Conference Call) - Laura Merrill
- **3:45pm - 4:15pm Discuss PDS staff concern** (Jack's office) - Jack Louws

Thursday, June 11

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 10:30am Monthly AS Mgr Mtg - Finance** (Jack's Office) - Jack Louws
- **10:30am - 11:30am Budget Development** (RM-EX_ConferenceRoom) - Tawni Helms
- **11:00am - 12:00pm Taxes due**

Friday, June 12

- **7:30am - 8:00am *10 Year Employee Anniversary for Cathy Craver**
- **8:00am - 2:30pm Woods Tour** (Deming Log Show grounds) - Jack Louws

Saturday, June 13

Sunday, June 14

June 15, 2015 - June 21, 2015

June 2015

SuMo	TuWe	Th	Fr	Sa
	1 2	3	4	5 6
7 8	9 10	11	12	13
14 15	16 17	18	19	20
21 22	23 24	25	26	27
28 29	30			

July 2015

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Monday, June 15

- **10:00am - 10:45am Jon Komorowski review prep** (Write Jon's performance review)
- **11:00am - 12:00pm Performance Review Jon Komorowski** (Jack's Office) - Jack Louws
- **12:15pm - 1:35pm Ooo ncb. Tl. Hearthfire Meet at 12:15**
- **3:30pm - 4:30pm DNR discussion with Commissioner Goldmark** (Conference call) - Laura Merrill

Tuesday, June 16

- **9:00am - 11:00am Small Cities Partnership Meeting** (Lynden City Hall)
- **2:00pm - 2:30pm Karlee Deatherage and Matt Isenhower (Del Bene's staff)** (Jack's Office)
- **3:00pm - 3:30pm Craig McConnell - WTA discussion** (Jack's office)

Wednesday, June 17

- **9:00am - 9:15am talk to kelli - personell issue**
- **2:00pm - 2:30pm Monthly meeting Jack/Mark** (Jack's office) - Arden Landry
- **3:00pm - 4:00pm Bi-monthly mtg - Rob/Jack** (see schedule below) - Jack Louws
- **5:00pm - 7:00pm President McKeown's retirement celebration** (Settlemyer Hall, 3028 Lindbergh Ave.) - Arden Landry

Thursday, June 18

- **7:00am - 8:00am breakfast with Kelli**
- **8:00am - 9:00am WTA Board Meeting** (Council Chambers)
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 11:00am Design Review Process** (RM-PW_Civic2ndFloorConferenceRoom) - Jon Hutchings
- **11:00am - 12:00pm Jail Financing** (Jack's Office) - Tyler Schroeder

Friday, June 19

- **8:30am - 9:00am *15 Year Employee Anniversary for Amy Monroe**
- **9:00am - 9:45am sign off on grant apps** (Jack's office) - Arden Landry
- **9:30am - 10:30am Jail financing** (Jack's Office) - Jack Louws
- **12:00pm - 4:30pm hold**
- **4:30pm - 6:00pm The Vikings Are Coming Downtown! June 19 WWU Ribbon Cutting Ceremony at The Herald Building!** (Herald Building, Suite 110) - Arden Landry

Saturday, June 20

- **2:00pm - 9:00pm Portluck/Garden Party/ Sterling Goens** (Orcas Island-Dream Ranch; 298 Boone's Pond Road) - Jack Louws
- **5:30pm - 8:00pm Tentative - Whatcom Land Trust Celebration** (412 N. Commercial) - Linda Salas

Sunday, June 21

June 22, 2015 - June 28, 2015

June 2015

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July 2015

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Monday, June 22

- **8:30am - 9:00am *Employee Anniversary - 10years for Marti Jones**
- **12:00pm - 1:30pm Rick Larsen Lunch Event** (Hampton Inn)
- **3:00pm - 4:00pm CONFIRMED: Home Dedication Ceremony -Kulshan Community Land Trust** (2939 Lafayette Street) - Jack Louws
- **4:30pm - 5:00pm Tim Douglas - will call you here**

Tuesday, June 23

- **9:30am - 10:00am Natural Resources Committee**
- **11:00am - 12:00pm Finance Committee**
- **1:30pm - 2:30pm Public Works, Health & Safety**
- **3:00pm - 4:30pm Special Committee of the Whole**
- **5:00pm - 7:00pm Tentative - WTA Strategic Plan Steering Committee Meeting** (Whatcom Community College Room 201)

Wednesday, June 24

- **9:00am - 9:30am Greg Baker (Superintendent Bellingham Schools)** (Jack's Office)
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **11:00am - 12:00pm Monthly mtg Sam/Jack** (Jack's office) - Jack Louws
- **11:30am - 1:30pm Bellingham City Club - tickets are at will call** (Northwood Hall, 3240 Northwest Avenue) - Jack Louws
- **2:00pm - 3:30pm Jail discussion** (Jack's office) - Jack Louws
- **3:30pm - 4:30pm Discussion on road projects** (Jack's office) - Jack Louws

Thursday, June 25

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **8:30am - 9:00am *Employment Anniversaries - see below**
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **12:00pm - 3:00pm hold -- OOO NCB**
- **3:00pm - 5:00pm Drug Court Graduation - Cindy attending** (Judge Snyder's courtroom, 3rd floor) - Jack Louws

Friday, June 26

- **9:00am - 9:15am hold for Kevin Thompson - public works coming to have something signed**
- **9:30am - 10:00am Flood Plain Planning Process Issues** (RM-PW_Civic2ndFloorConferenceRoom) - Jon Hutchings
- **10:00am - 10:30am FW: WRIA Mgmt Team Prep Re: Joint Board Reorganization Proposal** (RM-PW_Civic2ndFloorConferenceRoom) - Gary Stoyka
- **10:30am - 11:00am Ray Baribeau - jail discussion**
- **11:00am - 12:00pm hold - Karen**
- **1:00pm - 5:00pm hold unless mission critical**

Saturday, June 27

- **10:00am - 11:30am Optional: Sumas Community Days Parade** (Sumas) - Jack Louws

Sunday, June 28

- **10:00am - 2:00pm Lummi Island Open House - Tentative** (Fire District 11 Legoe Bay Road) - Linda Salas
- **2:00pm - 4:00pm Isla's Dance Recital** (Mt Baker Theater) - Cindy Louws
- **2:00pm - 4:00pm Isla's Dance Recital** (Mt Baker Theater) - Jack Louws

June 29, 2015 - July 05, 2015

June 2015

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July 2015

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Monday, June 29

- **8:30am - 10:00am Revised JFUA discussion** (RM-EX_ConferenceRoom) - Tyler Schroeder
- **9:00am - 9:45am Prep for Performance Eval - Karen** (Write Karen Goens' evaluation)
- **10:00am - 11:00am Performance Evaluation Karen Goens** (Jack's Office) - Jack Louws
- **11:30am - 1:45pm Rotary club with Dewey - Sun House presentation**
- **2:00pm - 3:00pm Jail Discussions - Mayor, Exec, Tyler and Brian** (Room.MY.Board Room [City Hall, 2nd Floor]) - Linville, Kelli J.

Tuesday, June 30

- **8:30am - 9:15am bruce mccormink in my office**
- **9:30am - 10:00am agenda approval**
- **10:45am - 12:15pm meet Ray at Jail Work Center**
- **2:00pm - 2:30pm Grant Wilder Retirement Reception (Optional)** (Room 514)
- **5:30pm - 7:30pm Festival of Music Picnic** (Bellingham Ferry Terminal) - Linda Salas

Wednesday, July 01

- **7:30am - 8:30am Breakfast Dave/Jack** (Meet at Diamond Jim's) - Jack Louws
- **9:00am - 10:30am EOB meeting** (RM-Courthouse514) - Tawni Helms
- **11:45am - 1:15pm meet Ray at Main Jail**
- **2:00pm - 3:00pm James Rienstra**
- **6:00pm - 10:00pm Paul & Chris Keeners** (Birch Bay) - Jack Louws

Thursday, July 02

- **7:30am - 9:00am Semiahmoo Men's Breakfast Club** (Semiahmoo Golf & Country club)
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **9:00am - 9:30am Travel**
- **10:00am - 11:00am meeting Chairman and Executive** (Lummi Gateway Center, 4920 Rural Ave, Ferndale) - Arden Landry
- **11:00am - 12:30pm FW: DLR Public Outreach** (RM-EX_ConferenceRoom) - Tawni Helms
- **12:30pm - 5:00pm OOO - NCB**
- **6:00pm - 9:00pm 85th Birthday Dinner for Alta Louws** (Condo) - Jack Louws

Friday, July 03

- **8:00am - 5:00pm Office closed for Independence Day** - Lisa Poast

Saturday, July 04

- **11:30am - 1:30pm Blaine's Old Fashion Parade** (Peace Portal Drive) - Jack Louws
- **11:30am - 1:00pm Optional: Blaine's Old Fashioned 4th Parade** (Along Peace Portal Drive, Blaine) - Jack Louws

Sunday, July 05

July 06, 2015 - July 12, 2015

July 2015

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August 2015

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Monday, July 06

- **8:00am - 8:30am Sandy Korthius' starts**
- **8:30am - 9:00am *Employee Anniversaries - see below**
- **10:30am - 11:00am travel to Lynden**
- **11:00am - 12:30pm Small Cities Partnership Meeting** (Lynden City Hall - 300 4th Street, Lynden) - Tawni Helms
- **12:30pm - 1:00pm travel from Lynden**
- **2:00pm - 4:00pm city council mtg**
- **4:00pm - 4:30pm B.J. - Document signing**

Tuesday, July 07

- **9:00am - 9:30am don't forget exec summary for council**
- **11:00am - 12:00pm Finance Committee meeting**
- **1:30pm - 2:30pm Public Works, Health and Safety Committee**
- **6:30pm - 7:00pm COTW - Executive Session**

Wednesday, July 08

- **10:00am - 10:30am IT Manager Meeting** (Jack's Office) - Jack Louws
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **11:30am - 1:30pm NW Business Club**
- **2:30pm - 3:15pm Ambulance Concerns** (Jack's Office) - Jack Louws
- **3:30pm - 4:15pm WCOG Policy Board** (314 Champion)

Thursday, July 09

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **9:45am - 10:45am Lorraine** (Condo) - Jack Louws
- **10:00am - 10:30am Monthly AS Mgr Mtg - Finance** (Jack's Office) - Jack Louws
- **10:30am - 11:00am talk to Sam and Jon re: Douglas**
- **1:30pm - 2:30pm Meeting - Jack, Tyler, Dewey jail jazz**

Friday, July 10

- **7:00am - 7:30am Kelli Linville's birthday**
- **8:30am - 10:00am Department Head/Elected Officials** (Confrence Room 514) - Linda Salas
- **10:00am - 11:00am Elected Officials Meeting** (Jack's Office) - Jack Louws
- **12:00pm - 5:00pm Hold**
- **6:00pm - 9:00pm NW WA Fair Foundation Annual Dinner/Fundraiser** (Fairgrounds) - Jack Louws

Saturday, July 11

- **11:00am - 12:30pm Optional: Everson-Nooksack Summer Festival & Parade** (Main Street Everson) - Jack Louws
- **5:00pm - 8:30pm NSEA's Salmon At The Bay** (Boundary Bay Brewery) - Jack Louws

Sunday, July 12

July 13, 2015 - July 19, 2015

July 2015

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August 2015

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Monday, July 13

- **9:00am - 9:45am Monthly Meeting Jack/Jon** (Jack's office) - Jack Louws
- **9:45am - 10:30am Regular Mtg. Jack / Regina** (Jack's office) - Arden Landry
- **10:30am - 1:30pm Ooonch Mitek Burlington**
- **2:30pm - 3:00pm Approve council agenda**
- **3:30pm - 5:00pm Skagit-Whatcom-North Sound Mental Health Administration: Behavioral Health meeting** (Executive's Office, 311 Grand Avenue, Suite 108, Bellingham (Use South Entrance) #676-6717) - Amber Kllogjeri

Tuesday, July 14

- **8:00am - 5:00pm NWTFA Golf Tournament -- optional** (Harbor Pointe Golf Club) - Jack Louws
- **4:00pm - 5:30pm Whatcom Funders Alliance Meeting** (1500 Cornwall Avenue)
- **6:30pm - 8:30pm An Invitation: CELEBRATE THE BELLINGHAM FESTIVAL OF MUSIC WITH THE MAESTRO** (1311 - 37th Street Bellingham) - Arden Landry

Wednesday, July 15

- **8:30am - 10:00am Bellingham PD Advisory Council** (Bellingham PD)
- **10:00am - 12:00pm State Auditor's Office Lean Program - Whatcom County (2nd revised meeting location) - Moved to Exec Conference Room** (RM-EX_ConferenceRoom) - Tyler Schroeder
- **12:00pm - 1:30pm Port of Bellingham - Tenant Appreciation Lunch (BBQ)** (Squalicum Boathouse 2600 Harbor Loop)
- **1:30pm - 2:00pm Monthly meeting Jack/Mark** (Jack's office) - Arden Landry
- **2:00pm - 3:30pm New phone system training** (IT Training Room - basement) - Arden Landry
- **3:30pm - 5:00pm** (Mayor's Board Room) - Jack Louws
- **5:00pm - 7:00pm Faithlife VIP Open House -- Check in at Bldg 4** (1323 Commercial St.) - Jack Louws

Thursday, July 16

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **9:45am - 10:45am Lorraine water** (Condo) - Jack Louws
- **10:30am - 11:30am Bi-monthly mtg with Executive Louws - Reynolds, Van Glubt, Komorowski** (Jack's office) - Jack Louws
- **11:30am - 12:00pm travel**
- **12:00pm - 1:00pm NEW Date Set For Northwest Consortium Committee Meeting** (Worksource Skagit Boardroom) - Arden Landry
- **1:00pm - 2:00pm travel**

Friday, July 17

- **8:00am - 8:30am Linda's last day**
- **9:00am - 12:00pm Meeting Regarding the Lummi Nation Conceptual Water Settlement Proposal for the Nooksack River Watershed** (Lummi Administration Bldg) - Jack Louws
- **12:00pm - 1:00pm lunch - office**
- **1:30pm - 2:15pm gene knutson** (exec office) - Jack Louws
- **2:30pm - 3:15pm interview**
- **6:00pm - 10:00pm Wine Cellar Opening** (Bob & Doris) - Jack Louws

Saturday, July 18

- **11:00am - 1:00pm Optional: Birch Bay Discovery Days Parade** (Birch Bay) - Jack Louws
- **1:00pm - 4:00pm Adult Day Health open house - optional** (851 Aaron Drive, Lynden) - Jack Louws
- **6:00pm - 9:00pm Tenative Dinner Bob Goodwin, Linville, Louws'** (Goodwins) - Jack Louws

Sunday, July 19

July 20, 2015 - July 26, 2015

July 2015

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August 2015

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Monday, July 20

- **7:00am - 7:30am Tawni's birthday**
- **7:30am - 8:00am Tyler OOO**
- **8:30am - 12:00pm Roger Brooks Presenation** (Fox Hall)
- **12:00pm - 12:30pm *Employee Anniversaries - see below**
- **2:30pm - 3:00pm Darcy Wiebe & Brian Haugen Meeting** (Jack's Office) - Jack Louws

Tuesday, July 21

- **8:00am - 8:30am Tyler OOO**
- **9:00am - 11:00am Small Cities Partnership Meeting** (usually Lynden City Hall)
- **9:30am - 10:30am Natural Resources Committee**
- **11:00am - 12:00pm Finance Committee Meeting**
- **1:30pm - 2:30pm Public Works, Health & Safety Committee**
- **6:00pm - 8:30pm Optional: Nickee Hughes Retirement Open House** (Squalicum Boathouse, 2600 N Harbor Loop Dr)
- **6:45pm - 7:00pm Committee of the Whole**

Wednesday, July 22

- **7:30am Jack OOO - NCB** - Jack Louws
- **8:00am - 8:30am Tyler OOO**
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **11:00am - 12:00pm Monthly mtg Sam/Jack** (Jack's office) - Jack Louws

Thursday, July 23

- **Jack OOO - NCB** - Jack Louws
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws

Friday, July 24

- **Jack OOO - NCB** - Jack Louws

Saturday, July 25

- **Jack OOO - NCB** - Jack Louws
- **11:00am - 1:00pm Optional: Old Settler's Pioneer Days Parade & Picnic** (Ferndale) - Jack Louws

Sunday, July 26

- **Jack OOO - NCB** - Jack Louws

July 27, 2015 - August 02, 2015

July 2015

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August 2015

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Monday, July 27

- 5:00pm Jack OOO - NCB - Jack Louws

Tuesday, July 28

- **7:30am - 8:00am Tyler out till Aug 4**
- **9:00am - 9:30am Approve council agenda**
- **1:00pm - 1:30pm Dewey**
- **1:30pm - 2:30pm Michael Burnett student field visit** (Jack's Office)
- **3:30pm - 5:00pm hold**

Wednesday, July 29

- **8:30am - 10:30am Staff orientation** (ROOM 514)
- **10:00am - 11:00am Waddell & Reed Ribbon Cutting** (2122 Barkley Blvd)
- **10:00am - 11:00am Q2 Administrative Finance Committee meeting** (Treasurer's conference room) - Karen Thomas
- **1:00pm - 2:00pm Dan/Bill**

Thursday, July 30

- **8:00am - 9:00am WTA Board Meeting** (Council Chambers)
- **8:30am - 12:00pm WTA Summer Budget Workshop confirmed** (Room 514) - Arden Landry
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **12:00pm - 2:00pm Lunch with Carole MD** (Ciao Thyme) - Jack Louws
- **2:00pm - 3:00pm Mtg with Exec/Jon, Ted Carlson, Rick Sepler re: Caitac E8/E9** (Jack's office) - Jack Louws
- **3:00pm - 5:00pm OOO - NCB**
- **5:00pm - 8:00pm OOO - NCB** - Jack Louws

Friday, July 31

- 8:00am ooo-ncb
- **9:00am - 9:30am **Employee Anniversary - 10 years for Kirk Christensen**
- **6:00pm - 9:00pm Business Dinner with BJ/Rachel** (Anthony's) - Jack Louws

Saturday, August 01

- **6:30pm ooo-ncb**

Sunday, August 02

August 03, 2015 - August 09, 2015

August 2015

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September 2015

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Monday, August 03

- **10:00am - 10:30am Daryl Campbell, CEO/President Goodwill** (Jack's Office) - Jack Louws
- **11:30am - 12:00pm travel to Ferndale**
- **12:00pm - 1:00pm Lunch Chairman Ballew/Executive Louws** (Chihuahua's/Ferndale)
- **6:00pm - 8:00pm Ferndale Council meeting** (Ferndale city hall) - Jack Louws

Tuesday, August 04

- **9:30am - 10:00am Natural Resources Committee**
- **10:30am - 11:00am Risk Management Pool Visit** (Jack's Office) - Jack Louws
- **11:00am - 12:00pm Finance Committee**
- **1:30pm - 2:30pm Public Works Committee**
- **3:00pm - 3:30pm Special Council Meeting - appointment of pro and con statement committees**
- **3:30pm - 4:30pm Special Committee of the whole - jail resolution - follows directly after the other COTW**

Wednesday, August 05

- **9:30am - 10:00am Discussion on potential event with Tyler Hooff and Jessica Serre** (Jack's office) - Arden Landry
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **10:45am - 11:00am Gary Dolan at his office** (Opportunity Council) - Jack Louws
- **11:00am - 11:15am drop tahoe at Hinton for service**
- **11:30am - 12:00pm travel**
- **11:45am - 1:00pm Lynden Noon Kiwanis meeting** (Fairway Cafe, 1726 Front Street, Lynden) - Jack Louws
- **2:30pm - 3:00pm do voicemail broadcast message for employee picnic**
- **3:00pm - 3:30pm dentist**

Thursday, August 06

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **8:30am - 9:00am *Employee Anniversary - 25 years for Maurice Hanna**
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 10:30am Pick employee names for draw prizes (with Shara)** (Jack's office) - Jack Louws
- **11:00am - 1:30pm staff picnic - strawberry sundaes** (Library Lawn) - Jack Louws
- **1:30pm - 4:00pm OOO - NCB**
- **4:00pm - 6:00pm (Tentative) Moss Adams 10th Annual Trap 'n' Skeet Competition** (Bellingham Gun Club, 940 Larson Road, Bellingham) - Linda Salas

Friday, August 07

- **7:15am - 7:45am Pick up Cherie to go out** (Airport) - Jack Louws
- **6:00pm - 9:00pm Beach BBQ with Bob & Kim** (Seniahmoo) - Jack Louws

Saturday, August 08

Sunday, August 09

August 10, 2015 - August 16, 2015

August 2015

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September 2015

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Monday, August 10

- **8:00am - 8:30am Arden OOO**
- **9:00am - 9:45am Monthly Meeting Jack/Jon** (Jack's office) - Jack Louws
- **10:00am - 11:00am purchasing policy discussion** (Jack's office) - Jack Louws
- **12:00pm - 1:00pm Rotary**
- **1:30pm - 2:30pm Whatcom County FY2014 Audit Exit Conference** (Room 514) - Jack Louws
- **1:30pm - 3:30pm City Council Meeting - Jail is 5th item on the agenda** (Bellingham) - Tawni Helms

Tuesday, August 11

- **9:30am - 10:30am Biennium Budget Review** (Jack's Office) - Jack Louws
- **10:30am - 12:00pm PMC Meeting** (Assessor/Treasuer Conference room 1st Flr. Courthouse) - Debbie Hayes
- **1:00pm - 2:15pm Tri-Funder meeting** (Port office-Mt Baker room) - McClain, Diane
- **3:30pm - 5:00pm Current jail use agreement with COB** (RM-EX_ConferenceRoom) - Arden Landry
- **4:30pm - 7:30pm Washington Federal Summer BBQ - We look forward to you joining us!** (Lairmont Manor) - Linda Salas

Wednesday, August 12

- **10:00am - 10:30am IT Manager Meeting** (Jack's Office) - Jack Louws
- **12:00pm - 12:30pm Travel time to Ferndale**
- **12:30pm - 1:30pm Senior Day in the Park** (Hovander Park in Ferndale)
- **1:30pm - 2:00pm travel back to office**
- **2:00pm - 2:45pm Malcolm Oliver & Trinidad group**
- **2:00pm - 2:30pm Monthly meeting Jack/Mark** (Jack's office) - Arden Landry
- **3:00pm - 3:30pm meeting with the boss before he goes** (Jack's office) - Arden Landry
- **3:30pm - 5:00pm OOO**

Thursday, August 13

- **8:00am - 5:00pm OOO - NCB**
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 10:30am Monthly AS Mgr Mtg - Finance** (Jack's Office) - Jack Louws

Friday, August 14

- **7:30am - 8:00am *Employee Anniversary - 10 years for Travis Bouma**
- **8:00am - 4:00pm OOO - NCB**
- **4:00pm - 7:45pm pre-season seahawks game - NCB-OOO** - Jack Louws

Saturday, August 15

Sunday, August 16

August 17, 2015 - August 23, 2015

August 2015

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September 2015

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Monday, August 17

- **8:00am - 5:00pm OOO - NCB**

Tuesday, August 18

- **8:00am - 5:00pm OOO - NCB**

Wednesday, August 19

- **8:00am - 5:00pm OOO - NCB**
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws

Thursday, August 20

- **8:00am - 5:00pm OOO - NCB**
- **8:00am - 9:00am WTA Board Meeting** (Council Chambers)
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws

Friday, August 21

- **8:00am - 5:00pm OOO - NCB**

Saturday, August 22

Sunday, August 23

August 24, 2015 - August 30, 2015

August 2015

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September 2015

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Monday, August 24

- **8:00am - 5:00pm OOO - NCB**

Tuesday, August 25

Wednesday, August 26

- **11:00am - 12:00pm Monthly mtg Sam/Jack** (Jack's office) - Jack Louws
- **2:00pm - 5:00pm ooo - NCB**

Thursday, August 27

- **8:30am - 9:00am *Employee Anniversaries - see below**
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws

Friday, August 28

- **5:30pm - 10:00pm Dinner Out; @ 6PM** (Brennan's/Lynden) - Jack Louws

Saturday, August 29

- **Bachelor party** (Padden golf)
- **6:30pm - 10:00pm "Best of the Northwest" Farm to Market Dinner** (Lynne & Gerald Baron The Carriage House Bow, WA) - Cindy Louws
- **6:30pm - 10:00pm Best of the Northwest** (Lynn & Gerald Baob the Carriage House Bow, WA) - Jack Louws

Sunday, August 30

- **11:00am - 3:00pm Field to Flame Fundraiser: Sustainable Connections** (Boxx Weddings Northwet) - Cindy Louws
- **11:00am - 2:30pm Sustainable Connection: Field to Flame Fundraiser Brunch: Invitation From Carole MacDonald** (5295 S Church Road) - Cindy Louws

August 31, 2015 - September 06, 2015

August 2015

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September 2015

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Monday, August 31

- **11:00am - 12:00pm Meeting to discuss "Six year program"** (Jack's office) - Arden Landry
- **1:30pm - 2:30pm Purchasing Code and Memo** (Jack Office) - Tyler Schroeder

Tuesday, September 01

- **9:00am - 9:30am *Employee Anniversary - 25 years for Judge Ira Uhrig**
- **10:00am - 11:00am Purchase of Development Rights Program** (Jack's Office) - Jack Louws
- **11:30am - 12:00pm hold**
- **12:00pm - 1:00pm Let's Have Lunch: Mt Baker Foothills Chamber of Commerce** (Bellewood Acres, 6140 Guide Meridian Rd)
- **1:00pm - 2:00pm hold**
- **2:00pm - 2:30pm Phone Interview Sam Wohlfeil Bellingham Herald**

Wednesday, September 02

- **9:00am - 10:30am Staff Orientation** (Room 513)
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **11:00am - 12:00pm Discussion on NW Soccer Park and lease** (Executive's Office) - Arden Landry
- **12:30pm - 1:00pm travel to Lynden**
- **1:00pm - 2:30pm Solid Waste Executive Committee (SWEC) Meeting** (Lynden City Hall) - Arden Landry

Thursday, September 03

- **5:00pm Nate & Torey Marry** (Evergreen Gardens) - Cindy Louws
- **7:30am - 8:30am Breakfast** (Old Town Cafe) - Jack Louws
- **8:30am - 9:00am *Employee Anniversary - 25 Years for Terry Stach**
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **9:00am - 10:00am Mtg - re: Prop 1, social media data** (RM-EX_ConferenceRoom) - Arden Landry
- **12:00pm - 2:00pm Chamber Speaker Series:State of the State Legislative Update** (Best Western Lakeway Inn & Convention Center 714 Lakeway Drive, Bellingham)
- **2:00pm - 5:00pm OOO - NCB**

Friday, September 04

- **5:00pm Nate & Torey Marry** (Evergreen Gardens) - Cindy Louws
- **9:00am - 9:30am *Employee Anniversary - 10 years for Charles Sullivan**
- **12:00pm - 5:00pm OOO - NCB**

Saturday, September 05

Sunday, September 06

September 07, 2015 - September 13, 2015

September 2015

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October 2015

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Monday, September 07

Tuesday, September 08

- **9:00am - 9:30am Review 9/15 council agenda and approve** (Jack's office) - Jack Louws
- **10:00am - 11:00am Meeting with Bob Carmichael & Caitic** (Jack's Office) - Jack Louws
- **11:00am - 11:30am South Fork Trail (Jack, Mike, Jean)** (Jack's office) - Jack Louws
- **1:00pm - 1:45pm Sierra contract** (Jack's office) - Jack Louws
- **2:00pm - 3:00pm EDI Board Meeting** (Conference Room 514)
- **3:00pm - 3:45pm Ferndale project potential EDI -Greg Young** (Jack's Office) - Jack Louws

Wednesday, September 09

- **6:45am - 8:15am kiwanas lynden ed hinkle**
- **9:00am - 9:30am *Employee Anniversary - 30 years for Dan Gibson**
- **9:30am - 10:00am Travel to Sedro Woolley**
- **10:00am - 11:00am North Sound E&T Opening** (7825 North Sound Drive, Sedro Woolley, WA 98284) - Jack Louws
- **10:00am - 10:30am IT Manager Meeting** (Jack's Office) - Jack Louws
- **11:00am - 11:30am Travel**
- **1:30pm - 2:30pm Joint Board Meeting Briefing** (Jack Louws Office) - Beth Bushaw
- **2:30pm - 3:00pm Kiosk Public Monitors project** (Jack's office) - Tawni Helms
- **3:30pm - 3:45pm Whatcom Transportation Policy Board Meeting** (Gordon W. Rogers Conf rm / WCOG office) - Arden Landry
- **3:45pm - 5:00pm WCOG Full Council Meeting** (314 Champion Street

Thursday, September 10

- **7:30am - 9:00am INVITATION: Alcoa Intalco Works Community Advisory Board Breakfast & 2015 Alcoa Foundation Grant Awards** (Bellingham Golf & Country Club) - Clark, Raina O.
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 10:30am Monthly AS Mgr Mtg - Finance** (Jack's Office) - Jack Louws
- **10:30am - 11:00am Discuss Rover Stay Over** (Jack's office) - Jack Louws
- **11:30am - 12:00pm *Employee Anniversaries - see below**
- **1:30pm - 2:30pm Discussion on Jail issues** (Jack's office) - Jack Louws
- **2:30pm - 3:30pm Jail Financing** (Exec. Conference Room) - Tyler Schroeder
- **4:00pm - 4:30pm Senator Ranker meeting**

Friday, September 11

- **12:00am St. Loius NCB-OOO** - Jack Louws
- **10:30am - 4:30pm Flight to St.Louis lvs seattle at 10:40 a.m.** (SEATAC) - Jack Louws

Saturday, September 12

- **St. Loius NCB-OOO** - Jack Louws

Sunday, September 13

- **St. Loius NCB-OOO** - Jack Louws

September 14, 2015 - September 20, 2015

September 2015

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October 2015

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Monday, September 14

- ☐ **12:00am St. Loius NCB-OOO** - Jack Louws
- **7:30am - 8:00am *Employee Anniversaries - see below**
- **8:00am - 4:00pm Flight to SEATAC** (St Louis) - Jack Louws
- **8:00am - 8:30am Review /finalize Flood subzone budget for council submittal on 10/16**

Tuesday, September 15

- **9:15am - 10:15am Discussion: jail** (Jack's office) - Jack Louws
- **9:30am - 10:00am Natural Resources Committee**
- **10:30am - 12:30pm Finance Committee**
- **12:30pm - 1:30pm Public Works, health and Safety**
- **3:00pm - 4:00pm Planning Committee**
- **6:00pm - 7:00pm Committee of the Whole**

Wednesday, September 16

- **8:00am - 11:30am Dentist**
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **1:30pm - 3:30pm WRIA 1 Joint Board and Salmon Recovery Board** (Garden Room, Civic Center Building) - Becky Peterson
- **3:30pm - 4:00pm Sheriff**

Thursday, September 17

- **7:00am - 8:00am Breakfast with Kelli**
- **8:00am - 9:00am WTA Board Meeting** (Council Chambers)
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:30am - 11:30am Bi-monthly mtg with Executive Louws - Reynolds, Van Glubt, Komorowski** (Jack's office) - Jack Louws
- **11:30am - 12:00pm Monthly meeting Jack/Mark*revised date and time** (Jack's office) - Arden Landry
- **2:00pm - 3:00pm Monthly Meeting Jack/Jon** (Jack's office) - Jack Louws

Friday, September 18

- **8:30am - 9:00am *Employee Anniversaries - see below**
- **9:30am - 10:00am WRIA Policy Board** (Jack's Office) - Tyler Schroeder
- **10:00am - 11:30am JFUA Review** (Jack's Office) - Tyler Schroeder
- **1:00pm - 1:30pm Meeting time with Executive for briefing** (Jack's office) - Arden Landry
- **3:00pm - 3:30pm Ag Watershed Contract Amendment- Ag Mitigation** (Jack's Office) - Karin Beringer
- **3:30pm - 5:00pm hold**
- **5:30pm - 6:00pm**
- **6:00pm - 9:00pm Phyllis's Birthday Dinner Party** (J & C Condo) - Cindy Louws

Saturday, September 19

- **10:00am - 11:30am Rebuplican meeting to present jail proposal in offiicual capacity as exec with Shriff Bill** (Meridian High School)
- **11:00am - 1:00pm celebration of Les's life** (Sonlight Church) - Cindy Louws

Sunday, September 20

September 21, 2015 - September 27, 2015

September 2015

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October 2015

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Monday, September 21

- **9:00am - 11:00am Sept. 21 2015 Meeting of Incarceration Prevention and Reduction Task Force** (Rooms 513/514) - Arden Landry
- **11:00am - 12:00pm Purchasing Policy Review** (Jack's Office) - Tyler Schroeder
- **1:00pm - 2:00pm COB Jail Fiscal Analysis** (Jack's Office) - Tyler Schroeder
- **2:00pm - 2:30pm Meeting for Exec Louws/Pres. Kathi Hiyane-Brown** (Executive's Office - 311 Grand Ave., Suite 108) - Jack Louws
- **3:00pm - 3:30pm Review council agenda for 9/29** (Jack's office) - Arden Landry
- **3:30pm - 4:15pm Purchasing Policy Memo and Code Meeting w/ Rud Brown** (Jack's Office) - Jack Louws

Tuesday, September 22

- **9:00am - 11:00am Small Cities Partnership Meeting** (usually Lynden City Hall) - Jack Louws
- **11:00am - 1:00pm hold - Lynden**
- **1:00pm - 3:00pm OOO - NCB**
- **3:00pm - 4:30pm City/County Elected Officials Meeting** (Lynden) - Matt Aamot
- **4:30pm - 5:00pm travel**
- **5:00pm - 6:30pm Bellingham Food Bank Open House** (1824 Ellis Street) - Jack Louws

Wednesday, September 23

- **9:00am - 9:30am 2016 What-Comm Budget** (Bellingham Police Department) - Knight, Julie K. (949)
- **10:00am - 10:30am IT Manager Meeting** (Jack's Office) - Jack Louws
- **11:00am - 12:00pm Monthly mtg Sam/Jack** (Jack's office) - Jack Louws
- **3:30pm - 4:15pm Purchasing Policy Memo and Code Meeting w/ Carl Weimer** (Jack's Office) - Jack Louws

Thursday, September 24

- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **11:00am - 12:00pm EWRRC Expansion Discussion Finet/Schissler** (Jack's Office) - Jack Louws
- **12:00pm - 12:30pm travel with Jon (he will pick you up**
- **12:30pm - 2:00pm Smith Creek Visit** (Smith Creek) - Jack Louws
- **2:00pm - 2:30pm Jon will return you to the office**
- **2:30pm - 3:00pm Purchasing Policy Memo and Code Meeting w/ Barry Buchanan** (Jack's Office) - Jack Louws
- **3:30pm - 4:00pm Dewey to introduce Alisha Fehrenbacher, new ED of WAHA**

Friday, September 25

- **7:30am - 9:00am Breakfast with Bob Goodwin** (Old Town Cafe)
- **9:30am - 10:00am *Employee Anniversary - 15 years for Jim Griffith**
- **10:00am - 10:30am hold**
- **10:30am - 11:00am OOO - NCB**
- **11:00am - 12:00pm Memorial Service** (New Life Fellowship) - Jack Louws
- **12:00pm - 5:00pm OOO - NCB**

Saturday, September 26

- **10:00am - 11:00am Walk 2.5 M to Defeat ALS** (Squalicum Boathouse Bellingham) - Cindy Louws
- **2:00pm - 3:00pm Compass wines**
- **6:00pm - 9:00pm WTC special invitation for dinner event** (New Community Food Co-op Connections Building, corner of Holly and Forest) - Jack Louws

Sunday, September 27

September 28, 2015 - October 04, 2015

September 2015

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October 2015

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Monday, September 28

- **8:00am - 8:30am Review mid biennium supps for council submission on 10/21**
- **9:00am - 10:00am Oooncb bias**
- **1:30pm - 2:15pm Purchasing Policy Memo and Code Meeting w/ Ken Mann** (Jack's Office) - Jack Louws
- **2:30pm - 3:00pm Discussion on Brad's presentation to council** (Jack's office) - Jack Louws

Tuesday, September 29

- **9:00am - 9:30am Jail Powerpoint** (Jack's Office) - Tyler Schroeder
- **11:00am - 12:00pm Finance Committee**
- **12:00pm - 12:45pm Purchasing Policy Memo & Code w/ Barbara Brenner** (Jack's Office) - Jack Louws
- **1:00pm - 1:45pm pete kremen** - Jack Louws
- **6:30pm - 7:00pm COTW - Executive Session**

Wednesday, September 30

- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **1:00pm - 2:00pm FCZD Budget** (Executive's Office) - Jon Hutchings
- **2:30pm - 3:30pm Discussion on metrics project** (RM-EX_ConferenceRoom) - Arden Landry

Thursday, October 01

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **8:30am - 9:30am New Jail discussion** (RM-EX_ConferenceRoom) - Jack Louws
- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 10:30am Temporary Food Permit Policy Change** (Jack's Office) - Jack Louws
- **10:00am - 11:00am Regular Mtg. Jack / Regina** (Jack's office) - Arden Landry
- **1:00pm - 3:00pm What-Comm/Prospect Administrative Board Meeting** (Whatcom Unifed Emergency Coordination Center) - Knight, J
- **4:00pm - 7:00pm Taste of Tourism - B'ham / Whatcom County Tourism Fall Networking Event** (Squalicum Boathouse) - Jack Louws
- **4:00pm - 4:30pm Tyler potential**
- **6:00pm - 9:00pm OOO - NCB**

Friday, October 02

- **8:30am - 10:00am Department Head/Elected Officials Meeting** (Conference Room 514) - Linda Salas
- **10:00am - 11:00am Elected Officials Meeting** (Jack's Office) - Jack Louws
- **11:30am - 12:00pm *Employment Anniversaries - see below**
- **4:00pm - 5:00pm Donor Appreciation Event** (Whatcom Dispute Resolution Center) - Jack Louws
- **6:00pm - 9:00pm Marce's 65th Bday** (Bob & Doris) - Cindy Louws

Saturday, October 03

- **8:00am - 12:00pm ooo-ncb-c**
- **10:00am - 5:00pm NSEA Open House: New Base of Operations** (3057 E Bakerview Rd) - Cindy Louws
- **11:00am - 2:00pm Buddy Walk** (Fairhaven) - Cindy Louws
- **6:00pm - 9:00pm Jim & Leanne** - Cindy Louws

Sunday, October 04

October 05, 2015 - October 11, 2015

October 2015

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November 2015

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Monday, October 05

- **9:00am - 9:45am Prep: write Mike's Evaluation**
- **10:00am - 11:00am Performance Evaluation for Mike McFarlane** (Jack's Office) - Jack Louws
- **3:00pm - 3:30pm Review council agenda for 10/13** (Jack's office) - Arden Landry

Tuesday, October 06

- **10:00am - 10:45am Prep: write Sam's review**
- **11:00am - 12:00pm Performance Evaluation for Sam Ryan** (Jack's Office) - Jack Louws
- **1:30pm - 2:30pm Discussion - transition** (Jack's office) - Jack Louws
- **6:00pm - 9:00pm ooo-ncb - lwv**

Wednesday, October 07

- **9:30am - 11:00am ASR's - FTE requests** (RM-EX_ConferenceRoom) - Tawni Helms
- **11:30am - 1:30pm Ribbon Cutting Ceremony for the Potter Rd. Bridge No. 148** (Potter Rd., VanZandt, WA) - Sandra Mock
- **5:30pm - 9:15pm ooo-ncb-c** - Jack Louws

Thursday, October 08

- **9:00am - 10:00am HR Manager Meeting** (Jack's Office) - Jack Louws
- **10:00am - 10:30am Monthly AS Mgr Mtg - Finance** (Jack's Office) - Jack Louws
- **11:00am - 11:30am *Employment Anniversary - 25 years for Kevin Atkinson**
- **11:30am - 12:00pm Anthony Vogel** (Jack's Office)
- **1:30pm - 2:15pm Canceled: Sun House** (Jack's Office) - Tyler Schroeder
- **3:00pm - 5:00pm hold**
- **5:00pm - 10:00pm ooo - NCB** - Jack Louws

Friday, October 09

- **7:00am - 7:30am Suzanne Mildner's birthday**
- **10:30am - 11:00am Mayor Kelli** (Jack's office)
- **12:00pm - 1:00pm Ooo ncb WDW sports bar**
- **1:00pm - 5:00pm hold - NCB**
- **6:30pm - 10:00pm OOO - NCB** - Jack Louws

Saturday, October 10

- **10:30am - 12:00pm What does hunger look like in our community? tentative**** (EWRRC) - Arden Landry

Sunday, October 11

- **3:00pm - 5:00pm Whatcom Symphony Orchestra Celebrating 40th Anniversary Season** (Mt Baker Theater) - Arden Landry

October 12, 2015 - October 18, 2015

October 2015

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November 2015

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Monday, October 12

- **7:30am - 8:30am old cafe - ncb- ncb**
- **8:30am - 9:00am *Employment Anniversaries - see below**
- **9:00am - 9:45am Monthly Meeting Jack/Jon** (Jack's office) - Jack Louws
- **10:00am - 12:00pm Emergency Management Council (EMC) Meeting** (RM 3) - WCDEM
- **2:00pm - 2:30pm Phone Conference with Eric Johnson WSAC**
- **2:30pm - 3:30pm Biennium reivew - Sheriff Office ASR's** (RM-EX_ConferenceRoom) - Tawni Helms

Tuesday, October 13

- **9:00am - 10:00am ncb-ooo- rs**
- **11:00am - 12:00pm Finance Committee**
- **1:30pm - 2:30pm Public Works Health and Safety Committee**
- **6:30pm - 7:00pm Committee of the Whole**

Wednesday, October 14

- **9:00am - 9:30am staff orientation visit - IT training room**
- **10:00am - 10:30am IT Manager Meeting** (Jack's Office) - Jack Louws
- **10:30am - 11:00am Facilities Manager Meeting** (Jack's Office) - Jack Louws
- **11:30am - 1:30pm OOO-NCB Northwest Business Club** (Elks Lodge - 710 South Samish Way)
- **3:30pm - 5:00pm WCOG Policy Board - 314 Champion Street**
- **5:30pm - 8:00pm ooo-ncb-biaw**

Thursday, October 15

- **8:00am - 9:00am WTA Board Meeting** (Council Chambers)
- **9:00am - 9:30am Mailer** (Jack's Office) - Tyler Schroeder
- **11:30am - 12:15pm Health Dept. ASR Review** (RM-EX_ConferenceRoom) - Tawni Helms
- **2:00pm - 2:30pm Malcolm Oliver coming to see you** (Jack's office) - Jack Louws

Friday, October 16

- **8:15am - 8:45am Travel to Lynden**
- **9:00am - 10:30am Ribbon-Cutting Ceremony -Lynden Water Plant** (Lynden's Water Treatment Plant)
- **10:30am - 11:00am travel from Lynden**
- **11:30am - 12:00pm *Employee Anniversaries - see below**
- **6:00pm - 10:00pm Best of the Northwest** (Four Points Sheraton Bellingham) - Cindy Louws

Saturday, October 17

Sunday, October 18

October 19, 2015 - October 25, 2015

October 2015

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November 2015

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Monday, October 19

- **11:00am - 12:00pm Annual Construction Program and Mid-Biennium Process** (RM-EX_ConferenceRoom) - Tyler Schroeder
- **11:30am - 2:30pm OOO - NCB**
- **3:00pm - 3:30pm Review council agenda for 10/27** (Jack's office) - Arden Landry

Tuesday, October 20

- **9:00am - 11:00am Small Cities Partnership Meeting** (usually Lynden City Hall)
- **11:00am - 12:00pm Meet with Ali Taysi on Development Permit Process Improvements** (Jack's Office) - Tyler Schroeder
- **2:00pm - 4:00pm Review and presentations of 2016 LTAC applications** (RM-Courthouse514) - Tawni Helms
- **5:30pm - 7:45pm ooo-ncb-src** - Jack Louws

Wednesday, October 21

- **9:00am - 9:30am Weekly HR meeting** (Jack's Office) - Jack Louws
- **10:00am - 11:00am Jon/Chris B. Coffee** (TBD) - Jon Hutchings
- **11:00am - 11:30am Monthly meeting Jack/Mark** (Jack's office) - Arden Landry
- **3:00pm - 4:00pm Bi-monthly mtg - Rob/Jack** (see schedule below) - Jack Louws
- **4:30pm - 5:30pm Meeting of the Northwest Economic Council** (Port of Bellingham) - Arden Landry

Thursday, October 22

- **7:30am - 8:30am Breakfast - Kelli/Jack** - Jack Louws
- **8:30am - 9:00am Travel to Mt. Vernon**
- **9:00am - 11:00am WSAC Regional Legislative Delegation Meeting** (Skagit County Admin. Bldg., Commissioners Hearing RM, 1800 Continenal Place, Mount Vernon)
- **11:00am - 12:00pm Travel - easiest parking is under the building (enter from 4th Ave)**
- **12:00pm - 1:30pm meeting with Mike Griffin/ County Executives** (Sound Transit, Union Station, 401 South Jackson Street Seattle) - Arden Landry
- **1:30pm - 3:30pm travel back to Whatcom**
- **3:30pm - 5:00pm OOO - NCB**

Friday, October 23

- **8:00am - 1:00pm OOO - NCB**
- **1:30pm - 2:30pm Budget discussion** (Jack's office) - Jack Louws
- **2:30pm - 3:00pm Christine Perkins (WCLS) will call you**
- **6:00pm - 10:00pm Bruce & Sue for Dinner/ Black Cat** (Fairhaven) - Cindy Louws

Saturday, October 24

- **5:00pm - 10:00pm Gala Dinner to Benefit BTC Students** (Bellingham Technical COllege) - Cindy Louws
- **5:00pm - 9:30pm Bellingham Technical College Foundation 2015 Gala Dinner** (BTC) - Jack Louws

Sunday, October 25

October 26, 2015 - November 01, 2015

October 2015

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Monday, October 26

- **9:00am - 10:00am Jail - Tuesday council meeting discussion**(Jack's office) - Arden Landry
- **10:30am - 11:00am mtg with Carl/Jack** (Jack's office) - Arden Landry

Tuesday, October 27

- **9:00am - 11:00am Cindy Periodontal Surgery & Recovery** (Dr Curtis Wade: Burlington) - Cindy Louws
- **9:30am - 10:30am Natural Resources Committee**
- **11:00am - 12:00pm Finance Committee**
- **1:30pm - 2:00pm Special Committee of the Whole (2016 Annual Construction program)**
- **3:00pm - 4:00pm Planning and Development Committee**

Wednesday, October 28

Thursday, October 29

- **8:00am - 5:00pm OOO - NCB** - Jack Louws
- **11:00am - 11:30am arr Buffalo at 11:16 a.m.**

Friday, October 30

- **8:00am - 5:00pm OOO - NCB** - Jack Louws
- **8:00am - 8:30am *Employment Anniversary - 10 years for Joel Vega** (caio thyme)

Saturday, October 31

- **8:00am - 5:00pm OOO - NCB** - Jack Louws

Sunday, November 01

- **8:00am - 5:00pm OOO - NCB** - Jack Louws

November 02, 2015 - November 08, 2015

November 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Monday, November 02

- **8:00am - 5:00pm OOO - NCB** - Jack Louws
- **11:00am - 11:30am lv Buffalo at 11:49 a.m.**
- **6:00pm - 6:30pm arr Seattle at 6:04 p.m.**

Tuesday, November 03

- **9:00am - 9:30am Review Council Agenda with Tyler**
- **11:00am - 11:30am HR Manager Meeting** (Jack's Office) - Jack Louws

Wednesday, November 04

- **9:00am - 10:30am QTLY EOB Meeting** (RM-Courthouse514) - Tawni Helms
- **10:30am - 11:30am win lose or draw** (RM-EX_ConferenceRoom) - Jack Louws
- **12:00pm - 1:30pm Meeting with Exec.** (TBD) - Jack Louws
- **2:00pm - 3:30pm Performance Metrics Project Pilot with Finance** (Executive Conference Room) - RM-EX_ConferenceRoom
- **3:30pm - 4:30pm Transition chat** (Jack's office) - Jack Louws

Thursday, November 05

- **8:00am - 5:00pm OOO - NCB**

Friday, November 06

- **7:30am - 8:00am *Employment Anniversaries - see below** (caio thyme)
- **8:00am - 5:00pm OOO - NCB**

Saturday, November 07

Sunday, November 08

Royce Buckingham

From: Tyler Schroeder
Sent: Wednesday, October 14, 2015 6:03 PM
To: Jack Louws
Cc: Dewey Desler; Daniel Gibson; Royce Buckingham
Subject: Information Mailers
Attachments: 39890 Justin Stranzl Political Mailer.docx

Jack

I am talking with Royce in the morning in regards to the PDC guidance, which says;

"The PDC has routinely advised and held that with respect to election related publications, one jurisdiction-wide objective and fair presentation of the facts
per ballot measure is appropriate"

"Agencies shall not distribute election-related information in a manner that targets specific subgroups. Targeting does not refer to mailing information to agency constituencies such as community leaders, or some other group, or to the agency's regular distribution list to provide information in a manner that is consistent with the normal and regular conduct of the agency."

This is from Pg. 21 of the PDC guidance in this link, http://www.pdc.wa.gov/archive/guide/pdf/04-02Revised052213.rev.pdf

Since we do not have a jurisdiction wide regular distribution list we gathered contacts from the Auditor. The list from the auditor contained a total of **128,580 registered voters**. We reduced the number of mailers as follows:

1. We selected registered voters that have voted in the three of the four past major elections (Primary 8/2015, General 11/2014, Primary 8/2014, General 11/2013).
2. We deleted addresses located outside USA because bulk mailers cannot be mailed to foreign addresses.
3. We deleted all parties that are located at the same mailing address.

The total count was **24,880 households**.

If we were to mail the mailer one per household of registered voters without restricting from the number of times they have voted (not including foreign voters), we would have:
55,726 households.

If we were to mail the mailer one per household of registered voters that have voted at least one time (not including foreign voters), we would have:
36,908 households.

The 25,000 mailers were produced at a cost of around $4,000. There's an additional fee for producing and applying address labels of $30 per $1,000 copies, with a $50 setup fee. The bid is attached. If we were to send to the entire 55K it would cost around $4,000 and if to the 37K it would be around $2,000.

I will give you an update once I talk with Royce. I will also call the PDC to see if they have any recommendations of further definition to "specific subgroups."

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager
Whatcom County Executive's Office

ATTACHMENT 8

311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

Disclaimer: Public documents and records are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

Exhibit 10 shows the following:

- Advice from attorneys indicating that Whatcom County should consult with the PDC.
- Notice that the PDC no longer provides review of mailers.
- Evidence that Whatcom County used the PDC manual as a guide.
- Further evidence that Whatcom County sought PDC guidance regarding content of the mailer and "how many mailers" were appropriate.

ATTACHMENT 10

Royce Buckingham

From:	Tyler Schroeder
Sent:	Monday, October 05, 2015 8:48 AM
To:	Royce Buckingham; Daniel Gibson
Cc:	Tawni Helms
Subject:	RE: Whatcom - Mailer FINAL DRAFT - content

Royce and Dan,

After working with the PDC to have them review the mailer they indicated that they no longer provide those services. Something to do with state budget cuts. However, they have put out an informative manual on the topic, http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf .

This manual is guidance that they used in their past reviews. The mailer that we are sending out seems consistent with their general guidance for "fair and objective." Please confirm.

If you have any questions please call me to discuss.

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

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From: Royce Buckingham
Sent: Tuesday, September 29, 2015 10:53 AM
To: Daniel Gibson; Tyler Schroeder
Subject: RE: Whatcom - Mailer FINAL DRAFT - content

Tyler,

Dan says, and I agree, that if you can run this by the Public Disclosure Commission for their feedback, that is the best check on the content.

Royce Buckingham
Civil Deputy Prosecutor for Whatcom County
rbucking@co.whatcom.wa.us
360-778-5710

From: Daniel Gibson
Sent: Monday, September 28, 2015 11:35 AM

To: Royce Buckingham
Subject: FW: Whatcom - Mailer FINAL DRAFT

Royce:
FYI re: mailer for the New Jail.

From: Tyler Schroeder
Sent: Monday, September 28, 2015 11:34 AM
To: Jack Louws; Bill Elfo; David McEachran
Cc: Daniel Gibson; Dewey Desler; Tawni Helms
Subject: FW: Whatcom - Mailer FINAL DRAFT

Jack, Bill, and Dave,

Here is the Final Draft for the mailer associated with the New Jail. This is a 11"x17" mailer that is folded in half and then accordion style. Please share with me any thought that you may have so that I can incorporate them into the final mailer.

If you have head photos that you would like me to use please forward them onto me. I do have Dave's and they will be using that instead of the one shown.

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

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From: Loynd, Erica [mailto:eloynd@DLRGROUP.com]
Sent: Monday, September 28, 2015 9:29 AM
To: Tyler Schroeder
Cc: Stranzl, Justin
Subject: Whatcom - Mailer FINAL DRAFT

Tyler
Here is the final draft of the mailer for your review. We can discuss any final comments at our meeting this afternoon and have a final version by tomorrow AM.

During our call, we can discuss the printing and mailing procedures. We are condensing the list of voters right now to remove duplicate addresses and get a good idea of the number of mailers we need. We may be getting into about 25,000 mailers once complete (original list was 47,500+). Justin is researching printing houses that will be able to do the mailing from Bellingham. Consolidating services of printing and mailing to one house is definitely efficient. He is compiling the information and can share what he has learned this afternoon.

We will call into the zoom call so we can all conference together. Please let me know that 100PM works for you still.
Thank you
Erica

Erica Loynd, AIA, LEED AP
Architect | Senior Associate
eloynd@dlrgroup.com

DLR Group
Architecture Engineering Planning Interiors
o: 206-461-6000 | f: 206-461-6049
51 University Street, Suite 600 Seattle, WA 98101
Find us at: dlrgroup.com | Facebook | Twitter

Royce Buckingham

From: Tyler Schroeder <tschroed@co.whatcom.wa.us>
Sent: Wednesday, September 02, 2015 8:27 AM
To: Loynd, Erica
Cc: Stranzl, Justin; Tawni Helms; Valdez, Bill; Dewey Desler
Subject: RE: Whatcom Mailer - Draft 1
Attachments: 150901_Mailer01_DRAFT1.pdf

Erica,

I totally agree. We need to do a better job at laying this mailer out and showing graphics. The two sections that we could remove this go around is the Small City's letter and the Superior Court Judges statement.

Also, I have some concerns with the overall layout of the mailer. The statistics section does not stand out, everything seems to blur together and overall It looks like we have just copy and pasted the content in the mailer and there does not appear to be a cohesive, professional display of the information. My apologies for being somewhat critical of the document, I guess I just expected more.

I am also very interested in hearing an update when Justin has talked with the PDC. I am interested in their opinion on how many mailers we can send out make sure they review the content prior to it being sent.

I am available to discuss this in more detail today.

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

Disclaimer: Public documents and records are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

From: Loynd, Erica [mailto:eloynd@DLRGROUP.com]
Sent: Monday, August 31, 2015 5:17 PM
To: Tyler Schroeder
Cc: Stranzl, Justin; Tawni Helms; Valdez, Bill
Subject: Whatcom Mailer - Draft 1

Tyler,
Here is the draft of the mailer with the content. This includes all the text from the content you provided, but not all the imagery. I know the goal is to show more imagery. To make space for imagery, some of the text information could be reserved to the next mailer as well.

Justin made the comment that the statements in support from the Mayors and the Justice officials may be a small conflict because there is not an opportunity for opposition to voice their comment as well.

If these comments are removed, we can include more space for the imagery you would like to show. Do you agree?

Justin is still trying to get a hold of the PDC. He has gotten the contact person and left some messages. Hopefully he will be able to connect tomorrow and we will provide comment to you.

I have laid this out so when read on the computer, the text is right side up. When printed double sided, we will have one sheet rotated 180deg. This will be completed on the final version that goes to the printer and explicit instructions on folding and printing will be provided.

Please let me know your comments. I am happy to talk with you tomorrow or Wednesday morning. I am in Oregon with Justin both days, and we can have a phone call if you would like. I will be able to give you a specific time when I know we are available if you want to talk.
Thank you!
Erica

Erica Loynd, AIA, LEED AP
Architect | Senior Associate
eloynd@dlrgroup.com

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51 University Street, Suite 600 Seattle, WA 98101
Find us at: dlrgroup.com | Facebook | Twitter

Phil Stutzman

From: Loynd, Erica <eloynd@DLRGROUP.com>
Sent: Wednesday, October 14, 2015 5:33 PM
To: Tyler Schroeder (tschroed@co.whatcom.wa.us)
Cc: SEA Admin2
Subject: Whatcom - Mailer counts

Hello Tyler,

Per our phone conversation, the list from the auditor contained a total of **128,580 registered voters**. We reduced the number of mailers as follows:

1. We selected registered voters that have voted in the three of the four past major elections (Primary 8/2015, General 11/2014, Primary 8/2014, General 11/2013).
2. We deleted addresses located outside USA because bulk mailers cannot be mailed to foreign addresses.
3. We deleted all parties that are located at the same mailing address.

The total count was **24,880 households**.

If you were to mail the mailer one per household of registered voters without restricting from the number of times they have voted (not including foreign voters), we would have:
55,726 households.

If you were to mail the mailer one per household of registered voters that have voted at least one time (not including foreign voters), we would have:
36,908 households.

Please let me know if you need more information.
Thank you
Erica

Erica Loynd, AIA, LEED AP
Architect | Senior Associate
eloynd@dlrgroup.com

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Tyler Schroeder replied 2 months ago (Wed, 30 Dec, 2015 at 1:21 PM)
to : pdc@pdc.wa.gov , cc : rbucking@co.whatcom.wa.us
Phil,

Thanks for the call today. Here is the requested information from our call;
The informational mailer was sent to every registered voting household in Whatcom County. According to the invoices, 62,172 mailers were sent and the cost of the mailing for printing and postage was $27,670.76. This single mailer was sent out in two batches, please see the attached invoices. Also, according to the invoices the final count of mailers (62K)is larger than the approximately 56K that we discussed today. Sorry for any inconvenience for not recalling this number during our phone call.

Please follow up with any questions that you may have.

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

LITHTEX NW
Printing Solutions

2000 Kentucky Street
Bellingham, WA 98229
Phone: (360) 676-1977
Fax: (360) 676-1895

Sold To:

DLR Group
51 University Street
Suite 600
Seattle, WA 98101

Invoice

Invoice Number:

55953

Invoice Date:

Oct 6, 2015

Customer ID	Customer PO	Payment Terms	
DLR Group		Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
Wheeler			11/5/15

Description	Extension
Whatcom County Jail Informational Mailer ~ 25,000 qty	4,070.00
Mail Prep	796.40
Proof Changes	65.00
Postage - see invoice #55953.1	

Customer Resale Number

Subtotal	4,931.40
Freight	
Sales Tax	429.03
Total Invoice Amount	5,360.43
Payment/Credit Applied	
BALANCE DUE	5,360.43

2000 Kentucky Street
Bellingham, WA 98229
360.676.1977 Phone

LITHTEX NW
Printing Solutions

2000 Kentucky Street
Bellingham, WA 98229
Phone: (360) 676-1977
Fax: (360) 676-1895

Sold To:

DLR Group
51 University Street
Suite 600
Seattle, WA 98101

Invoice

Invoice Number:

55953.1

Invoice Date:

Oct 5, 2015

Customer ID	Customer PO	Payment Terms	
DLR Group		Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
Wheeler			11/4/15

Description	Extension
Whatcom County Jail Informational Mailer	
Postage ~ 24,860 qty	6,599.48

Subtotal	6,599.48
Freight	
Sales Tax	
Total Invoice Amount	6,599.48
Payment/Credit Applied	
BALANCE DUE	6,599.48

Customer Resale Number

2000 Kentucky Street
Bellingham, WA 98229
360.676.1977 Phone
360.676.1895 Fax

LITHTEX NW
Printing Solutions

2000 Kentucky Street
Bellingham, WA 98229
Phone: (360) 676-1977
Fax: (360) 676-1895

Sold To:

DLR Group
51 University Street
Suite 600
Seattle, WA 98101

Invoice

Invoice Number:

56225.1

Invoice Date:

Oct 16, 2015

Customer ID	Customer PO	Payment Terms	
DLR Group		Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
Wheeler			11/15/15

Description	Extension
Whatcom County Jail Informational Mailer	
Postage ~ 37,312	9,954.85

Subtotal	9,954.85
Freight	
Sales Tax	
Total Invoice Amount	9,954.85
Payment/Credit Applied	
BALANCE DUE	9,954.85

Customer Resale Number

LITHTEX NW
Printing Solutions

2000 Kentucky Street
Bellingham, WA 98229
360.676.1977 Phone
360.676.1895 Fax

Date: 10-15-15
Estimate: 40401

DLR Group
51 University Street Suite 600
Seattle, WA 98101

We are pleased to confirm our quotation to you as follows:

Mail Prep: $1175.45

Description:	Whatcom County Jail Informational Mailer
Size/Pages:	22 x 17
Prepress:	Exact Repeat
Proofs:	No Proofs
Inks:	4 cp + Flood Satin Aqueous / Same
Stock 1:	80# Gloss Book
Binding:	Trim, Fold to 17 x 11, then Closed gatefold to 4.25 x 11.

Quantity:	37,515
Price:	$5,756

We thank you for this opportunity to be of service to your company and look forward to your order. Prices are valid for 30 days. Paper pricing is currently unstable and may impact prices after that.

Sincerely,

Carl Asplund

From:	Loynd, Erica
To:	Tyler Schroeder (tschroed@co.whatcom.wa.us); Tawni Helms (THelms@co.whatcom.wa.us)
Cc:	SEA Admin2
Subject:	Whatcom - Cost of services for the mailers
Date:	Friday, October 16, 2015 4:20:14 PM

Tyler,
I went through the invoices to review hours put toward the mailer. We did not start any production or research on the mailer until August 4, 2015. Looking at the August and September invoices, I broke out the people that worked specifically on the mailer. My time is heavily toward the mailer, but not 100%. Therefore I selected the days where I know I was predominately working on developing or reviewing the mailer with the team. We have the following hourly costs:

August - $12,542.50
September - $3,807.50
October * - ~$1,705

* Our records have not posted for October, but I know I am the only person typically putting time on the mailers, and all my time has been put toward that coordination and final review.

Total cost in labor for the mailer is:
$18,055.00

Please let me know if you need any further clarification.
Thanks,
Erica

Erica Loynd, AIA, LEED AP
Architect | Senior Associate
eloynd@dlrgroup.com

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WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Ave. Suite #108
Bellingham, WA 98225

Jack Louws
County Executive

MEMO TO: County Council Chair
County Council Members

FROM: Jack Louws, County Executive

DATE: October 16, 2015

SUBJECT: Jail Proposition Mailer

In the DLR services contract unanimously passed by the Whatcom Council on September 30th, 2014 there was a budget allocation authorizing public outreach on the project. This activity included providing assistance in developing clear public information and developing graphics, including images of the existing facilities and renderings of the new facility. The planned public information for the project also included developing materials for presentations and mailers. The schedule in the contract included the community report concerning the ballot measure. This report is being distributed to every registered voter household in Whatcom County.

According to the PDC guidelines, "**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate**;"

> *"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

The Administration worked with the Prosecuting Attorney's office to ensure consistency with state law in regards to local government and election activities. We also worked with the Public Disclosure Commission (PDC) that has prepared guidance on this subject (http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf).

The community report is consistent with public information efforts executed in other communities, such as the recent Skagit jail/sales tax measure. The report is a fair and factual presentation of the new jail project including the background leading to its development, the laws and circumstances related to the project and relevant information from key county officials. It neither asks for support or rejection of the ballot measure.

If you have additional questions please do not hesitate to call me for additional information.

Phil Stutzman

From:	Jack Louws <JLouws@co.whatcom.wa.us>
Sent:	Monday, October 19, 2015 3:16 PM
To:	abejacobson1948@gmail.com
Cc:	Council; Keith Willnauer; Steve Oliver; Debbie Adelstein; Bill Elfo; Daniel Gibson; David McEachran; Bill Valdez (bvaldez@DLRGROUP.com); John Perry; 'Jim Ackerman'; Bob Bromley (mayorbromley@cityofsumas.com); Scott Korthuis; Gary Jensen; Kelli Linville; 'hrobinson@cityofblaine.com'; Arden Landry; Dewey Desler; Tawni Helms; Tyler Schroeder
Subject:	RE: Official jail mailer from County: poorly done, unethical, and illegal

Mr. Jacobsen,

Thank you for your comments. I take full responsibility for the publication of the mailer. After working with DLR, county legal, and my direct team in my office, I authorized the printing and distribution of it.

It has always been my desire to provide the citizens good information to base decisions on. Obviously this is not my best work, because an informational document authorized by the PDC should be non-controversial, focusing on the decision to be made. I am truly sorry for the controversy, and will stand in judgement of my decision from the citizens, and as County Executive will be responsible for any potential consequences.

Again, thank you for your direct and clearly defined articulations of the challenges surrounding the mailer.

Best regards,

Jack Louws
Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5200

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From: Abe Jacobson [mailto:abejacobson1948@gmail.com]
Sent: Monday, October 19, 2015 12:58 PM
To: Jack Louws
Subject: Official jail mailer from County: poorly done, unethical, and illegal

Mr. Louws; members of County Council:

I am writing as a concerned citizen and taxpayer of Whatcom County.

I happen to be a jail supporter, but first and foremost, I'm a hawk on government efficiency, accountability, and compliance with applicable law.

We all hate to see taxes poorly used. It is only worse when taxes are poorly, unethically, *and* possibly illegally used. And that is the case with the recent mail piece from the County entitled "Whatcom County Community Report". The mailer is the trifecta of what we don't want to see in use of taxpayer money.

Here is what is wrong with the mailer:

(a) Poor quality and workmanship. The taxpayers paid top dollar for the outfit that produced this (over $170 per billable hour!). You are now asking for north of $100-million to execute the jail project. To get that, you should demonstrate competence. Yet what we received is embarrassing. For example:

(a1) The artists' renditions show Sheriff quarters' new space almost equal in footprint to the jail itself. Is that really the public-outreach intent of an Administration seeking a much-needed new jail for housing prisoners?

(a2) The photo of the Sheriff is blurry and out of focus, as if taken by a distant low-resolution cell phone.

(b) Violation of ethical standards:

(b1) Within a day of ballots sent out by the Auditor, this brochure puts into voters' homes glossy photographs of two members of the Administration who are currently running for office. OK if done with those candidates' own funds, but *not OK* if done with taxpayer monies.

(b2) Within a day of ballots sent out by the Auditor, this brochure puts into voters' homes glossy promotional coverage of an issue being voted upon by the voters- Whatcom County 2015-1. Simple ethics and common sense requires that the County not act as an advocate for one side or the other of a ballot question, during the window of the calendar when ballots have been mailed.

(c) Possibly illegal actions by the County:

(c1) The January 12, 2015 guidance from the Public Disclosure Commission to "local government agency officials" (i.e., you Mr. Louws, and all other officers of the County Government) states:

> "In PDC Interpretation 04-02, *Guidelines for Local Government Agencies in Election Campaigns*, the Commission held that *"it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."* Accordingly, the Interpretation states that *"[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure,"* typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

In the Executive's memo to Council on 16 October, the memo appealed to the middle of the paragraph, which sanctions an "objective and fair presentation..."

I believe that the "fair and objective presentation" allowed by the PDC is also known as the *Voters' Pamphlet* and is distributed by the County Auditor to all County voters. Is that not correct?

However, the memo from the Executive did not acknowledge, or attempt to demonstrate the jail mailer's consistency with, *the last sentence of the PDC guidance*. Note carefully the last sentence, in which it is stated, of the mailer for example, that:

> **"Such a presentation ... must not promote or oppose the proposition in the tenor or tone of the language used."**

I have not found any objective reader of the jail mailer who would argue that the mailer complies with that binding guidance from the PDC. The mailer is replete with advocacy on a matter now open to the public vote as Proposition 2015-1. The mailer thus appears to be an illegal violation of State regulations.

(c2) The jail mailer is a promotional piece promoting what is actually Proposition No. 2015-1. But the mailer's authors and reviewers were apparently unaware of the name of the measure they were promoting. The mailer mentions the word "proposition" six times. Two of those times, the proposition is identified. In those identifications, the identity is given as either "PROPOSITION NUMBER 1" or "Proposition #1". The incorrect ballot proposition is identified! So the editor, and the contractor, and the County Attorney reviewing the content of the mailer, signed-off on an egregious error.

But wait, it gets worse. *There actually is a Proposition Number 1 on the ballot, for something entirely non-jail-related.* By its advocacy for Proposition Number 1, the taxpayer-financed mailer is likely to taint the ballot measure election for the non-jail-related matter, the real Proposition Number 1.

To repeat: The Executive and all others responsible for this mailer have tainted the election regarding the true Proposition Number 1.

Sincerely,
Abe Jacobson

2314 Samish Way
Bellingham, WA 98229

>>}}}}}}}}}}}}}}}*>

Here is the email and responses to Satpal that I promised yesterday.

Arden

From: Jack Louws
Sent: Wednesday, October 21, 2015 8:48 AM
To: Council@co.whatcom.wa.us
Cc: Bill Elfo (BElfo@co.whatcom.wa.us); Dana Brown-Davis (DBrown@co.whatcom.wa.us); NaDean Hanson; Jill Nixon; Marina Engels; Kristi Felbinger; Tyler Schroeder; Dewey Desler; Tawni Helms; Daniel Gibson; David McEachran (DMcEachr@co.whatcom.wa.us)
Subject: Response to Councilmember Sidhu's questions concerning mailer

Dear Council Member Sidhu:

Please see my responses below each of your questions. Thank you.

1. In the past 4 years of your tenure as County executive, how many times you / your admin has sent similar Community Informational brochure to the residents covering what kind of subject matters.

Yes, the County has sent out informational mailers a number of times over the last four years. Examples of these mailers are on specific countywide issues pertaining to;

- ***Water resources and flood matters to residences that those issues pertain to (BBWARM newsletter, Lake Whatcom postcard, Annual River and Flood Newsletter),***
- ***Postcards and letters on on-site septic operational and maintenance issues in specific watersheds and printed brochures for recycling and solid waste,***
- ***Annual postcards to residences in the Swift Creek area to remind those residences of actions needed during floods and***
- ***Ag newsletter to Countywide (Rural and Ag) residences***

Most of these mailers on our specific issues to specific residences in Whatcom County. These mailers have been in the newsletter and postcard format, sent to between 7,000 and 16,000 residences in Whatcom County and have cost between $5,000 to $8,000 for printing and mailing. My office has some examples of those mailers if you would like to see them.

If you mean specifically the County Executive's Office, please note, given the importance and cost of this entire jail project our office is the manager and oversees the planning and development of the new jail project. Since the ballot measure for the sales tax increase is a countywide issue the information mailer was sent to all registered voting households.

Has this been a standard practice by your admin and prior admins to mail similar community updates?

The informational brochures and update as discussed above have been used as a method of informing Whatcom County residents on important matters.

2. If yes, has the occasions been coinciding with election ballot drop dates ?

Generally no, but please note the County does not often take large public projects for taxes and ballot measures. The jail information mailer was sent out to inform Whatcom County residents of this important and large public works project. While it is not part of your question, please note that Skagit County issued an extensive community report to their residents just prior to the August 2013 jail and sales tax ballot measure. Please see a copy of the attached reports to compare the content of these reports.

3. Was this brochure mailed to every registered Voter in the County or every resident of Whatcom County?

The informational mailer was sent to every registered voting household in Whatcom County.

4. How many copies were printed and mailed?
62,172 mailers were printed and sent to every registered voting household in Whatcom County.

5. Does the cost of approx $28,000 is for printing alone or both Printing and postage cost ?
The cost of the mailing for printing and postage was $27,670.76. The contract with DLR had a budget amount of $28,452 for printing and mailing.

6. How much, if any contribution was made in-kind or cash by DLR towards this brochure?
No in-kind or cash contribution was provided by DLR for this informational mailer. This public outreach service is a part of the DLR contract and the services are provided in conjunction with their other design, architectural and engineering responsibilities for the new jail project.

How much County staff time (approx dollar value) was spent to prepare this brochure?
No new content was created by County staff for this informational mailer. The report contains information from existing documents created over the last few months for County Council and community review in preparation for their decision to place the ballot measure on the General Election. The total County staff time was not tracked but is considered minimal. The County staff time encompassed compiling the existing information, reviewing DLR's work in preparing the mailer and working with the Prosecuting Attorney's office to ensure consistency with PDC guidelines.

7. How much was paid to the third party contractor / Copy Writer to prepare this brochure?
Associated with the public outreach component with the DLR contract there has been $16,350.00 for research, design and production of the mailer in August and September. The invoice for October has not been received but only minimal work by DLR was devoted towards the final coordination and review of the informational report.

I would like to thank you for your questions on the information mailer. The intent of this mailer was to inform our citizens on this very important public project. This informational report is in line with the guidelines as authorized by the PDC where they note ***"it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."*** It was reviewed by county legal staff. The PDC further describes ***"that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."*** The need to inform the public concerning this important issue stems from the fact that not correcting the deficiencies of our existing jail facility by building a new replacement jail continues to have the County at significant risk for potential liability, as has been discussed in the last years.

I'm planning on engaging the council on this issue at the Finance Committee meeting at 11 AM, next Tuesday.

(Dana, please forward as per Councilmember's request)

Jack Louws
Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5200

Disclaimer: Public documents and records are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082

Jack Louws
County Executive

MEMORANDUM

TO: Carl Weimer, Council Chair
Whatcom County Council

FROM: Jack Louws, County Executive

DATE: October 27, 2015

RE: Whatcom County Community Report – Whatcom County Jail

After 5 years, we are at a point in time where next Tuesday November 3rd the voters of Whatcom County will decide to support or oppose a sales tax measure for the construction of a replacement jail on LaBounty Road in Ferndale. The Council and the Administration have taken very deliberate and crucial steps to prepare our organization and the community for this vital decision;

- In April 2011, the Council passed Resolution 2011-14 "Establishing a Jail Planning Task Force"(JPTF) for study and recommendations on a proposed direction for the County jail;
- In September of 2011, the Whatcom County JPTF unanimously agreed that "due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail";
- In early 2013, based on the JPTF findings and recommendations, the Council and Executive retained DLR Group for jail planning, architecture, engineering and other services to plan for the replacement jail;
- In late 2013, on recommendation from the Executive and other team members the Council made the decision to purchase the LaBounty Road property in Ferndale, (appraised and purchased for approximately $6 Million) for the future location of the Whatcom County Jail and Sheriff's Office;
- In September 2014, the Council and the Executive approved a contract with DLR Group to seek a Conditional Use permit, which was issued in March 2015 by the City of Ferndale;
- In June and July 2015, The Council adopted Ordinance 2015-025 and amended Ordinance 2015-037 establishing the Incarceration Prevention and Reduction Task Force;
- In June 2015, the Council approved Resolution 2015-024 authorizing the jail facilities sales and use tax ballot measure to be brought before the people.

The September 30th, 2014 contract with DLR Group authorized public outreach on the project. This outreach included providing a coordinated informational publication, including images of the existing facilities and renderings of the new facility. The planned public information schedule for the project included developing materials for presentations and for the ballot measure mailers.

The Council's role related to the mailers, while important, was limited to the authorization of funds within the budget and contract that approved the preparation and distribution of the ballot measure mailers. I take full responsibility for the design, delivery and content of the informational mailer.

During the preparation of the mailer, my team, the Prosecuting Attorney's office and I worked closely together to ensure consistency with state law on this matter. According to the Public Disclosure Commission (PDC) guidelines, "**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate;**"

> *"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "**it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies.**" Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

Simultaneously we reviewed the PDC guidance on informational mailers, and consulted with DLR, who has experience in preparing informational mailers requiring PDC compliance. We sought PDC review. However, the PDC stopped providing review of mailers last year, due to their budget constraints. We worked diligently to make the mailer factual and objective. My team and DLR Group consulted with the PDC, and to the best of our knowledge the mailer follows their guidelines and is consistent with state law. DLR Group received specific guidance from the PDC that;

- one mailer is appropriate,
- the list of registered voters may be used,
- the mailer should not directly advocate for or against the proposition,
- there are no specific timelines designated as it relates to the mailer and the election date.

The informational mailer content was informed by the Skagit Community Report that was issued just prior to their sales tax ballot measure in the August 2013 election. I would like to submit a copy of that report for your review and comparison. In our community you will find similar informational reports developed by school districts, fire districts and other jurisdictions that have communicated to their voters on important ballot issues. The mailer was designed to give the voters of our community solid and accurate information on a large and complex jail project.

After so many years of good work and so many good decisions by the Council we stand today with a solid project now poised to be decided by the voters of Whatcom County. While I am proud of all of our work on this most significant of criminal justice challenges I do regret that this entire jail project and the associated public informational mailer have resulted in controversy among some people in the community. With that controversy in mind, I stand before you, ready to move forward, shoulder to shoulder, to achieve a sensible solution to this longstanding community challenge of a replacement jail.

I do want to state that the entire jail plan, the documents and agreements associated with the plan, as well as the informational mailer was developed and distributed with all good intent by competent, ethical and conscientious people working within Whatcom County Government. I am proud to serve alongside each of them. These people are committed to the mission of Whatcom County and strive every day to protect our residents and ensure the health and prosperity of Whatcom County.

Again, we are all looking forward to the decisions that the voters of Whatcom County will make on November 3rd. We can always learn from the work we do together and I am willing to use what I have learned from this project in our important work together in the future.

Respectfully,

JL

Confidential Attorney Client Privileged Communication

DOCUMENT June 3, 2015 entitled "Public Outreach Kick Off"

-do not recall previously seeing this document
-cannot locate a copy in an email search of Outlook
-sent invitation from Tawni Helms to attend
-did not confirm invitation; but did attend the June 3rd meeting (and only June 3rd meeting)

Recall DLR representative from Portland, Oregon-Justin Stranzi- who purported to have expertise in effective public outreach on ballot issues making presentation and adherence to public disclosure laws;

Recall Chief Deputy Prosecuting Attorney Dan Gibson making opening cautionary statement distinguishing between campaigns to support ballot initiatives and providing public neutral outreach to inform citizens;

Recall Executive Jack Louws making statement about need to adhere to Washington Public Disclosure laws and asking for assistance of our legal advisor (Prosecuting Attorney's Office);

"Notes" on DLR Communication of June 3rd

"There are added benefits to a sales tax v. property tax such as tourist and commuter taxes included in paying for the measure and the taxes are not centered on property tax payees only. The logistics of the technical workings of the sales tax measure such as expiration dates, etc. are important to confirm and communicate to people."

-recall a general presentation from Mr. Stranzi on the above paragraph

"Messaging needs to include information on the consequences if the measure does not pass. The outreach shall provide a clear idea of what will occur in the jail does not get built, but not use fear or threat approaches. Items include the financial impact, overcrowding limitations, raised cost/inmate (higher capital costs), and ongoing facilities maintenance of an aging building. These impacts cannot be bluffed." **Side note:** ***"Bill Elfo shall describe consequences and provide full description for literature and message."***

-my recollection was that I told DLR that I had provided an extensive number of editorials over the years to local media on the need to replace the jail and that I had also provided detailed memorandums to Council in a public record of April 9th, 2015 (attached as Exhibit A) and in a memorandum to Executive Louws dated April 22, 2015 that responded to questions from Council on the need to replace the jail (attached as Exhibit B). I also offered to provide DLR with copies of past editorials on the jail and suggested that they search the Bellingham Herald

web-site. The only quote from me in the flyer was taken by DLR from the first paragraph of a guest editorial in the Bellingham Herald that was published on June 14, 2015.

Sheriff Elfo has been determining a Plan B approach that would be required if the measure does not pass.

- ***The County Jail is regulated to meet life safety conditions for the County needs.***
- ***Cities may be required to find alternative solutions at their own cost if this measure does not pass.***
- ***Population cap may be required to ensure building is able to be maintained and not overly stressed by overpopulation.***

-I recall providing the information referenced in this paragraph verbally during the meeting

-I did prepare a memo to the Executive's Office on this topic (as related to establishing a population cap) – I do not recall providing it to DLR

"Bellingham Herald offered the opportunity for OpEd pieces over the next few months. Sheriff Elfo shall prepare a document for next issue on Friday 6/12" **Sidenote:** ***Sheriff Elfo to write OpEd"***

-During the June 3rd meeting, Mr. Stranzi suggested publishing an editorial in local newspapers concerning the jail. I told him that such an editorial was already planned.

-On May 11th, 2015 at 1:45 p.m. (recollection it was during this time period and in Outlook Calendar appointments I accepted) Executive Louws and I met with Bellingham Herald Editor Julie Shirley and Publisher Mark Owing at the Herald. During the May meeting, I was requested to write an editorial on issues related to the jail for publication sometime in June. I agreed to write the editorial for the Herald prior to any meeting with DLR on a public information campaign. This editorial followed probably a dozen earlier editorials I have written since 2003 on the need to replace the jail. The editorial was submitted to the Herald and published on June 14th, 2015 (copy of June 14th editorial; appointment notes and email to editor of Herald attached as "Exhibit C." DLR apparently included the first paragraph of the editorial as the quote attributable to me in the flyer.

"Justin Stranzi detailed the "20-60-20 approach" where typical populations have approximately 20% that say no regardless of the literature or information provided Sixty % may be predisposed but are willing to listen to each stance. These are the people who need to be talked to."

-generally recall most of this as part of the presentation made by Mr. Stranzi

"**Upcoming Scheduled Topics**" on DLR Communication

"19 weeks until October 16 (ballots are released) – Public Outreach work shall be complete

"Bi-weekly leadership team meeting – Review with staff and county administration

- ***Work to create a mailer and make the unified voice***

"Tyler Schroeder shall confirm the appropriate communication the team may have with the PAC following the issue being confirmed on the ballot based on voter outreach regulations."

-I am unaware of any agreement as to regularly scheduled "leadership team meetings" between DLR and staff regarding public messaging – if there were, I did not attend. I was sent invitations to several updates but did not accept or attend

- Chief Civil Prosecuting Attorney Dan Gibson specifically briefed and cautioned attendees on laws regarding the use of public resources to advance ballot measure.

- Chief Civil Prosecuting Attorney Dan Gibson cautioned that public information efforts could not be coordinated with activities of any political action committee

-Chief Civil Prosecuting Attorney Dan Gibson indicated that staff should work with his office and the Public Disclosure Commission on the development of any public communication materials and that materials proposed for distribution should be reviewed by the PDC prior to approval for dissemination

"Whatcom County shall confirm the appropriate communication the team may have with the PAC following the issue being confirmed on the ballot based on voter outreach regulations."

-Chief Civil Prosecuting Attorney Dan Gibson cautioned that County resources should not be used to initiate communications with any PAC on an issue on the ballot – however, county officials could respond to requests for information with factual information as they would any other group so long as advocacy was not suggested

"Sheriff Elfo is the lead decision-maker from the County team for the campaign. He will identify the key players that shall create the PAC. Tyler shall remain the point of contact to DLR Group. Tyler shall address responses to taxes questions, and Sheriff Elfo will address responses to operations."

-This statement is inaccurate and does not in any way reflect my activities. All of the County officials in attendance knew (if not before, certainly after receiving strong advice from Chief Prosecuting Attorney Dan Gibson) that they should not take part as County officials in using public facilities to organize a PAC. I clearly stated that I was aware that a PAC had formed or was in the process of forming (I believe it formed around February). I did not organize any PAC.

-I am unsure what DLR is referring to in its use of the word "campaign." I certainly did not consent to engage in a political campaign on behalf of the County. If the term was meant to denote the County's public information campaign regarding the jail, I certainly was not the lead

decision-maker and did not take part in the design of the flyer. I did concur with the content of the flyer with the understanding it would be reviewed by legal counsel and the Public Disclosure Commission for compliance with the law prior to distribution.

-I did not previously read the calendar of events submitted by DLR – In reviewing it now, I note a notation "Campaigning is Complete" on the October entry. Again, I'm not sure how the term "campaign" is intended. It would be difficult for me to conceive that any officials who attended the June 2nd meeting with DLR and heard the advice of Attorney Gibson would agree to engage in a political campaign.

-The only PAC I am aware of that was formed to support Proposition 2015-1 consisted of a group of citizens who have consistently through the years advocated for replacing the jail. I know some of these individuals well who included Ray Baribeau; Doralee Booth; Terry Terry; Isaac Colgan; Mark Shintaffer and Theresa Ericksen. Mr. Baribeau and Ms. Booth both served on the County Council created and County Executive appointed Jail Planning Task Force (2011-2013). In late 2011 / early 2012, these citizens formed a non-profit public education group (not a PAC) called "Public Safety Now." The group extensively researched issues relating the Whatcom County Jail; reviewed jail operations across the state; and educated the public and elected officials on the need to replace the jail; and offered suggestions and solutions to jail problems. I attended many of their meetings and served as a technical advisor on jail-related conditions and issues. Public Safety Now was <u>not</u> a PAC but many of the core members on their own initiative and without any need for urging by me, formed a PAC.

-As Sheriff, I responded fairly frequently to questions from PAC members regarding jail conditions; prior studies; trends, etc., etc. As Sheriff, I provided factual information and in some cases, public records that were responsive to their requests. I did not use county resources to engage in advocacy on the ballot measure. I also provided similar information to others who were not part of the PAC including those whose communications made it apparent that they did not support the initiative and other interested persons. I have attached a sampling of materials from the 2012 non-PAC public education group (Exhibit "D.)"

-I attended some meetings of the PAC as a private citizen. No meetings were held at the Sheriff's Office or in any other public facilities. I did not use any County or other public resources to advance the purpose of the PAC. I provided information on issues related to the jail. I answered questions regarding my speaking schedule both as Sheriff and those where I spoke as a candidate for Sheriff. There was absolutely no coordination with the PAC on the design of the flyer distributed by the County. Although I was unopposed in the 2015 election for Sheriff, I was invited to various candidate forums and spoke favorably on the jail proposition. Again, county resources were not utilized to facilitate these activities.

-During weekly staff meetings, I clarified to Sheriff's Office staff and Citizen's Advisory Committee the requirements of the Public Disclosure Commission and that County resources could not be used to facilitate a position on a ballot initiative (reiterated the advice provided by Chief Deputy Prosecutor Gibson).

"Items that may be used to get the message out include direct mail or trifold (similar to mailer for Skagit County), direct meetings with local organizations such as the Rotary and Chamber of Commerce. DLR Group shall provide information and arrange a scientific survey of topics and messages to be called to likely voters with varied demographic. Calls should be made by survey callers (not automated messages)."

-I recall Mr. Stanzi making a presentation of this nature. I also recall Executive Louws expressing reservations with surveys and suggesting that the Prosecuting Attorney first review proposal for compliance with law. I specifically recall advising that I already spoken to most interested civil organizations on issues related to the jail and that I would continue to accept invitations as Sheriff (I had already presented to the Rotary, Kiwanas, etc). I specifically declined any assistance from DLR with these efforts.

***DLR Group shall provide**:*

- ***Draft questions for survey***
- ***DLR Group workplan of included scope***
- ***Master calendar with all dates and issues when needs to be complete***
- ***Checklist items to do – confirmation items have complete***

-I don't recall any authority be given by the Executive for DLR to develop a survey

Whatcom County Shall Provide:

- ***Itemized list of consequences if measure does not pass***
- ***Identify communications consultant (attend meeting if available and set up)***
- ***Confirmed go ahead from all cities (expected by June 17th)***
- ***Names of Potential PAC co-chairs***
- ***Any public meetings that are available to be attended by leadership team shall be confirmed and attended prior to next meeting***

-my recollection is that these were suggestions offered by DLR
-I did not provide DLR any information on PAC or its co-chairs
-I did not coordinate my meeting schedule with DLR – I continued to accept invitations to speak "as Sheriff" and those as a candidate for re-election (for which no public resources were used)

July 2, 2015 DLR Notes

I was on vacation and did not attend this meeting or read the notes provided to Tyler Schroeder by DLR.

I did not utilize in any way the "calendar of events" provided by DLR

I did not participate in any way in the survey or comment on the survey that is referenced in the notes. I do recall Executive Louws indicating at some point near this time, that a survey would not be authorized

I am "cc'd" as an attendee at this meeting (on "cc" as an "attendee" but not listed as an attendee on page 1. I was on vacation at the time of this meeting (See my calendar Exhibit "F").

I do not recall having any other direct communications with DLR on the public information campaign.

Response to Mr. Stutzman's email of December 14th, 2015

From: PDC Support [mailto:pdc@pdc.wa.gov]
Sent: Monday, December 14, 2015 5:28 PM
To: Jack Louws
Cc: Royce Buckingham; Tyler Schroeder; Jack Louws; Daniel Gibson
Subject: Re: PDC - Whatcom County Officials: Alleged use of public facilities to promote Propositon 2015-1 (Whatcom County Jail Ballot Measure)

Royce,

Thank you. I would like to speak directly with Justin Stranzl, with DLR Group, about his September 2, 2015 conversation with PDC Filer Assistance Specialist Chip Beatty. Can you facilitate that conversation or should I contact DLR Group directly? This conversation was summarized in an October 26, 2015 letter from William Valdez to Tyler Schroeder that Whatcom County included as Exhibit A when it responded to the complaints.

Another area I am investigating is Whatcom County's outreach to the community about the proposed ballot proposition during the months leading up to the election. For the period June 2014 through the election, please provide a complete list of speaking engagements, including the group spoken to, the speaker or speakers and support staff attending, the date of the speaking engagement, and who initiated the contact (from Whatcom County or from the group). Also, please provide copies of all emails sent and received between Whatcom County and community groups about proposed speaking engagements. Thank you.

Phil Stutzman
Sr. Compliance Officer
(360) 664-8853

Meetings Attended as Sheriff June 1st , 2015 through November 3rd, 2015

Date Presented: June 2nd, 2015 – I was requested by the Whatcom Women Republicans to provide an update on progress on presenting a plan for a replacement jail and other criminal justice topics to include behavioral health. I attended and presented as Sheriff. I made this presentation as Sheriff. No other County staff were present. I did not solicit this speaking engagement. The presentation was requested by the Republican Women's organization (I can't recall "who" specifically requested me but I believe it was Lisa Sherry). I worked off of a previously developed Powerpoint. I experienced difficulty in linking the Powerpoint projector to my computer. County IT staff member John Dahlquist came by and assisted me in resolving technical issues but did not take part in the presentation.

Date Presented: July 29th, 2015 – I was requested by Joan Standridge of the Semiahmoo Resort Association to provide a talk on Neighborhood Security. Through a series of communications and coordinating a joint presentation with the Blaine Police Department, the thrust of the portion I agreed to provide was on untreated mental illness and the impact on the criminal justice system and the plan that would be presented to voters to replace the jail and provide for improved mental health evaluation, treatment and housing. No other County staff were present. I did not solicit this speaking engagement. The presentation was requested by Ms. Strandridge.

Date Presented by Executive Louws: August 27th, 2015 I attended a meeting of the Whatcom County Democrats who had invited Executive Louws to present on the proposal to replace the jail. I simply attended and did not present.

Date Presented: September 2nd, 2015 – on August 8th, my staff received an email from the Willow's Retirement Home staff (Sierra Thomas) asking that I provide information to their residents about the proposal for a new jail. I later communicated with the requestor through email. "Jen" at the Willows requested "*an unbiased, middle of the road description on both sides of the controversy*." I attended the speaking engagement on the afternoon of September 2nd and provided the requested and also spoke of functions of needed improvements in our behavioral health system; and proved general information regarding our law enforcement bureau and operations; as well as our division emergency management and the recently established new emergency operations center. I made this presentation as Sheriff. No other County staff were present. I did not solicit this speaking engagement. The presentation was requested by the Willows staff. I worked off of a previously developed Powerpoint.

Date Presented: September 15th, 2015 I was telephoned by Russ Weston of the Bellingham Grange to make a presentation on the County's plan to replace the jail and the issue of untreated mental illness and criminal justice impacts. I made this presentation as Sheriff. No other County staff were present. I did not solicit this speaking engagement. The presentation was requested by Mr. Weston. I worked off of a previously developed Powerpoint

Date Presented: September 17th, 2015 I was requested by a member of the Birch Bay Chamber of Commerce - Doralee Booth-to provide information on the jail ballot measure. I made a presentation on the proposal to replace the jail as well as impacts of untreated mental illness on the criminal justice system. Due to time constraints, my presentation was limited to about 10 minutes. Prosecuting Attorney David McEachran also made a separate presentation. I made this presentation as Sheriff and did not solicit this speaking engagement. I worked off a previously developed Powerpoint. I was also requested by Doralee in the same email to also attend a candidate's forum hosted by the Birch Bay Chamber of Commerce in October. I did not respond to this request through the County email system. I later telephoned Ms. Booth from my home phone and advised here that I could not accept or respond to political invitations through the County email system. Please

note that the email chain also contains an unrelated communication that refers to a "Sheriff's Advisory Group" meeting that she missed– this is a group of citizens I meet with to receive community input. It was organized in the 1990s by my predecessor. Ms. Booth has been a part of the group for at least 14 years, beginning with my predecessor. It is not a political action committee.

Date Presented: September 25, 2015 I was invited by a "Liz"to attend a meeting of what I understood to be members of the construction trades to discuss the proposal for the new jail. When I arrived, there were several candidates for public office. Ray Baribeau spoke in favor of Proposition #2015-1. As Sheriff, I primarily answered questions about the jail site selection process and the findings of the jail planning task force as they related to design and location. The group consisted of about 10 people involved in the construction industry. The meeting is listed on my calendar lists the meeting as "construction trades" (as I originally understood).

Meeting Scheduled to Present as Sheriff June 1st , 2015 through November 3rd 2015 but Subsequently Cancelled by Requestor

Date Scheduled but Cancelled: September 9th I received a telephone call from Riggs Nelson of the Northwest Business Club during the Summer who requested that I present on the ballot measure to replace the jail and jail needs in Whatcom County. I agreed to speak as Sheriff. I am also a member of the organization. However, Mr. Nelson cancelled the presentation due to a scheduling conflict.

Meeting Frequently Attended where I am asked to provide an "Elected Official" Update

Puget Sound Democrats (2nd Friday of most months) I frequently attend the Puget Sound Democrats monthly luncheon. While all are listed on my calendar, I do not attend all meetings. During at least 2 or 3 of the meetings, I was asked to provide a update on the jail planning process and answer questions. I do not recall the specific dates. I have a standing invitation to attend the meetings and only present when I am requested.

Northwest Business Club (2nd Wednesday of the month) I am a member of this organization and frequently attend monthly luncheons. While all scheduled meetings are listed on my calendar, I do not attend all meetings. During at least 2 or 3 of the meetings, I was asked to provide a update on the jail planning process and answer questions. I do not recall the specific dates. The organization also provides a separate time for those seeking elected office to speak as well as for others to speak on issues before voters.

Meetings Attended as a Private Citizen where I advocated for Proposition 2015-1

Date Presented: <u>September 19th, 2015</u> I was requested by the Chair of the <u>Whatcom County Republican Central Committee</u> (along with Executive Louws) to present on Proposition 2015-1. I was originally invited to attend as Sheriff. I was later asked to take a position on the ballot issue. I ultimately spoke in favor of the ballot measure at the meeting. My presentation did not involve the use of County resources and was presented as a citizen. I did not request this meeting and was rather invited by the Chair of the local party to present.
I was also invited by various organizations and groups to attend political forums as an unopposed candidate for Sheriff and to speak in support of Proposition 2015-1. Some of the forum dates changed and on some I needed to seek clarification as to whether the event was a political forum or a citizen's meeting.
I was also invited by various organizations and groups to attend political forums as an unopposed candidate for Sheriff at which I publicly supported Proposition 2015-1. I no longer have the exact dates of the forums (however they were held during the relevant time periods). I did not solicit any of the invitations. The invitations included:

1) **A Birch-Bay Chamber of Commerce sponsored candidate forum**
2) **A Mount Baker Chamber of Commerce sponsored candidate forum**
3) **A Point Roberts area residents sponsored candidate forum**
4) **A southeast County area residents' sponsored candidate forum**

I also was invited to speak in favor of Proposition 2015-1 at a meeting of the Northwest Business Club (2 minutes) at a specific time during the meeting that was for candidates and proponents of propositions. I do not recall the exact meeting but it was during the election season. No County resources were used to effectuate this advocacy.

The Whatcom County Jail: Whatcom County's Largest Behavioral Health Institution

Sheriff Bill Elfo

Chair of the Whatcom County Behavioral Health Revenue Advisory Committee

Whatcom County Jail

Detains and Houses Arrests from:

- ***All*** **Local, State and Tribal Law Enforcement Agencies and Courts within Whatcom County**
- ***All*** **Courts (City, District, Superior, Tribal) in County**
- ***All*** **Fugitives from Justice sought in other States**

Bookings (February 2013-December 2014)

15,225 Bookings into Jail (23 months)
(includes multiple booking of same person)

Behavioral Health Referrals (February 2013-December 2014)

8,354 Referrals of Inmates for Behavioral Health Evaluations and/or Treatment (23 months)
(includes multiple booking of same person)

Dramatic Increase in Offenders with Serious Behavioral Health Issues booked into Jail

Inmates with Mental Health Problems in County Jails-64.2%

Inmates with "Serious" Mental Health Problems in County Jails-24%

Inmates in County Jails admitting to Substance Abuse Disorder-68%

Many have "co-occurring Mental Health and Substance Abuse Issues

Whatcom County approximates national average

James DJ, Glaze LE. ***Mental Health Problems of Prison and Jail Inmates***, Washington, D.C.: **U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics** (2006)

MAIN JAIL OVERCROWDED

Designed for 148 but Holds up to 320

Dangerous – Difficult to Manage Population

Often ***Aggravates Existing Mental Health Issues***

Jail is not designed to effectively provide mental health services

Problems with Treatment

-Often Inmates have gone years without treatment

-Services in Jail although improved, are less than fully effective

-Physically very little space to deliver services

-Suicide and Suicide Attempts in Jail

-Addiction including smuggling drugs into Jail through body cavities

-Drug overdose and deaths

-Huge safety and offender management issues

-Suicides

-*Very little space for Evaluation, Treatment and Therapy*

-*Relatively short stay (average 21 days)*

Facility Limitations - Delivery of Mental Health Services

Mental Health Observation Cells
-in 24/7 busy booking area

Mental Health Isolation Cell

-Busy first floor booking to increase intense 24/7 monitoring

-No toilet or sink

-Prevent inmates from harming themselves

Interim Jail Work Center

- (2006)-Temporary Solution for 6 to 8 years

-Bakerview Industrial Area – Division Street

-Designed for Conversion to Industrial Use with Promise to Sell and Apply Proceeds to Construction of New Jail Facility

Why Overcrowded?

LEGISLATION

-Mandatory Arrest and Incarceration for **DUI** and **Domestic Violence** Related Incidents

-**Transfer of Responsibility** from State Department of Corrections **to County Jails**

-**2SHB1885**

OFFENSE	CURRENT	2SHB1885
3rd time Car Thief	17-22 months state prison	Possible 60 days county jail
3rd time Burglary 2nd	12-16 months state prison	Possible 30 days county jail
3rd time Identity Thief	12-14 months state prison	Possible 30 days County Jail

Why Overcrowded?

FAILURES in MENTAL HEALTH SYSTEM:

-***De-Institutionalization*** **(95% less in-patient capacity since 1955)**

- **-Change in Philosophy**
- **-Civil Rights Issue**
- **-Community-Based Alternatives**

-***Community-Based Mental Health Treatment***

- **-Inadequate / Difficult to Navigate**
- **-Dramatic Funding Reductions – especially in past 10 years**

Northern State Hospital

Skagit County 1909-1976

Competency

Evaluations and **Restoration of Competency**

-Generally Involve Very Dangerous and Violent Offenders

-Very difficult inmates to manage; often must be isolated from other inmates

-Issue is whether they are Competent to Assist in their Defense

-Evaluations must be Performed at Western State Hospital in Pierce County

-Restoration of Competency (usually administering drugs) must occur at Western State Hospital

Competency

-Evaluation Process formerly took 2-3 weeks to complete

-Budget Reductions at Western State resulted in 3-4 month process with multiple trips from Jail to Western State Hospital

-Languish in Jail awaiting evaluation and treatment

-Result in Dramatic Increase in the Most Difficult and Dangerous Offenders to Manage

Example: Per Olaf Johansson

-Stabbed Father to Death
-Nearly Killed Mother and 13 year old Niece

Two Categories of Offenders with Mental Illness in Jail

Crimes Against Public Disorder and Property Crime

- -routine shoplifters
- -blocking sidewalk in City of Bellingham
- -substance abuse

Very Violent and Dangerous Crimes including Assault, Arson and Murder

- -attempted murder of officers
- -arson at apartment complex
- -kill father and stab mother and niece
- -grab baby from mother and throw to sidewalk

Law Enforcement - Other Options
Involuntary Evaluation

Involuntary Detention – Law Enforcement Officer may if result of a *Mental Disorder* and:

-Likelihood of Serious Harm

-Gravely Disabled

-Designated Mental Health Professional

-Emergency Department Saint Joseph's

-Hold up to 72 hours

-Court Commitment for longer period

System Does Not Always Work
February 13th-14th, 2015

2/13/2015 Telephone call to 9-1-1 wanting to meet an officer so the officer could kill him or he could kill the officer

Standing in Pole Road waving hammer and a knife-took clothes off

Deputies blocked road for 90 minutes and man was talked into surrendering weapon by Sheriff's Crisis Negotiator

Had been taken to ER for Involuntary Evaluation in January

Transported to Saint Josephs for Involuntary Mental Health Evaluation at 1:30 p.m.

February 14th at 7:59 p.m.

Hey. I was wondering how would i go about getting my hammer and knife back from you sheriff deputies?

No Notice to law enforcement that he had been released

Hey. I was wondering how would i go about getting my hammer and knife back from you sheriff deputies?

Behavioral Health Triage Center

-16 beds for alcohol and mental health

-Never funded to service intended purpose

-Option: Saint Joseph's Emergency Room

Jail Based Treatment

-Despite limitations, Provide Evaluation and Treatment

-If Amenable to Treatment, can be Stabilized

-Upon Release

- -Uninsured / Eligible but not enrolled
- -Medicaid Terminates When they Enter the Jail
- -Lack Access to Community-Based Services
- -Quickly Re-Offend
- -Nationally 2-3 times more likely to be incarcerated*

*Baillargeon J, Binswanger IA, Penn JV,Williams BA, Murray OJ. Psychiatric disorders and repeat incarcerations: the revolving prison door. *Am J Psychiatry*. 2009;166(1):103-109

Jail Behavior Health Program

Chemical Dependency and Mental Health Fund (sales tax funded)

Advisory Board:

"Find pathways to treatment rather than continue the treadmill that often returns mentally ill and addicted offenders to the criminal justice system"

-included enhancing evaluation and treatment within the jail and for those leaving the jail

Mental Health and Chemical Dependency Sales Tax

-Local Option Sales Tax 1/10 of 1%

-Dime on $100 purchase

-Funds Prevention and Treatment Programs

- Mental Health Counselors in Every School District
- Housing for Chronically Mentally upon Release from Jail
- Drug Court
- New Mental Health Court
- Jail Based Behavioral Health Services

Jail Based Behavioral Health Program

-Funded Through the County Sales Tax

-Recognition of Facility-Based Limitations

-Increased Behavioral Health Professionals performing Evaluation/Treatment

-Increased Hours for Psychiatrist

-Re-entry specialist

Jail Based Behavioral Health Program-continued

- February 2013 through December 2015- 8354 referrals to Behavioral Health Specialist for evaluation and or treatment
- Referrals from Corrections Deputies; Medical Staff; Inmates themselves and Inmate Families
- 84% seen within 24 hours of referral

Jail Re-Entry

-Assist with Re-Enrollment in Medicaid and Medicare and other forms of Health Care

-Referrals to community-based behavioral health and other services

- Make appointments / Follow up
- Transitional Medications if Needed
- Housing assistance in some cases

Council Created Jail Planning Task Force

"Due to overcrowding, life-safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail" – Need is <u>Critical</u>

-Justice Department: "Catastrophic loss of life" in event of fire

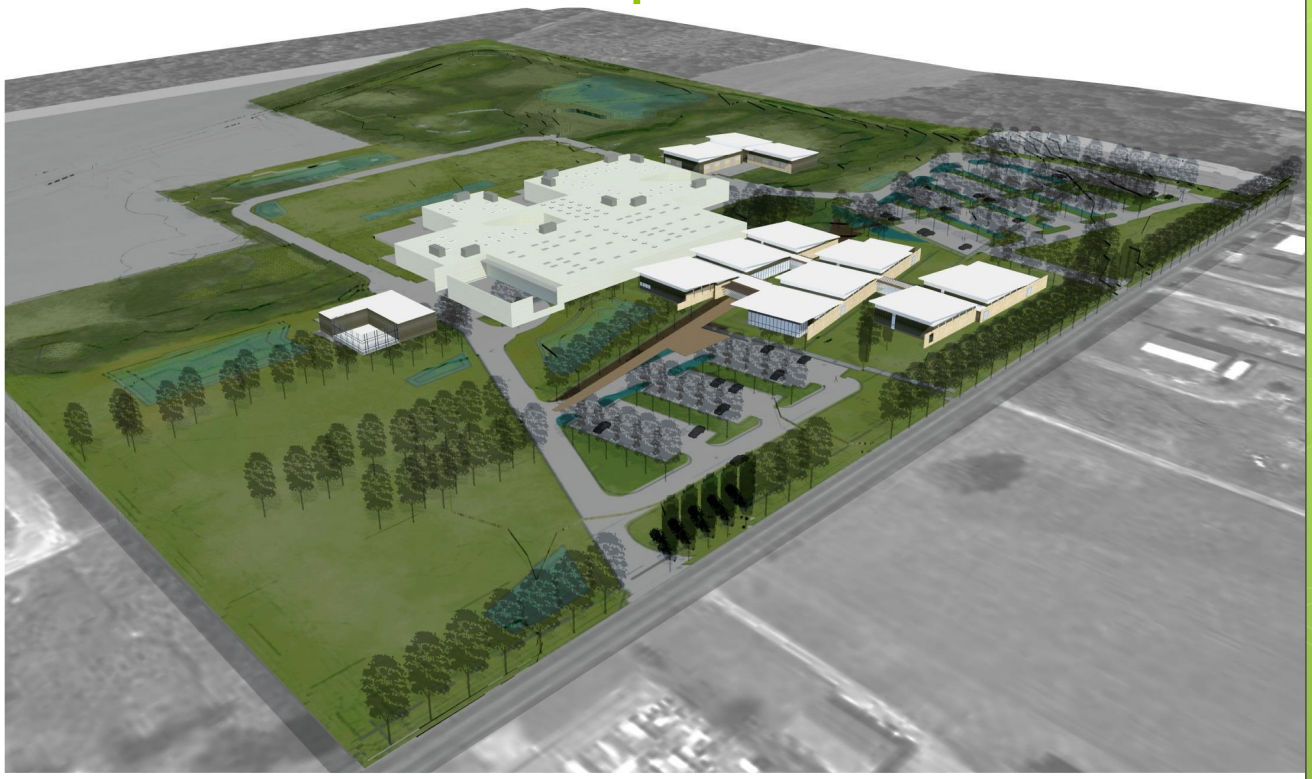
-Bellingham Fire Department: unable to evacuate facility in the event of fire will result in loss of life

LaBounty Rd, Ferndale

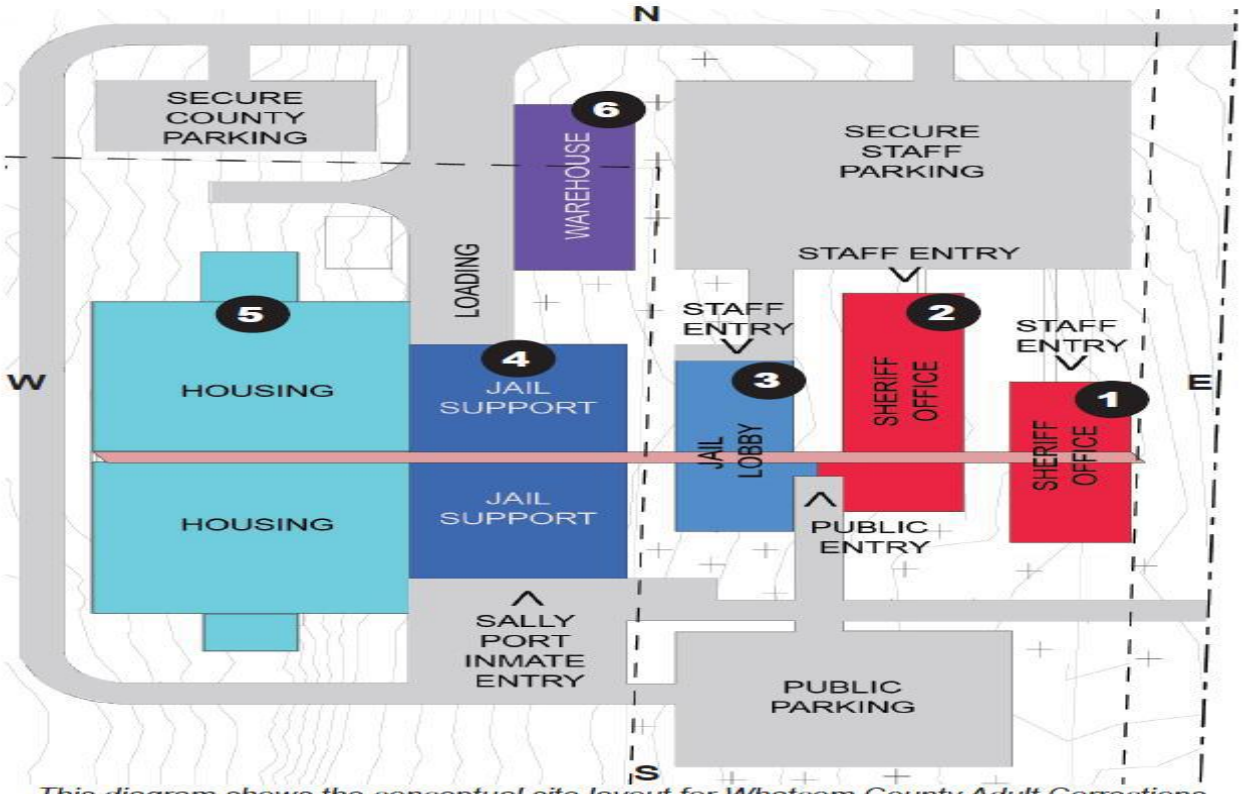
-Industrial area near Slater Road

- 40 total Acres
- Close to I-5
- Limited wetlands
- Appropriate zoning
- Utilities on site
- No wildlife issues
- Limited archaeological concern
- Army corp. and development permits
- Critical Needs Assessment
- City of Ferndale Permits

Site Plan - conceptual

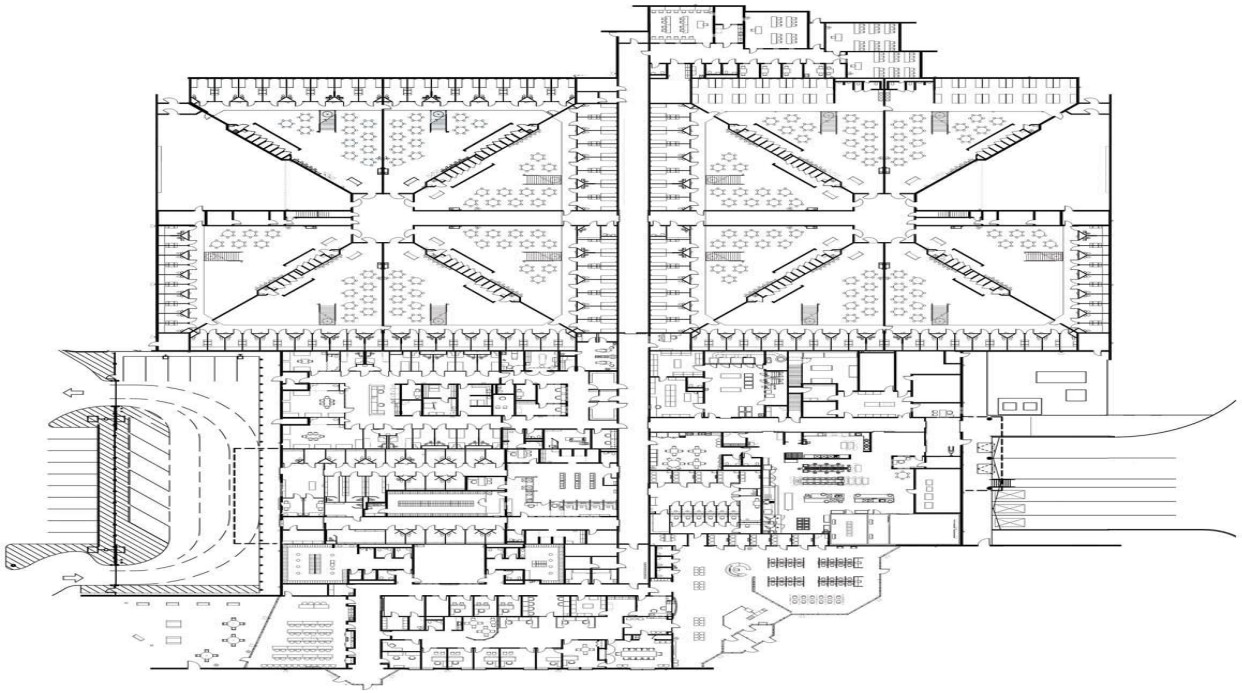


Site Plan



This diagram shows the conceptual site layout for Whatcom County Adult Corrections Facilities and Sheriff's Headquarters.

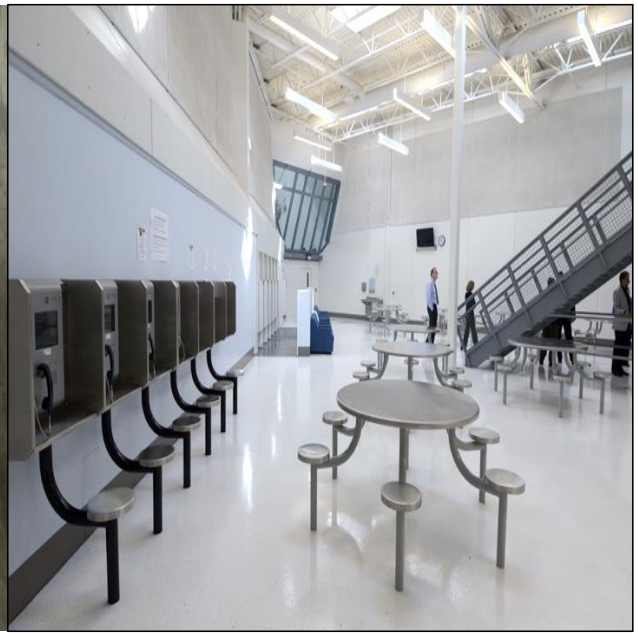
Design



Control Room – line of site

Central Control Booth

Cell Block areas



4 person cells

Bill Elfo

From: Doralee Booth <doralee@earthlink.net>
Sent: Tuesday, September 01, 2015 1:10 PM
To: Bill Elfo
Subject: Birch Bay dates....

Hi Sheriff…Sorry to have missed the mtg. We were in the "DARK" at BB. We are now powered up finally after 60 hours!
Will be checking out the B'ham Council mtg. on line. Hang in there…you are doing a great job for Whatcom County!!

Birch Bay Chamber luncheon is scheduled for Thursday, Sept 17th…location to be determined. Who would you like us to invite, besides you, to inform our members about the ballot issue? Speakers are given 20 minutes in our luncheon format. There will probably be some questions as well. We are also planning a Candidate Forum on Oct. 15th and would like to have the Prop. 1 ballot issue info addressed these as well.

Thanks,

~db

On Aug 31, 2015, at 10:59 AM, Bill Elfo <BElfo@co.whatcom.wa.us> wrote:

Hi everyone! I believe Marvin's internet and phone service may have been disrupted due to the weekend wind storm. Just a reminder that the Advisory Committee meeting will be on Tuesday morning-September 1st- at 7:30 a.m. Thanks! Bill

Sheriff Bill Elfo
Whatcom County Sheriff's Office
311 Grand Avenue
Bellingham, Washington 98225
(360) 676-6650
"Dedicated to making Whatcom County the safest in the State through excellence in public safety."
<image001.jpg>

From: mnmwolff@comcast.net [mailto:mnmwolff@comcast.net]
Sent: Monday, August 03, 2015 9:54 AM
To: Booth, Doralee; Bill Elfo; Friske, Bob; Harris, Paul; Kent, Mike; Meyers, Paul; Newmon, Bill; Papadakis, Constantine; Sano, David; Shintaffer, Mark; Marvin Wolff; Wolff, Marvin; baribeau, ray
Subject: Advisory Group Meeting Reminder

Hi, Just a reminder that the Sheriff's Advisory Group will meet on Tuesday, August 4,2015 at 7:30 AM at the Sheriff's Office conference room. The Sheriff will provide an update on several matters. Thank you, Marvin

Bill Elfo

From: Joan Standridge <joanstandridge@yahoo.com>
Sent: Friday, April 24, 2015 10:18 AM
To: Bill Elfo
Subject: Neighborhood Safety

Bill,

At our last meeting on Wednesday, the Semiahmoo Resort Association Board decided to look into having a town hall meeting dealing with neighborhood security. We are hoping that we can work with you to put something together fairly quickly, and we are looking for your direction as to what can be done to make our community safer. We are researching installing surveillance cameras at our gates and would like you input on this topic as well.

I have contacted the Blaine Police Department and hope that this could be a combined effort with your office. Your help it would be greatly appreciated and I look forward to hearing from you.

Thank you,
Joan Standridge
SRA Assistant Treasurer
joanstandridge@yahoo.com
208.305.4900 (c)

Bill Elfo

From: Bill Elfo
Sent: Friday, April 24, 2015 10:28 AM
To: Joan Standridge
Cc: mhaslip@cityofblaine.com
Subject: RE: Neighborhood Safety

Joan – thank you for your email. I would be happy to assist in any way. As most of Semiahmoo Resort is in the City of Blaine and is the primary responsibility of the Blaine Police Department, I would heavily defer to Chief Haslip's recommendations. Chief Haslip would also have the data on crime trends within the City. I do know that there has been a lot of success with the use of security cameras as a means to both deter and prevent crime. I think law enforcement does a good job in capturing criminals but there are lots of inadequacies in our justice system that result in the quick release of criminals who go on to victimize others. Perhaps I could present on some of the more global issues in the justice system that require community-based support. I will copy Chief Haslip on this email so he can coordinate.

Thank you!

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Thank you,
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joanstandridge@yahoo.com
208.305.4900 (c)

Bill Elfo

From: Joan Standridge <joanstandridge@yahoo.com>
Sent: Friday, April 24, 2015 10:31 AM
To: Bill Elfo
Subject: Re: Neighborhood Safety

Wonderful, thank you so much for your support. I look forward to seeing you again soon.

From: Bill Elfo <belfo@co.whatcom.wa.us>
To: Joan Standridge <joanstandridge@yahoo.com>
Cc: "mhaslip@cityofblaine.com" <mhaslip@cityofblaine.com>
Sent: Friday, April 24, 2015 10:27 AM
Subject: RE: Neighborhood Safety

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Thank you,
Joan Standridge
SRA Assistant Treasurer
joanstandridge@yahoo.com
208.305.4900 (c)

Bill Elfo

From: Mike Haslip <MHaslip@cityofblaine.com>
Sent: Friday, April 24, 2015 10:52 AM
To: Bill Elfo
Subject: RE: Neighborhood Safety

Thanks Bill,
We'll give her a call.
/Mike

Sent with Good (www.good.com)

-----Original Message-----
From: Bill Elfo [belfo@co.whatcom.wa.us]
Sent: Friday, April 24, 2015 10:27 AM Pacific Standard Time
To: Joan Standridge
Cc: Mike Haslip
Subject: RE: Neighborhood Safety

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joanstandridge@yahoo.com
208.305.4900 (c)

Bill Elfo

From: Joan Standridge <joanstandridge@yahoo.com>
Sent: Monday, April 27, 2015 7:50 AM
To: Bill Elfo
Cc: John Landis
Subject: Re: Neighborhood Safety

Good morning Bill,

I spoke with Officer Landis over the weekend and he is willing to participate in a neighborhood safety town hall meeting as well. If you the two of you could coordinate several dates based on your schedules that would be a great place to start. Please keep in mind that I need to find a venue and have time to promote the event, so not too soon but maybe within the next couple of months.

Thank you so much for agreeing to support us. Have a great day, Joan

---

From: Bill Elfo <belfo@co.whatcom.wa.us>
To: Joan Standridge <joanstandridge@yahoo.com>
Cc: "mhaslip@cityofblaine.com" <mhaslip@cityofblaine.com>
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joanstandridge@yahoo.com
208.305.4900 (c)

Bill Elfo

From: Mike Haslip <MHaslip@cityofblaine.com>
Sent: Friday, May 15, 2015 11:43 AM
To: Bill Elfo
Cc: Jon Landis
Subject: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Bill,

Joan Standridge (Semiahmoo Resort Association) advises she has convinced you to attend the crime & safety meeting she's putting together. Congratulations! (I get the impression that the topic has expanded from only "Neighborhood Watch" to include a component on "What do officers, deputies, Border Patrol etc do to keep Semiahmoo's residents safe".

They plan to use the large Semiahmoo Inn meeting room, on a Monday, Tuesday or Wednesday, from 4p-6p with stand & mingle time afterward. She wants us to give her 3 dates when we're all available. Here are the dates Landis & I have open together:

June 29, 30

July 13, 14,15

July 27, 28, 29

Aug 17, 18, 19

Aug 24, 25, 26

If any three (or more) of these days work for you, let me know and I'll pass the options back to her. Thanks in advance.

//Mike

Michael Haslip, Chief
Blaine Police Dept. 322 H St Blaine, WA 98230
o/ 360-332-6769 mhaslip@cityofblaine.com c/360-815-2006

Bill Elfo

From: Bill Elfo
Sent: Friday, May 15, 2015 2:46 PM
To: 'Mike Haslip'
Subject: RE: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Mike, I'm unavailable from June 21st through July 6 and will not be available August 19th – any other time works; I see this as primarily a Blaine PD presentation but after she extended the invitation, I thought it may be a good opportunity to discuss how foundational a jail is to public safety and educate the community about the dire need to replace it. Bill

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o/ 360-332-6769 mhaslip@cityofblaine.com c/360-815-2006

Bill Elfo

From: Mike Haslip <MHaslip@cityofblaine.com>
Sent: Friday, May 15, 2015 4:38 PM
To: Bill Elfo
Subject: RE: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Thanks Bill –
I'll advise them and will send you an appointment as soon as I hear.
Look forward to meeting up
//Mike

From: Bill Elfo [mailto:belfo@co.whatcom.wa.us]
Sent: Friday, May 15, 2015 14:46
To: Mike Haslip
Subject: RE: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Mike, I'm unavailable from June 21st through July 6 and will not be available August 19th – any other time works; I see this as primarily a Blaine PD presentation but after she extended the invitation, I thought it may be a good opportunity to discuss how foundational a jail is to public safety and educate the community about the dire need to replace it. Bill

Sheriff Bill Elfo
Whatcom County Sheriff's Office
311 Grand Avenue
Bellingham, Washington 98225
(360) 676-6650
"Dedicated to making Whatcom County the safest in the State through excellence in public safety."

From: Mike Haslip [mailto:MHaslip@cityofblaine.com]
Sent: Friday, May 15, 2015 11:43 AM
To: Bill Elfo
Cc: Jon Landis
Subject: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Bill,

Joan Standridge (Semiahmoo Resort Association) advises she has convinced you to attend the crime & safety meeting she's putting together. Congratulations! (I get the impression that the topic has expanded from only "Neighborhood Watch" to include a component on "What do officers, deputies, Border Patrol etc do to keep Semiahmoo's residents safe".

They plan to use the large Semiahmoo Inn meeting room, on a Monday, Tuesday or Wednesday, from 4p-6p with stand & mingle time afterward. She wants us to give her 3 dates when we're all available. Here are the dates Landis & I have open together:

June 29, 30

July 13, 14,15

July 27, 28, 29

If any three (or more) of these days work for you, let me know and I'll pass the options back to her. Thanks in advance.

//Mike

Michael Haslip, Chief
Blaine Police Dept. 322 H St Blaine, WA 98230
o/ 360-332-6769 mhaslip@cityofblaine.com c/360-815-2006

Bill Elfo

From: Bill Elfo
Sent: Friday, May 22, 2015 4:28 PM
To: 'Mike Haslip'
Subject: RE: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Thanks - Bill

Sheriff Bill Elfo
Whatcom County Sheriff's Office
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From: Mike Haslip [mailto:MHaslip@cityofblaine.com]
Sent: Friday, May 15, 2015 4:38 PM
To: Bill Elfo
Subject: RE: ? Possible Dates for meeting at Semiahmoo re RE: Neighborhood Safety

Thanks Bill –
I'll advise them and will send you an appointment as soon as I hear.
Look forward to meeting up
//Mike

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o/ 360-332-6769 mhaslip@cityofblaine.com c/360-815-2006

Bill Elfo

From: Joan Standridge <joanstandridge@yahoo.com>
Sent: Sunday, May 24, 2015 6:47 PM
To: Mike Haslip
Cc: Bill Elfo; John Landis
Subject: Re: Dates for a presentation

Mike, Bill and John,

I just heard that we have a ballroom at the Semiahmoo Resort scheduled for our meeting on July 29th. We have a meeting on Wednesday, I will confirm details and get back to asap with timing etc.

Thank you so much, I look forward to working with you all. Have a safe weekend, Joan

---

From: Mike Haslip <MHaslip@cityofblaine.com>
To: 'Joan Standridge' <joanstandridge@yahoo.com>
Sent: Friday, May 15, 2015 3:27 PM
Subject: Dates for a presentation

Hi Joan,
I have consulted with Sheriff Elfo and Senior Officer Landis.
Currently, here are the dates on which we all have the 4:pm-6pm timeslot open:

Monday	Tuesday	Wednesday
6/29	6/30	X
7/13	7/14	7/15
7/24	7/28	7/29

I'll secure the date you select on each of our calendars as soon as I hear back from you.
(And, I can work up dates in August if you find that none of these work.)

Thanks again for the offer to meet with SRA members.

Sincerely,
//Mike

Michael Haslip, Chief
Blaine Police Dept. 322 H St Blaine , WA 98230
o/ 360-332-6769 mhaslip@cityofblaine.com

Bill Elfo

From: Joan Standridge <joanstandridge@yahoo.com>
Sent: Tuesday, June 02, 2015 3:57 PM
To: Bill Elfo
Subject: Security Meeting

Hi Bill,

Your talk was amazing today and frustrating too, thank you for the information. Did you receive the email I sent confirming the date of July 29th for the Semiahmoo Neighborhood Security Meeting? The meeting will start at 4:00 pm and be in a ballroom at the Semiahmoo Resort.

Thanks again, see you soon, Joan

SRA Neighborhood Security Meeting
July 29, 2015 4:00 – 6:00 pm
Semiahmoo Ballroom
Semiahmoo Resort

Guest Speakers
Whatcom County Sheriff Bill Elfo
Blaine Police Chief Mike Haslip
Blaine Police Officer John Landis

Agenda:

4:00-4:05 SRA President Paul Atchison opens meeting, talks about security cameras at gates

4:05-4:25 Sheriff Bill Elfo to speak on crime statistics in Whatcom County and give update on the proposed new jail

4:25-4:45 Chief Bill Haslip to give an overview of statistics for criminal activity in our area

4:45-5:25 Officer John Landis to present the "Neighborhood Watch" program and discuss ways to prevent crime

5:25-5:45 Questions

5:45-6:00 CC&R Changes by John Binns

Plan to stay and have dinner at Packers or Pierside after the meeting!

Thank you Mark Andrew and the Semiahmoo Resort for the use of the ballroom.

Bill Elfo

From: Joan Standridge <joanstandridge@yahoo.com>
Sent: Monday, July 20, 2015 12:59 PM
To: Bill Elfo; Mike Haslip; John Landis
Subject: Security Meeting
Attachments: SRA Neighborhood Security Meeting.docx

Bill, Mike and John,

Attached is the agenda for our security meeting on the 29th. Looking forward to seeing you and again, thank you for doing this for us.

Joan Standridge
208.305.4900

Bill Elfo

From: Nickee Hughes
Sent: Friday, June 05, 2015 3:25 PM
To: Bill Elfo
Subject: Semiahmoo Resort Assoc.

I put the meeting that Joan Standridge spoke to you about on your calendar for July 29th at 1600 hours at the resort in one of the ballrooms. I have her info on the calendar also. No need to call her back since I spoke with her.

Bill Elfo

From: Sheriff
Sent: Saturday, August 08, 2015 3:36 PM
To: Bill Elfo
Cc: Jeff Parks; Wendy Jones
Subject: FW: New Jail Presentation @ The Willows

Sheriff –
This came in to the general Sheriff email.
Please let me know whether or not you are interested in giving a short presentation so we can respond.
Thank you.
Dawn

From: Programs at The Willows [mailto:programs@thewillowsbellingham.com]
Sent: Saturday, August 08, 2015 2:04 PM
To: Sheriff
Subject: New Jail Presentation @ The Willows

Hello Sheriff Elfo,
I am the Programs Coordinator at The Willows retirement apartments here in Bellingham. I am contacting you to see if you might be interested and available to come to our facility to give a short presentation about the plans for the new Whatcom County jail.

A large part of my job is providing our residents with opportunities to interact with and participate in the larger Bellingham community. This summer, I've initiated a program called Current Events where local community members and professionals come to The Willows to share their expertise about a specific subject or event. So far, we've had programs about the Bellingham Public School District's Bellingham Promise, honoring end-of-life care decisions within the ethical constraints of hospitals with religious foundations, and income inequality in America. I would love to invite you to speak to the current jail efforts and your knowledge and experience with providing inmates with proper mental health care.

Please let me know if you would be interested in participating in a 30-45 minute presentation on the subject and we can get something on our September calendar. I hope to hear from you soon.

Thanks so much for all that you do,
Sierra Thomas
360.671.7077

Bill Elfo

From: Bill Elfo
Sent: Tuesday, August 11, 2015 10:31 AM
To: 'programs@thewillowsbellingham.com'
Cc: Dawn Pierce
Subject: FW: New Jail Presentation @ The Willows

Follow Up Flag: Follow up
Flag Status: Flagged

Sierra, thank you for your kind invitation and I look forward to meeting your residents; I am just awaiting some September meeting schedules to be finalized and will call you back in a day or two. Thank you again! Bill

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360.671.7077

Bill Elfo

From: Programs at The Willows <programs@thewillowsbellingham.com>
Sent: Tuesday, August 11, 2015 10:54 AM
To: Bill Elfo
Subject: RE: New Jail Presentation @ The Willows

Bill,
That's wonderful, thanks so much for being willing to present here on the topic! Our schedule is filling up pretty quick here, so I do hope to hear from you soon!

Thanks again!
Sierra

From: Bill Elfo [mailto:belfo@co.whatcom.wa.us]
Sent: Tuesday, August 11, 2015 10:31 AM
To: programs@thewillowsbellingham.com
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Bill Elfo

From: Programs at The Willows <programs@thewillowsbellingham.com>
Sent: Sunday, August 16, 2015 4:23 PM
To: Bill Elfo
Subject: Willows Presentation

Good morning Sheriff Elfo,

This is Jen, Sierra's assistant at the Willows. We came up with some dates for your presentation on the new Whatcom County Jail topic. We hope any of these will work with your schedule:
Tues. Sept. 1 afternoon
Wed. Sept. 2 afternoon
Wed. Sept. 9 late morning/early afternoon
Sat. Sept. 12 late morning/early afternoon
Tues. Sept. 22 afternoon

I hope we can connect on one of these dates. Please let us know asap. We are printing our September calendar and newsletter this week.
Thank you for your time!

Jen

Bill Elfo

From: Programs at The Willows <programs@thewillowsbellingham.com>
Sent: Sunday, August 16, 2015 4:26 PM
To: Bill Elfo
Subject: one more request

I forgot to ask about the topic info. we need....
If we connect on a date in September, we will write-up a short article for our newsletter. Can you please summarize the topics you will discuss regarding the new Whatcom Jail? An unbiased, middle of the road description or both sides of the controversy?

Thanks again,
Jen

Bill Elfo

From: Bill Elfo
Sent: Monday, August 17, 2015 2:53 PM
To: Bill Elfo
Subject: Fwd: Willows Presentation

Sent from my iPhone

Begin forwarded message:

> **From:** Programs at The Willows <programs@thewillowsbellingham.com>
> **Date:** August 16, 2015 at 4:23:07 PM PDT
> **To:** <belfo@co.whatcom.wa.us>
> **Subject: Willows Presentation**
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> I hope we can connect on one of these dates. Please let us know asap. We are printing our September calendar and newsletter this week.
> Thank you for your time!
>
> Jen

Bill Elfo

From: Bill Elfo
Sent: Tuesday, August 18, 2015 11:52 AM
To: 'Programs at The Willows'
Cc: Dawn Pierce
Subject: RE: one more request

Jen, sorry for the delay (I was awaiting confirmation from a doctor's office regarding surgery dates for my wife) – September 2nd in the afternoon would be great if that date and time is still available (If not, I still have flexibility). Please let me know which time works best. As the public will be asked to vote on a new jail, a relevant topic might be "Replacing the Whatcom County Jail and Improving Behavioral Health programming" which will highlight the current condition and capacity of the existing jail as well as current behavioral health and educational programming.

Thanks – my cell is 410-0466 if you have any questions or would like to discuss further.

I will bring a Powerpoint if that is ok (if you have a screen)

THANKS!

Best Regards

Bill

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Sent: Tuesday, August 18, 2015 1:15 PM
To: Bill Elfo
Subject: RE: one more request

Hi Bill,
Thanks so much for getting back to us. Sorry to hear about your scheduling conflicts, I hope that your wife is alright.

Let's do Wednesday, September 2nd at 2:00. Would you be available for about an hour at this time for your presentation and time for discussion afterward?

That topic is great, I will put together a short article to advertise your presentation in our newsletter with that focus in mind. And of course, you can bring a PowerPoint! We typically connect our lap top to the television screen in our media center, that way we've got the capability for sound if that is something you would include in your presentation. It works best if you can bring your presentation on a flash drive, that way we can simply plug it into our lap top.

Thanks again for getting back to us, we look forward to meeting you in a couple of weeks!
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Great, let us know if you've got any other questions in the meantime.

See you soon,
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Bill Elfo

From: Bill Elfo
Sent: Tuesday, September 01, 2015 11:28 AM
To: 'Programs at The Willows'
Subject: RE: one more request

Sierra, do you have a number that I can give you a quick call concerning tomorrow?> THANKS, Bill

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THANKS!

Best Regards

Bill

Sheriff Bill Elfo
Whatcom County Sheriff's Office
311 Grand Avenue
Bellingham, Washington 98225

(360) 676-6650
"Dedicated to making Whatcom County the safest in the State through excellence in public safety."

From: Programs at The Willows [mailto:programs@thewillowsbellingham.com]
Sent: Sunday, August 16, 2015 4:26 PM
To: Bill Elfo
Subject: one more request

I forgot to ask about the topic info. we need....
If we connect on a date in September, we will write-up a short article for our newsletter. Can you please summarize the topics you will discuss regarding the new Whatcom Jail? An unbiased, middle of the road description or both sides of the controversy?

Thanks again,
Jen

Bill Elfo

From: Bill Elfo
Sent: Tuesday, September 01, 2015 11:28 AM
To: 'Programs at The Willows'
Subject: RE: one more request

Sierra, do you have a number that I can give you a quick call concerning tomorrow?> THANKS, Bill

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From: Programs at The Willows [mailto:programs@thewillowsbellingham.com]
Sent: Thursday, August 20, 2015 3:35 PM
To: Bill Elfo
Subject: RE: one more request

Great, let us know if you've got any other questions in the meantime.

See you soon,
Sierra

From: Bill Elfo [mailto:belfo@co.whatcom.wa.us]
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From: Programs at The Willows [mailto:programs@thewillowsbellingham.com]
Sent: Tuesday, August 18, 2015 1:15 PM
To: Bill Elfo
Subject: RE: one more request

Hi Bill,
Thanks so much for getting back to us. Sorry to hear about your scheduling conflicts, I hope that your wife is alright.

Let's do Wednesday, September 2nd at 2:00. Would you be available for about an hour at this time for your presentation and time for discussion afterward?

That topic is great, I will put together a short article to advertise your presentation in our newsletter with that focus in mind. And of course, you can bring a PowerPoint! We typically connect our lap top to the television screen in our media center, that way we've got the capability for sound if that is something you would include in your presentation. It works best if you can bring your presentation on a flash drive, that way we can simply plug it into our lap top.

Thanks again for getting back to us, we look forward to meeting you in a couple of weeks!
Sierra

From: Bill Elfo [mailto:belfo@co.whatcom.wa.us]
Sent: Tuesday, August 18, 2015 11:52 AM
To: Programs at The Willows <programs@thewillowsbellingham.com>
Cc: Dawn Pierce <dpierce@co.whatcom.wa.us>
Subject: RE: one more request

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Sent: Tuesday, September 01, 2015 1:53 PM
To: Bill Elfo
Subject: RE: one more request

Hi Bill,
Sorry for the late reply. You can reach me at 360.671.7077.

Sierra

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Thanks again,
Jen

AFFIDAVIT

This Affidavit is made and effective December 15th, 2015

BETWEEN: Citizens for a Humane & Safe Jail Committee Member, Tyler E. Ryan, a PAC organized and existing under the laws of Washington state in the county of Whatcom, with its head office located at:

PO BOX 30991

Bellingham, WA 98228

AND: Royce Buchingham, Attorney at Law in Washington State.

To: Whom it May Concern

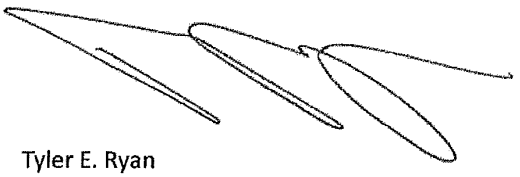
From: Tyler E. Ryan

As a founding member of the CITIZENS for a HUMANE & SAFE JAIL NOW PAC, on record I would like to state to the best of my knowledge the PAC did not at any time coordinate with Whatcom County officials regarding the mailer for proposition 2015-1. Furthermore, I can also state that at no time in any of the meetings I attended was there a discussion regarding a mailer coming from Whatcom County. I did not become aware of the mailer, its content, distribution date or its intended recipients until I received it in the mail like everyone else.

Any accusation of impropriety between our PAC and any elected officials is, in my opinion, categorically false and completely unfounded.

For any other questions or concerns, you may contact myself by email at tyler@multop.com or call directly at (360) 671-7891.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



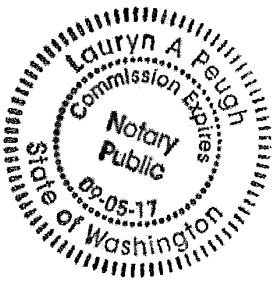
Tyler E. Ryan

CITIZENS for a HUMANE & SAFE JAIL NOW committee member

Notary Acknowledgement

STATE OF WASHINGTON, COUNTY OF Whatcom, ss:

On this 15 day of December, 2015, before me personally appeared Tyler Ryan, to me known to be the person described in and who executed the foregoing Affidavit, and, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.



Lauryn A Peugh

Notary Public

Notary Public

Title (and Rank)

My commission expires 09-05-17

Notary Address:

412 Rose Ct

Mount Vernon, WA 98273

Justin Stranzl Interview Summary – 12/28/15 (25:56 minutes) Interview under oath
jstsranzl@dlrgroup.com
o: 503-274-2675
m: 503-750-3471

Summary:

- Justin stated that Bill Valdez is in charge of the Justice and Civic division of DLR Group. Justin said his first contact with the PDC was calling Jennifer Hansen on September 1, 2015. He said he left two messages, and when he did receive a return call he contacted Chip Beatty on September 2, 2015. He said the purpose of his call was to ask someone to review the Whatcom County jail mailer. He said he asked Chip if he could review the informational mailer for Whatcom County, and Chip told him that was not possible.

- Justin said he then asked Chip how many mailers could be sent out, and Chip confirmed that one mailer could be sent.

- Justin said his exact question to Chip was, "We need to send this to all registered voters. This should not be broken down into subgroups. Is that correct?" He said Chip then explained that the County could not sort by Republicans or Democrats or likely voters. Justin said he followed up by asking whether they could restrict their mailing to likely voters, or were they required to send the mailer to all voters. He said Chip told him they needed to send to the mailer to all voters.

- Justin said he then followed up with, "I assume we can't send it to specific groups, but we need to send to all registered voters. Is that correct?" and the answer was "Send to all." Justin said he understood this to mean they should send the mailer to all registered voters.

- Upon further questioning during the interview, Justin said his follow-up question to Chip was, "Does it need to be sent to all voters, or can we send it based on the likelihood of voting, such as by whether they are regular voters, or if they are someone who has not voted in four years?" He said Chip told him, "No, you need to send it to everybody."

- When asked if he made it clear to Chip that the only distribution by the County was going to be to Registered Voters, Justin said he was trying to communicate to Chip that he was asking whether Whatcom County could send the mailer to a complete list of Registered Voters. He said he was not asking whether they needed to send the mailer to all households.

- Justin said that from his conversation with Chip, he understood that it was acceptable to send the mailer to a list of Registered Voters.

- Justin said asked a few questions about the mailing, and Chip directed him to the PDC's website and Interpretation 04-02.

- Justin said he requested a list of registered voters from the Whatcom County Auditor's Office on August 26, 2015, prior to speaking with Chip on September 2, 2015. He said he asked the County for a list of Registered Voters, including people who had voted in past elections.

- Justin said he called the PDC to ask someone to review the jail mailer and clear up all of his questions, but when Chip said he could not do that, he asked questions about who they could send the mailer to, whether the mailer could be sent out, and how many mailings could be sent.

- Justin said he was asking Chip whether it was okay to restrict the mailing to Registered Voters, and whether they could mail to subgroups of Registered Voters. He acknowledged that he does not know how Chip interpreted his questions.

- Justin confirmed that he did not discuss the content of the mailer with Chip.

Tyler Schroeder Interview Summary – 12/30/15 (01:02:30) Interview under oath
Ph: 360-778-5207
Email: tschroed@co.whatcom.wa.us

Summary:

- DLR Group, LLC was hired by Whatcom County to serve as the County's jail consultant and architect, as well as work through the public outreach project. The DLR contract was in front of Council during September and October 2014, and after approval, the contract was signed by Executive Louws. The public outreach aspect of the contract was part of the original contract. DLR's work dealt mostly with architectural processes, but included some engineering services related to land use issues. They worked on schematic designs for the proposed jail.

- Whatcom County officials gave DLR Group strict guidelines for providing public outreach services within PDC guidelines. Tyler reviewed their work, as did the Prosecutor's office to ensure compliance with PDC rules. The County originally relied on DLR Group to stay within the PDC guidelines because of DLR's prior experience working with a number of other public agencies in preparing public outreach materials related to ballot propositions.

- 6/3 & 7/2/15 DLR Meetings: Additional documents were provided to the Commission at its December 3, 2015 meeting. They concerned June 3, 2015 and July 2, 2015 meetings with DLR Group and Whatcom County officials. Tyler Schroeder and Jack Louws attended both meetings. June 3, 2015 Meeting: Notes were developed by Erica Loynd, Project Manager for DLR Group. They don't contain the County's input. Concerning the phrase in the June 3, 2015 minutes, "These impacts cannot be bluffed…" Tyler 's assumption is that it means the facts conveyed must be fact-based. Op-Ed pieces and the 6/12/15 date for Bill Elfo to write Op-Ed in Bellingham Herald: The County has an on-going standard practice of writing opinion pieces for the Bellingham Herald on a variety of topics. The quote attributed to Bill Elfo in the mailer came from an Op-Ed Elfo wrote for the paper. Schroeder reviewed statements on the public record, and selected the Bill Elfo quote from the Op-Ed piece in the Bellingham Herald for the mailer because it showed the facts of the overcrowded jail, and the impacts of not moving forward with a new jail.

- The reference to Justin Stranzl's description of a 20-60-20 approach in the June 3, 2015 minutes and the recommended approach: The minutes described this approach as where typical populations have approximately 20% that say yes, and 20% that say no regardless of the literature or information provided, and 60% that may be predisposed but are willing to listen to each stance. The minutes reflected the comment, "These are the people who need to be talked to." Schroeder said the County rejected most, if not all, of DLR's suggestions, except for the one mailer they sent out. He said the County did not, in any way, focus on a 20-60-20 approach. Schroeder that for the past year, the County has provided the facts to the public as best as they could, and within the legal framework of the PDC's rules. He said they engaged in an open dialogue with all of the public that wanted to have it, and provided one facts-based mailer.

- The June 3 and July 2, 2015 meeting notes outlined a plan that DLR Group proposed to the County, but the County did not accept or follow-through on those proposed plans.

- The minutes reflected that DLR Group would provide information and arrange for a scientific survey of topics and messages to be called to likely voters with a varied demographic. Schroeder said it took a while for the County to go through the proposals being made by DLR Group. Jack Louws and Tyler Schroeder decided that the County would not conduct a survey as recommended by DLR Group. In August or early September, Schroder sent an email to DLR Group stating that the County would not take the steps being suggested by DLR Group. That was done because they took the time to review the PDC Guidelines.

- The June 3, 2015 meeting was the introduction meeting between DLR Group and County officials concerning a public outreach plan for the jail mailer. Once the plan was reviewed in light of PDC rules and guidelines, a decision was made to not do many of the activities being suggested by DLR Group. Attachment 3 to December 17, 2015 response includes an email from County officials to DLR Group stating that they would not be conducting the survey work. The County questioned the legality of doing the survey work and decided not to do the work. Executive Louws was the final decision maker. At the June 3, 2015 meeting, there was a discussion about conducting a survey as part of the County's outreach effort. It was not until around July 20, 2015, that County officials realized it would not be an appropriate activity, and decided to not move forward with that idea.

- The June 3, 2015 minutes reflected that Whatcom County officials may use direct meetings with local organizations such as Rotary and Chamber of Commerce to get the message out about the jail issue. Schroeder said officials did not reach out to local communications groups to assist with the public outreach effort. The June 3, 2015 minutes Tyler Schroeder would identify potential local communication companies to help with the outreach as sub-consultants to DLR Group. Schroeder said once the decision was made to send out only one mailer, it was decided that the County did not need additional communications assistance from outside groups.

- The June 3, 2015 minutes stated that Sheriff Elfo is the lead decision-maker from the County team for the campaign, and said he will identify the key players that shall create the PAC. Schroder did not recall how Sheriff Elfo responded to this matter at the meeting.

- Schroeder compiled the existing factual information that was on the record for the mailer. In addition, there was a question as to the legality of conducting a survey, so the decision was made to not conduct a survey. The idea of conducting a survey was brought up at the June 3, 2015 meeting, but most of the discussion about the possibility of a survey was done at the July 2, 2015 meeting.

- July 2, 2015 meeting notes: The minutes reflected that the initial message for the mailer may be "Safe Home, Safe Community. Vote Yes for the Jail." Schroder said this was an initial dialogue for what would be put on the mailer. He said there was a discussion about including "Vote Yes" language in the mailer. The County decided to not include such language after discussing it with the Prosecutor's office. This was part of an initial brainstorming message that was refined a number of times to be fact-based, and not trying to persuade anyone. The final decision for what to include in the mailer was based on the PDC guidelines.

- The July 2, 2015 minutes reflected that the Whatcom County Executive Team will continue to work with the Bellingham Herald. Schroder said this reference related to Op-Ed articles.

- Distribution of mailer: DLR Group proposed two mailers, but a decision was made to send only one mailer. There was a question as to how many mailers could be sent out, and who could the mailers be sent to. The County had not previously sent out a County-wide mailer. The County believed they had two alternatives for creating a mailing list: (1) The assessor's office; or (2) The auditor's office. The County decided to use the registered voters list. He said Justin Stranzl of DLR Group asked the PDC if it was appropriate to use a Registered Voters list, or a subgroup of Registered voters.

- DLR Group proposed to send the mailer to around 25,000 registered voters. They wanted to send it to voters who had voted in 3 of the past 4 major elections, deleting addresses outside of the U.S. and duplicate addresses. DLR assured County officials that this was consistent with guidance received from the PDC. The County compared the cost of sending the mailer to all registered voters (approximately 56,000 households) to the cost of sending the mailer to a smaller subgroup of registered voters. They decided to send the mailer to the larger group, to a list obtained from the Auditor's office. The County sent the mailer to all registered voters, but only one per household.

- Cost: Schroder said the approximate cost for the mailer was $28,000. He said he would send the exact cost to the PDC. He said there are approximately 129,000 registered voters in Whatcom County, but only 56,000 households. He referenced Attachment 8 to the County's 12/17/15 response (55,726 households).

- Mailer: Schroder asked why the County included a picture of Jack Louws when he was a candidate for re-election. Schroeder said he wanted to include text from Executive Louws, Prosecutor McEachran, and Sheriff Elfo, using statements they had made in the past about the jail issue, and he wanted to include pictures of the existing facility, and drawings of the proposed facility. Schroeder said he reviewed the Skagit County informational mailer from a different election, and did not see anything in the PDC guidelines that prohibited the use of photos of individuals who were also candidates. He said he did not know using photos of Louws and Elfo might be prohibited. He said McEachran had previously sent a letter to the County Council about the jail issue, and said he used a quote from that letter for the mail mailer. He said McEachran's statement

was a fact-based discussion on treatment options for offenders. He said he employed the same logic for using Sheriff Elfo's picture. Schroeder said he decided to use existing information from the public record in the jail mailer.

- Schroder said the County has had a section on its website for the past couple of years to keep the public informed about its plans for a new jail. He said the county purchased a site in Ferndale in 2013 for the new jail, and hired DLR Group to provide consulting, architectural and engineering services. He said the section on the website goes into all of the background of the jail issue. He said it can be found on the County's website under "New Jail Project."

- Cost to build a new jail: Staff asked Schroder why he did not include a discussion about the cost to build a new jail, the number of beds, etc. in the jail mailer. He said it must be remembered that the County was asking for a sales tax increase, not a property tax increase. He said for a property tax increase, the County would have to know the cost of the project to get a levy rate that would be consistent with financing the project. Because it was a sales tax increase, the County did not need to know a specific cost for the project because they would later issue bonds equal to the sales tax revenue being generated for the project. In addition, the sales tax revenue was for the construction and ongoing operation of the new facility, which is not a fixed amount. If Bellingham agreed to participate, they knew the sales tax revenue would likely support a $97 million project with 521 beds. If Bellingham declined to participate and instead kept their share of the increased sales tax revenue, they knew the revenue would only support a $75 million project for approximately 400 beds. Schroder said the County did not want to list the size and cost of the project in the mailer because at the time of mailing, the County was still negotiating with the City of Bellingham, and they did not know the size or cost of the project. They understood that negotiations would continue after the election, and if the measure passed, they would build a facility based the revenue generated from the participating cities. He said that is what the County described in the mailer. He said the County felt it was most important to inform voters about the amount of sales tax increase being requested for the project.

- Schroder said that when the County was reviewing the PDC's guidelines on including the cost of the project in a mailer, it was clear that if it had been a property tax increase, they would have needed to include the amount of money being raised, but because it was a sales tax increase, the amount of money being raised was not specific, and the project cost could vary depending on the money generated and the cities participating through interlocal agreements. Therefore, they did not feel comfortable listing the size or cost of the project because of the uncertainty of the City of Bellingham's participation in the jail project. In addition, he said the County was not sure how to talk about the cost of ongoing operations which would have been funded out of the sales tax revenue.

- For one year, the County worked with the cities about participating in interlocal agreements for the new jail. There was an August 14, 2015 deadline for signing interlocal agreements, and by that date, all of the smaller cities had signed agreements,

but the City of Bellingham had not signed an agreement with the County. On August 27, 2015, Executive Louws gave a talk to the Democratic Party in which he stated that Bellingham was not participating and the project would be smaller, with about 400 beds. Schroder said a draft mailer referred to the smaller facility, but in September, 2015, Executive Louws went back to the City of Bellingham about participating. Throughout September, and in to October, there was not a true decision by Bellingham on whether to participate. Because the County wanted to be as truthful as possible, and because there was still no decision by the City of Bellingham, they did not include information about the cost or size of the facility in the mailer. There were ongoing discussions with the City of Bellingham about their participation when the mailer was sent out. There was uncertainty about Bellingham's participation.

- Pictures of the condition of the jail: Schroder said the pictures in the jail mailer showed existing living conditions, and were not designed to elicit an emotional response.

- Experts developed a plan: Schroder was asked whether the section in the mailer about experts developing a plan gave a false impression that there was a consensus on a plan for a new jail. Schroeder said a Jail Planning Task Force was appointed in 2011 to determine the size and needs of a new jail. He said the County's proposal was consistent with the recommendation of the task force.

- Schroeder said he reviewed the PDC's guidelines, and tried, to the best of his professional ability, to stay within those guidelines. He noted that the PDC was no longer providing fact sheet review guidance as it had in the past, and the County did the best it could, based on the available guidance.

From: Tyler Schroeder
To: Loynd, Erica
Cc: Stranzl, Justin; Tawni Helms; Bill (bvaldez@DLRGROUP.com) (bvaldez@DLRGROUP.com) Valdez
Subject: RE: Whatcom - Mailer full spread
Date: Wednesday, September 23, 2015 12:19:43 PM
Attachments: [redacted]

Erica,

Please see attached my comments on the mailer. As we have discussed, I continue to need to see an additional level of detail and display for this work product and I want to try and help get there. So far, I am still concerned. Let's walk through my comments but I urge your group to really provide a document that you are ready to send to thousands of constituents in Whatcom County. If I haven't provided enough guidance please let me know how to help.

Please call me to discuss and it might be best to schedule a meeting for tomorrow or Friday to really hammer out the final draft. If you can't meet in person maybe a web-ex with you and the graphic designers that are working on the mailer.

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

Disclaimer: Public documents and records are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

From: Loynd, Erica [mailto:eloynd@DLRGROUP.com]
Sent: Monday, September 14, 2015 9:28 AM
To: Tyler Schroeder
Cc: Stranzl, Justin; Tawni Helms
Subject: Whatcom - Mailer full spread

Tyler,

Here is the draft of the mailer with a full spread. Note that one of the pages is rotated due to the folding technique. Let me know if you need this adjusted for your review or if you can fully see it as you review.

I looked through the online content for information regarding the sales tax measure and pulled some. However, much of that information includes Bellingham which would need to be revised if the Bellingham proposal is not approved. Would you review and comment on the content you can pull together?

There are some images of the existing jail, but they are the same on the front and inside of the mailer. Do you have more images of the interior of the jail? We don't have more to reference.

Is it possible to move our call from 100PM to 230PM? I have a call with the east coast that can't be pushed later in the day.

Here is the remaining schedule for the mailer as we have discussed:

- MO September 14 – Review with WC at bi-weekly check in
- MO September 28 – Final review with WC for final modifications at bi-weekly check in
- WE October 7 – Mailer to Whatcom County for printing
- FR October 12 – Mailer sent to voters

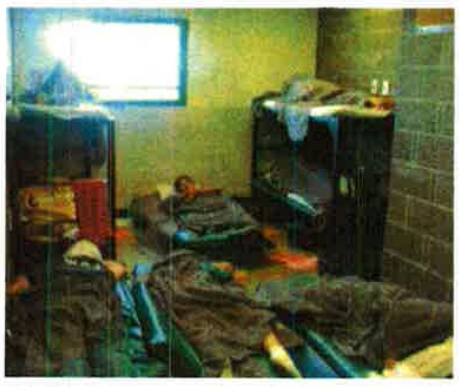
Thank you!
Erica

Erica Loynd, AIA, LEED AP
Architect | Senior Associate
eloynd@dlrgroup.com

DLR Group
Architecture Engineering Planning Interiors
o: 206-461-6000 | f: 206-461-6049
51 University Street, Suite 600 Seattle, WA 98101
Find us at: dlrgroup.com | Facebook | Twitter

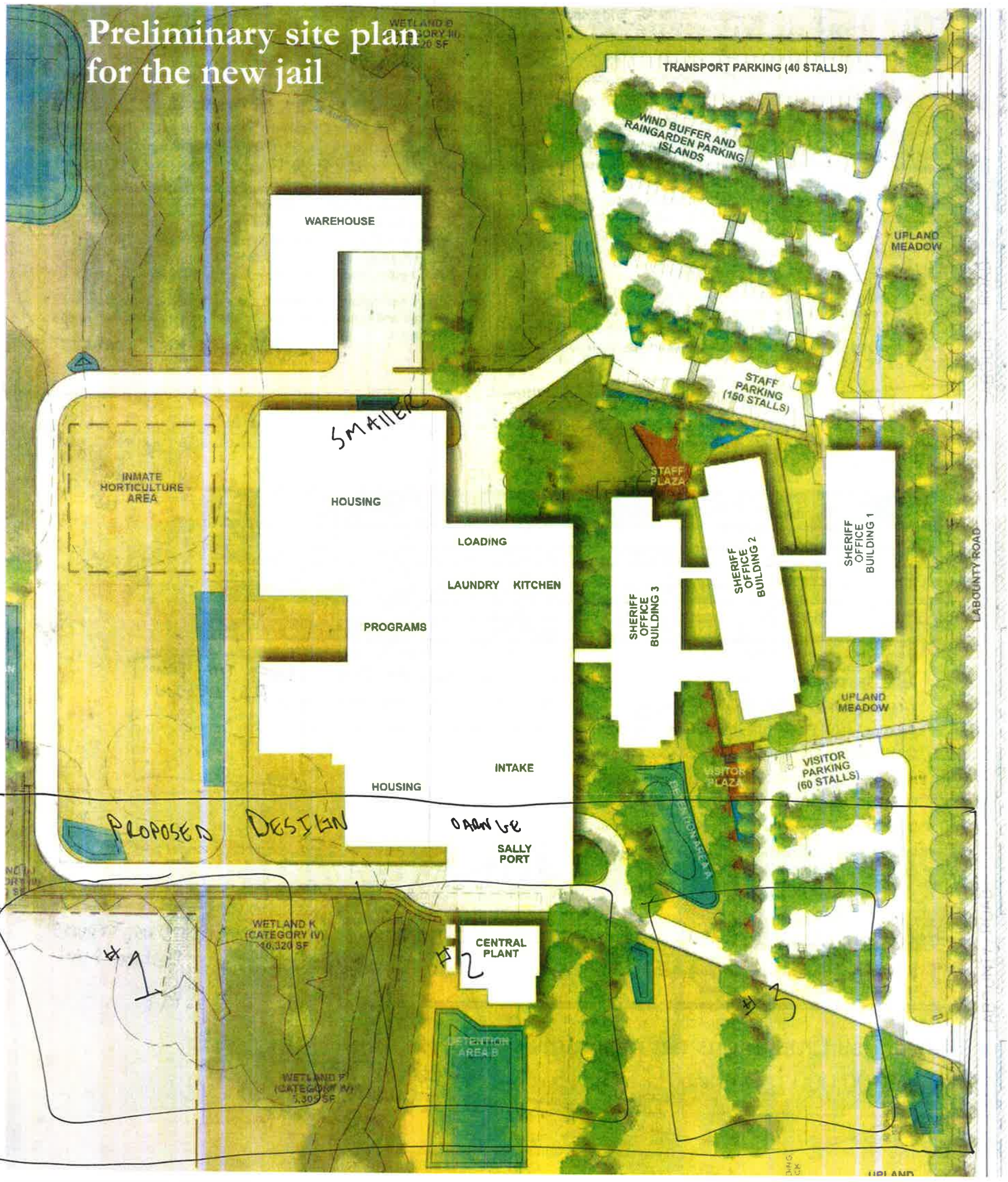
Existing Jail Conditions

Existing cell



Existing shower room converted to cell.

Existing dayroom



Timeline for New Facility

- ✓ April 2015 - Authorizing Permit Issued by City of Ferndale
- ✓ July 2015 - County Council Authorizes Sales Tax Ballot Measure
- ✓ August 2015 - Cities and County Agree to Construct and Operate Jail
- **November 2015 - Public Vote for Sales Tax**
- **Winter 2015-2016 - Following vote approval, final Design Work**
- **Spring 2017 - Start Jail Facility Construction**
- **Spring 2019 - Occupy Jail**

PHOTO OF FACILITY

Fast Facts

- Sales tax measure covers jail construction financing and long term jail operations cost.
- Distribution over 30 years or until construction bond have been repaid.
- Division street assets to be used for expansion of Behavioral Health facilities and programs
- All services including alternatives area available to all parties (participating Cities and County).

The Ballot Measure

WHATCOM COUNTY,
WASHINGTON PROPOSITION NUMBER 1
JAIL FACILITIES SALES AND USE TAX

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

Should this proposition be:
Approved _____
Rejected _____

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

If Proposition #1 passes, the County and 6 of the 7 cities will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new $75 million jail facility will house up to 400 inmates plus space for behavioral health, medical and administration areas.

The City of Bellingham will receive a portion of these tax proceeds per state law and is authorized to use the funds as described in the ballot measure.

- EMPHASIZE EACH ONE

Countywide Public Health & Safety Salex Tax Projections

Year	PH&S Sales Tax Beginning 4/2016	County Portion Bond Payment	City's Portion of Bond Payment	Net to County for Bond/Operations	Net to Cities for Criminal Justice
2017	$7,306,924			$4,567,231	$730,692
2019	$7,676,837	($4,543,192)	($1,766,797)	$62,910	$1,303,938
2022	$8,267,114	($4,543,192)	($1,766,797)	$417,076	$1,540,049
2027	$9,353,481	($4,543,192)	($1,766,797)	$1,068,897	$1,974,595
2043	$13,885,295	($4,543,192)	($1,766,797)	$3,787,985	$3,787,321
2048	$15,709,937	($4,543,192)	($1,766,797)	$4,882,770	$4,517,178

- Bond payment is estimated at $6.3M per year ($97M at 5% interest with 30 year term).
- Sales tax projected at modest 2.5% increase. Actual annual increase at 3.8% (1996-2013).
- First three years (2016-2018) 90% to County for bond payment reserve fund and interest charges.
- Starting in 2019 - 60/40% split as identified in agreement/balance to be distributed to Cities.

* WE CAN SPREAD THESE OUT

SALES TAX FROM P.S. REGION

2015 Budgeted for Alternatives

Prevention, Alternative and Diversion Programs
$ 11,500,000

→ CITIZENS, EXPERTS DEVELOP PLAN

→ JATF

Basic Jail Operations net programs
$ 12,300,000

→ REDUCE AND INCLUDE IN JAIL'S QUOTE

David McEachran Interview Summary – 1/25/16 (39:05) Interview under oath
Ph: 360-676-6784 or 360-778-5715

Summary:

- Started as a Deputy in 1972; elected in November 1974 and has been elected 11 times. He was last elected in 2014 and is starting the second year of his current four-year term.

- As Prosecuting Attorney he has two different roles. He is a state officer as well as a local officer, and half of his salary is paid by the State of Washington. He handles all of the criminal cases that occur in Whatcom County. He also handles all of the gross misdemeanors that occur in the unincorporated areas of Whatcom County, and handles all of the cases generated by the Washington State Patrol. Because Whatcom County is on the border, he works with many of the federal agencies. He has a task force that deals with drugs, and works with the DEA. There are 50 employees in his office, including 24 attorneys. Of his work, 70% is in the criminal realm and 30% is in the civil realm. Seven attorneys work in the civil side. His office works with all of the County's elected officials and advises and represents them. His office represents and advises Whatcom County, which is a municipal corporation, including the Whatcom County Council in the legislative branch, and the Executive branch. He also has a unit that deals with non supported paternity matters. He has two civil attorneys that deal with those cases. He also has a unit in the office that deals with victims and witnesses. He tries to get good coverage for victims, and make sure that they have restitution. They try to provide for them in any they can.

- He and his attorneys are on call 24 hours a day, seven days a week. All search warrants must go through the Prosecuting Attorneys office, so they are engaged in the investigations immediately. The search warrants are done telephonically with a judge, which involves the prosecuting attorney's office getting the officer and a judge on the telephone together. On a daily basis, Mr. McEachran reviews all of the felony arrests and assigns them to his attorneys. At 3:00 p.m. each day, they appear in their jail courtroom with the arrested individual making their first appearance in court. Then, each case is assigned to a criminal attorney, or Mr. McEachran will handle the case, and then they will file the case within the next few days. The Whatcom County Prosecutor files approximately 1,600 felonies each year. They process about 3,200 to 4,000 gross misdemeanor cases each year, and about 300 juvenile cases each year. After a person makes their initial court appearance, the Prosecutor must file charges or release the person within 72 hours. They receive investigative cases from the officers with the arresting agencies. The Prosecutor works with the investigative officers as the cases develop, assisting with obtaining the necessary search warrants, and getting the material they need to prove the case. The Prosecutor also conducts its own investigations and incorporates law enforcement into those investigations. Each week, there are 140 cases set for trial. About 90% of cases are plead out, and the rest are tried. There is a drug court, and if the Prosecutor believes that the arrested person has an underlying substance abuse problem, they will be evaluated for entering the drug court problem. If they are successful in this 12-18 month diversion program, then the Prosecutor will dismiss the charges.

- The current jail impacts the work of the Prosecutor. Proposition 2015-1 is the fourth attempt to get a new jail. Mr. McEachran started a FasTrack program to reduce the overcrowding in the jail. Every morning when he reviews the cases, he looks for cases that are good candidates for the FasTrack program. They are cases where there are confessions, straight forward, the facts are not disputed, and they are non violent crimes. They will make an offer immediately, and try to conclude the cast at the first appearance in court. The offer is a low offer, and it must be accepted within two weeks. It will include a guilty plea. The average time for completing a FasTrack case is 20 days, while the average time for completing other cases is 280 days.

- The current jail is impacted be a number of factors, including adjustments to sentencing grids set forth by the legislature. When sentencing grids are reduced, more inmates end up in the County system, causing overcrowding. If Proposition 2015-1 had passed, it would have taken a number of years to build a new prison, but when it was built, it would have helped the system a lot by enabling more programming for offenders.

- The current jail was built in 1984, and it was built by the State. Immediately, Whatcom County realized it was too small, but the State told them this is what we have for you. So, Whatcom County has been working for decades to find a way to have a better jail facility.

- The jail being proposed by Proposition 2015-1 was to be built in Ferndale, where it could be expanded, if needed. Initially, the County thought they would need a 1,000 bed facility, but that number has been reduced because of the success in criminal justice work. For example, the Prosecutor has been working with schools to reduce truancy, and with at-risk families that are being torn apart with drug abuse and violence in families.

- He said the current facility does not have adequate room for programming, and it is mostly only good for holding people, and at times that is not adequate. For example, he said the locks are failing, and the Sheriff reported recently that the inmates can kick the doors and get out, and they are going to have to go through a program where they will get all new door locks. The idea of the current jail is putting good money after bad money, while the new jail would been built for the future. It would have helped the community, provided for better programming, and would have been a much better environment for the inmates, and for staff.

- Mr. McEachran was asked how he became a part of the jail mailer, which has his picture and a quote from him about jail programs. He said he received a call from the Executive's office, asking if he could put a quote in the information they were going to put out about the jail. Mr. McEachran said he has been a very strong advocate for a new jail, so it made sense that the Executive's Office would ask him to put a statement in the mailer. He said they sent him a quote, and he told them that if he was going to make a statement that is certainly how he feels, and what he would say if he was asked. He said he told them it was an accurate statement. He said he did not write the statement, but he

approved it, and said it was a very accurate statement. Mr. McEachran said he provided a picture at their request, but they used the picture from the County's website instead.

- When asked why he believed the Executive's office asked him to make a statement in the mailer, Mr. McEachran said he believed the County had a responsibility to inform the public about the sales tax issue, and they wanted elected officials to explain the need. He said he believes the people wanted to know what the Executive, the Sheriff, and the Prosecutor think about this proposal. He said the public has a right to know what is going to happen to the money that will be generated, and what proposals are being made.

- Mr. McEachran said he told the Executive's office they could use a picture of him, and that the suggested quote sounded very realistic to him. He said he did not have anything to do with the design of the mailer, the distribution, or the timing of the mailer.

- Mr. McEachran said he thought his quote in the mailer was a matter presenting facts, and that the public has right to have officials tell them what the facts are, and that the County had an obligation to provide that information to the public, and make sure they are advised of the facts. He acknowledged that anyone could have made the statement in the mailer, but he was asked to make the statement, and he thought it was appropriate for him, as an elected official, to make the statement. He said it is an obligation of government to make sure people are advised, and then the people can decide whether to support the proposal. He said his statement was not urging people to pass the measure, but just presented them with the facts.

Jack Louws Interview Summary – 1/25/16 (58:39) Interview under oath
Ph: 360-778-5200
Email: jlouws@co.whatcom.wa.us

Summary:

- Jack Louws is the Whatcom County Executive. He has served one four-year term, and was re-elected in November 2015. He is starting his second four-year term. His duties include being the Chief Executive Officer for Whatcom County, responsible for budgets. He has authority to sign or cause to be signed all contracts, deeds, etc. Other than the other elected officials in Whatcom County, he is the administrative head for departments such as planning and development, public works, district court, public defenders, health department, etc. He is assigned all of the duties that are not specifically assigned to the other elected officials. Before serving as Whatcom County Executive, he was the Mayor of Lynden for eight years, and served on the Lynden City Council. He is starting his 17th year in public office.

- Mr. Louws described the history of the Whatcom County jail system, and the current jail building which was opened in 1984. Mr. Louws' father was the Whatcom County Executive from 1979 through 1984, during the period when the current jail was built and opened. As a young man, Jack Louws took a tour of the existing jail while it was being constructed. The current jail was constructed with state dollars. Due to state law changes, it soon became apparent that it was too small. In the mid 1990s, a former sheriff, prior to the current sheriff, and a public works director, made the decision, along with the County Council, to move the sheriff's office into the bottom of the existing jail. When they did that, they cut some structural supports out of the building that had been an on-going problem with seismic challenges. The jail has been at over capacity for many years, and the County did not invest a lot of money into maintain the jail, and consequently, Whatcom County has a jail that is sub-standard, and has severe life, safety issues.

- In 2004, voters passed a 0.1% sales tax increase. The money was used to construct the interim work center in the Iron Gate area. A great portion of that money has been used for the operation of the work release center. The County hired an additional 24 employees to be able to run two jail facilities. The money from the 2004 sales tax increase has been used to build, construct, operate, and maintain the Iron Gate facility.

- In 2008, voters passed an additional 0.1% sales tax increase that was a behavioral health tax that goes into a separate fund, and is used for various behavioral health programs as allowed by the RCW. Mr. Louws said the money from the 2004 and 2008 ballot measures are being used as intended, and the use of those funds was not addressed in the jail mailer for Proposition 2015-1 because it was not germane to the question that was on the ballot in 2015, which was whether voters were willing to support a 0.2% sales tax increase to construct and operate a new jail facility.

- Tyler Schroeder served as Special Projects Manager in 2015. At the beginning of 2016, Executive Louws appointed Schroeder to the position of Deputy Executive. Tyler was

responsible for facilitating the development of the mailer. DLR put the initial layout and thoughts together, and Tyler updated Executive Louws on what was going into the mailer. It included a picture and statement from David McEachran, and Sheriff Elfo has a little bit bigger role, but it was primarily developed through the Executive's office with the advice of the County's paid consultants, DLR Group, and then Tyler facilitated getting the mailer completed and sent out.

- Executive Louws said DLR Group had a lot to do with the development of the Skagit County jail mailer in 2013, and the County decided to use the Skagit County mailer, somewhat as a template for its mailer. Whatcom County noted that the Skagit County mailer had pictures of the County Commissioners and the Prosecutor, and the Mayors of the cities. He said that based on the Skagit County mailer, they decided to put the factual statements in the flyer, and have the Prosecutor talk about a certain segment of the issue, and the Sheriff a different segment, and have the Executive include a statement. He said the County was planning to send out two mailers, but while working with Dan Gibson, the Deputy Prosecutor, and Royce Buckingham of the Prosecutor's office, and going through the PDC guidelines, they decided to take a conservative approach and put out only one mailer.

- Executive Louws did not think about whether it was appropriate to have statements from the three elected officials in the flyer. Executive Louws said the appropriateness of including his picture in the jail mailer at a time when he was up for re-election did not enter his mind. He said there was no discussion about this issue with DLR Group. He said he does not believe putting his picture with a statement on the jail mailer assisted his campaign. He said he did not believe use of his picture in the jail mailer helped or hurt his campaign. Executive Louws said it is normal and customary to include the picture of the speaker next to a statement in agency publications. He said he had no knowledge that there was a prohibition against including his picture in the mailing.

- Executive Louws said the need for a new jail was identified four years ago, and the County hired DLR Group. He said they went through a facilities study process and a land purchase process. He worked with the small cities mayors and the Mayor of Bellingham throughout those four years. In September 2014, he started working diligently on jail facility use agreements with all of the mayors, so it could be brought to the voters in 2015. In early July 2015, the Whatcom County Council passed a resolution to put the proposition on the November 2015 ballot. The Executive's office then worked with DLR Group on the design of the mailer, which was completed and sent out.

- Formal public hearings were not required to be held, nor were they held, to discuss whether to put the jail issue on the ballot. However, through the environmental impact statement that was completed for identifying the new jail as an essential public facility, and for the purchase of the property, and for the conditional use permit through the City of Ferndale, there were several public hearings that happened primarily through 2013 and 2014.

- Starting in September 2014, Whatcom County was able to come to an agreement with the six small cities, but not with the City of Bellingham. At a City Council meeting in September, the Council Chair said it looked like the City would still be negotiating with the County well beyond the election on the jail issue. The Whatcom County Council wanted Bellingham to be part of the project, but passed the resolution to put the measure on the ballot even though Bellingham had not come to an agreement with the County.

- Executive Louws understood that Bellingham did not agree to participate because the County was asking them to pay more money than they were willing to pay. With sales tax revenue, 60% goes to the County and 40% goes to the cities, based on population.

- Jail Mailer: Executive Louws worked with the prosecuting attorneys who were advising him to make sure he was not exploiting the situation, and after reviewing the flyer, approved its production and mailing. He said a lot of questions were being asked about how much the County was spending on behavioral health expenses, and he contacted the health department to make sure he was factually correct in the statements he included in his statement. He did not recall discussions about the significance of comparing the behavioral health expenses with the jail operations cost. He said the DLR consultants felt it was an appropriate comparison to include in the mailer.

- Executive Louws said he may not have asked for specific pictures to be used in the flyer, but acknowledged that he was responsible for the flyer and its content.

- Cost: Executive Louws was asked why the size and cost of the proposed facility was not addressed in the flyer, explaining how much money the County expected to generate from the sales tax increase, and the two sizes and costs, depending on whether the City of Bellingham participated with the County. Executive Louws said he did not know to articulate it factually so that it would not put him in a position later of being unable to explain it correctly. He said this issue was discussed when the jail mailer was being developed. He explained that a sales tax increase is different than a specific property tax increase to pay for a specific amount of bonds. He said the current Council was precluded from taking any action that would limit the actions of a future Council. He said some Council members wanted the size and cost of the jail reduced, and half of the sales tax increase was perpetual, meaning the increased stream of money could be used later to fund additional bonds, and he did not know how to articulate that kind of a situation.

- Executive Louws said he did not articulate the size and cost of the jail facility in the mailer because it was not clear whether Bellingham would be participating in an agreement to use the new jail, and the County Council could still change the size and cost of the new jail. As a result, the County put everything in the mailer that the RCW

required, which was to include the cost to the taxpayer to pay for the construction and operation of a new jail facility. He did not believe he could accurately say how much money would be generated, how much would be used for construction, and how much would be used for the operation of the jail.

- The Council did not identify the cost of construction or operations for a new jail facility. However, the Jail Use Facility Agreement that was signed by the six small cities anticipates a $97 million facility if all of the cities are involved in the agreement. The $97 million amount was used in order to calculate the percentages of participation by the six small cities and the City of Bellingham.

- 6/3/15 & 7/2/15 DLR meetings: Executive Louws said DLR came in with a very aggressive approach, and the County did not agree to carry out most of the suggested plans. He said he knew the mailer had to be factual. After reviewing the PDC guidelines, they went from two mailers to one mailer. Executive Louws said he did not identify community groups to speak to about the ballot proposition. He said he was frustrated that the mailer had not gone out, and asked about the distribution list. He said he was told it was going to voters who had voted in three of the last four elections. He said he told those working on the mailing that they could not send to that subgroup, and the restricted list was canceled. That is when they decided to send the mailer to all households in Whatcom County with at least one registered voter.

- The language "Safe Home, Safe Community, Vote Yes on the Jail" was proposed by DLR Group. The Executive's Office decided not to use that subjective statement. They felt it was not appropriate based on the PDC guidelines. DLR Group suggested that Whatcom County officials meet with community groups to talk about the ballot measure. Executive Louws said he talked with groups he normally speaks with, but did not arrange to speak with other groups.

- Staff asked Executive Louws about his August 27, 2015 speech to the Whatcom County Democrats in which he said the City of Bellingham would not be participating the jail agreement. He said after that talk he went back to the City of Bellingham to again attempt to get then to participate in the jail agreement.

- Executive Louws said the jail mailer went out about three weeks before the election, which was later than when he wanted the mailer to go out. He said the mailer was not sent out sooner because he was waiting to see whether the City of Bellingham would accept the County's counter proposal to the jail use agreement. The Chair of the Bellingham City Council said it looked like they would be negotiating with the County well beyond the date of the election, meaning that Whatcom County did not know the size of the cost of the proposed facility. At that point, the County finalized the mailer and sent it out without stating a proposed size or cost for the proposed jail.

- Staff asked whether there was a formal needs assessment made. Executive Louws said there was a formal needs assessment completed for the Environmental Impact Study which resulted in an anticipated size of 521 beds. He said based on the criteria of that

needs assessment and the bed size, they broke it down by program area, such as the behavioral health area, how big the laundry needs to be, how big the intake area needs to be, etc. The needs assessment was completed by DLR Group.

- Executive Louws said the public outreach work by DLR Group was an addendum to the original contract. He said Phase I of the original contract was to conduct a needs assessment, which included determining the size and needs for a new jail, including the preliminary design, the EIS (which they subcontracted to the Shockey Group) which covered the land use part of the process. Then, the County Council purchased the 38 acre property for the new jail. Phase II was to facilitate the conditional use permit process with the City of Ferndale, and as a part of that process, an addendum was added to the contract to provide public outreach services, including developing an informational mailer for the County.

- Concluding Comments: The role of Prosecutor McEachran was to provide a picture and a statement for the mailer, and the role of Sheriff Elfo was to provide a picture and a statement for the mailer. He said he was responsible for the final content of the jail mailer. He said he made those decisions by working with his staff, and by listening to the advice of the deputy prosecuting attorneys who advised him. He said he used the best information he had, and relied on the DLR Group and the PDC guidelines. He said he did not believe anyone's motives were wrong, and he made his decisions with good intent and in the normal course of business, and if mistakes were made, they were because of a miscommunication about what was allowed. He said he can't believe that after 17 years in public service he is being questioned about an integrity issue. He said what he did was done in the normal course of business without any thought that it was wrong. He said a lot of things were proposed that they did not do, and ultimately, they sent out one mailer to the public describing in the best factual way they could exactly what state law required them to say, and asking the registered voters to make a decision. He believes that what he did was normal and customary.

Skagit County
Community Report
Skagit County Government
Summer 2013

Cities and County reach agreement

Jail overcrowding prompts call for new county facility

Like independent nations united to fight a common enemy, county and city leaders have joined forces to address the realities of a growing inmate population in Skagit County. On August 6, they will ask the voters of this region to finance a public safety initiative focused on the need for a new county jail.

After years of increasing stress on the public safety system in Skagit County, the decision was made in July 2012 to establish the Skagit County Public Safety Jail Coordinating Council.

That council, comprised primarily of elected public officials, represented Skagit County communities with voting members including three mayors, one county commissioner, two judges, one city supervisor and the county sheriff (see membership list, page 2).

After 10 months of study and deliberations, members of the council unanimously agreed on the need for a new county jail.

That proposal is dependent on a three-tenths of 1 percent increase of the sales tax in Skagit County – an increase that requires the approval of voters on the August 6, 2013 ballot.

Elected leaders and law enforcement officials endorse this plan as vital to the safety of this county's residents. Facts compiled by Skagit County and the Public Safety Jail Coordinating Council in anticipation of this ballot proposal are included on the pages of this publication.

Skagit County Commissioner Ken Dahlstedt, who represented the Board of Commissioners on the Council, expressed his thanks to those whose work led to the recommendation to build a new jail.

"We are grateful for the significant contributions made by Council members," said Dahlstedt. "Our deliberations sometimes reflected the desire to protect the interests of specific constituencies, and we still have some details to hash out in coming months. But in the end everyone agreed to a course of action intended to protect public safety in all corners of Skagit County, rural and municipal."

Law enforcement leaders from Skagit County meet on a monthly basis. At their May session, discussion included the importance of a new facility to replace the 30-year-old Skagit County Jail. Pictured above are (left to right) Sheriff Will Reichardt, Sedro-Woolley Police Chief Doug Wood, Anacortes Police Chief Bonnie Bowers, Burlington Police Chief Bill VanWieringen and Mount Vernon Police Chief Jerry Dodd. See statements, page eight.

Why a new jail?

Cities in Skagit County do not operate municipal jails, in keeping with a 1980 agreement mandated before granting $6.4 million in state funds to build the existing Skagit County Jail. By law, Skagit County is required to accept into the county jail all accused/convicted felons whose cases originate in local municipalities.

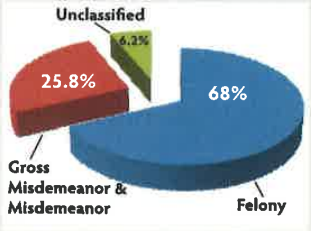
In the first few years following the opening of the current Skagit County Jail in 1984, approximately 2,500 inmates were booked each year. By 2004, that number had grown to more than 6,000 inmates per year. In the last 30 years, the Skagit County Jail has experienced a 240 percent increase in the average daily population.

The current jail was built in 1984 to house 83 inmates ($6.4 million in state funds, $800,000 in county funds to meet local needs including an increase in the number of single cells). It was expanded in 1991 to 160 beds; again in 2002 to 180 beds. The daily average jail population today (on-site inmates) is 200, a fact that translates to serious staffing challenges and safety issues both inside and outside the jail.

Jail overcrowding creates a "shell game" scenario, both inside the Skagit County Jail and between this facility and Snohomish County Jail. Due to severely limited space, Skagit County has been forced to contract the services of Snohomish County to house an average of 25 inmates (up from 15 in 2012). This alternative is costly in terms of "outsourcing" fees and transportation costs associated with moving individuals back and forth between the distant jail and the local court system.

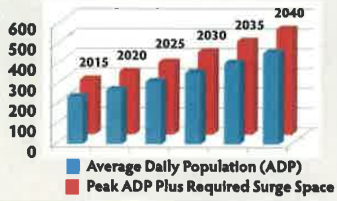
Statistics tell the story

Average Inmate Population Primarily Arrested or Convicted of Serious Crimes



Nine out of 10 inmates in the most seriously crowded section of the Skagit County Jail (North End males) fall into the felon category. The vast majority of inmates have been arrested or convicted of serious crimes, resulting in sentences of more than 30 days. At one point last spring the Skagit County Jail housed 13 people charged with homicide. Only one in four inmates is serving a short term sentence. "Unclassified" offenses include "holds" for the state Department of Corrections, other county felony warrants and federal agencies.

Average Daily Population Projections, 2015 - 2040



Members of the Skagit County Public Safety Jail Coordinating Council

Mayor Dean Maxwell	Anacortes
Mayor Steve Sexton	Burlington
Mayor Jill Boudreau	Mount Vernon
Supervisor Eron Berg	Sedro-Woolley
Sheriff Will Reichardt	Skagit County
Commissioner Ken Dahlstedt	Skagit County
Judge Michael Rickert	Superior Court
Judge David Svaren	District Court

Local leaders unanimous in call for new county jail

Today's issues of law and justice are complex, but local leaders unanimously agree that a new Skagit County jail is vital to the goal of protecting law abiding residents, their families and properties.

In recent months Skagit County Commissioners and the mayors of Anacortes, Burlington, Mount Vernon and Sedro-Woolley have conducted a series of discussions regarding a state provision to utilize sales tax to fund public safety/police and fire protection services.

In turn, mayors and city council members have conducted public meetings regarding the proposal to ask voters to approve a three-tenths of 1 percent sales tax increase on the August 6, 2013 ballot. Each city has also deliberated over possible use of sales tax funds in excess of those committed to construction and operation of a new Skagit County Jail.

Prior to a deadline on August 6 ballot proposals, all four mayors of Skagit County's largest cities endorsed a provisional agreement with the Skagit County Board of Commissioners. At the local level, city council members also gave unanimous support to the proposal (Among four councils: 27 "yes" votes, 0 "no" votes).

Under terms of the provisional agreement among Skagit County and cities, a "bed rate" for County Jail services will be eliminated, and some cities will also receive funds from the Public Safety Sales Tax fund for consideration in funding staff, services and equipment in police and fire departments.

Skagit County Commissioners Sharon Dillon, Ken Dahlstedt and Ron Wesen recently approved a provisional agreement to build and operate a new county jail.

Deficient county jail facility compromises entire system

Sheriff Will Reichardt has spent his entire law enforcement career in Skagit County. Over the years he worked his way up through the ranks, serving as Chief Criminal Deputy before being elected sheriff in 2010.

"As a new deputy in Skagit County in 1984, I began my career working in the newly opened Skagit County Jail," Reichardt recalls. "At the time it seemed as though it would last forever and we could never possibly fill it up. Unfortunately that was almost 30 years ago. The reality is that the jail began having 'growing pains' in the mid-1990s and by early 2000s we were seriously overcrowded."

Sheriff Reichardt

"Today," the sheriff continued, "the jail is routinely housing mostly felons at numbers that compromise safety to inmates and staff alike. The need for a new jail is critical. It is no longer acceptable to delay implementing this long overdue solution to this crisis."

"Every day as Skagit County Sheriff, I see the work being done by the officers and deputies 'on the street' solving crimes and making our community safer," said Reichardt. "Unfortunately, they are often left with no place to incarcerate these individuals."

"I also see our judges, prosecutors and probation officers trying to hold criminals accountable," he said. "But with no room in the jail they are often forced to make decisions based less on justice and more on what an outdated, overcrowded jail can handle."

Reichardt terms the jail "a critical component of the justice system," adding: "When it ceases to function efficiently, the entire system is compromised."

"Skagit County has always been a community that prides itself on compassion and tolerance," Reichardt concluded. "We expect civility and will hold those accountable who don't respect the law. A new jail with room to hold those needing to be incarcerated and room to provide programming for those receptive to treatment as they pay their debt to society is in keeping with the vision for Skagit County that I believe we all share."

Female inmates are housed in two 'dorm settings' including this space formerly used as an indoor recreational yard.

Scenes from inside the Skagit County Jail

Jail security technology is outdated.

Male inmates are in most cases housed three to a cell.

The jail booking area is a a 'pinch point,' often overcrowded due to multiple requirements for the space.

The Ballot Proposal

Skagit County Proposition No. 1
Sales and Use Tax for Jail Facilities and Police and Fire Protection

The Skagit County Board of County Commissioners has adopted Resolution No. R20130102 concerning a sales and use tax pursuant to RCW 82.14.450. If approved, this proposition would authorize an additional sales and use tax at a rate of 0.3 percent to be used for the construction, maintenance and operation of jail facilities and police and fire protection. Should this proposition be:

Approved ____
Rejected ____

The proposed Public Safety sales tax increase that will appear on the August 6, 2013 ballot is three-tenths of 1 percent, or three cents on a $10 purchase. Exemptions from this sales tax are: retail sale of motor vehicles, and lease of motor vehicles up to the first 36 months.

❑❑❑

Funds from this sales tax will be utilized by cities for a variety of Public Safety services, ranging from law enforcement to fire and emergency services. Under terms of the agreement, city "bed rates" for jail services will be eliminated.

❑❑❑

Funds to Skagit County will be applied to construction of a new, $60 million facility that would house a 400-inmate jail plus a space for legal activities including court arraignments. Sales tax revenue will also fund maintenance and operation of the jail.

❑❑❑

Contributors to the Public Safety sales tax fund will include Canadian shoppers and U.S. shoppers from outside Skagit County.

Sales tax rates from Puget Sound region

Bellevue	.095
Bellingham	.087
Everett	.092
Oak Harbor	.087
Port Townsend	.090
Seattle	.095
Tacoma	.095
Anacortes	.082
Burlington	.082
Mount Vernon	.082
Sedro-Woolley	.083
Skagit County	.082

Mayors on Public Safety

Mount Vernon

Mayor Jill Boudreau notes: "Public safety is a priority for the City of Mount Vernon. Years of overcrowding in the Skagit County Jail have left us vulnerable to the criminal element of our society. Funding public safety needs continues to be a challenge for both cities and counties in the State of Washington. Those needs include police and fire protection, public defense, jail housing, prisoner medical expenses, equipment and personnel."

Mayor Jill Boudreau

Burlington

Burlington Mayor Steve Sexton sees the provisional agreement among local cities and Skagit County as important in two key areas: fire and police service improvements in the city, and adequate county jail inmate space and services.

Mayor Sexton

The mayor says: "The county is responsible for housing felons. When you look back 10-15 years at the people who should be going to jail and aren't because of overcrowding, they are for the most part city misdemeanants. These are the folks who are committing crimes against our residents and stealing from our businesses. We owe it to both residents and business people to make sure those criminals are serving time, and the new jail will provide the capacity we need to do so."

Sexton noted that funds from the proposed sales tax would not only support construction and operation of a new jail, but: "They would allow us to provide public safety improvements in both our fire and police departments. It is key to us that we give our businesses and residents the services they deserve – and this plan will get us to that point."

Jail chief and staff cite safety as a daily challenge for all

Given the opportunity to do so, Skagit County Chief of Corrections Charlie Wend would invite as many people as possible to tour the 30-year-old downtown Mount Vernon facility. To see the jail firsthand, says the career corrections professional, is to recognize the need for a new jail at another location.

Wend is proud of a corrections staff working under increasingly challenging circumstances, but on a tour of the jail he delivers a powerful mix of statistics and visible evidence leading to the same conclusion: this facility suffers from space and design limitations that cannot be solved at the current location.

Jail Chief Charlie Wend

Wend, who worked 30 years in the state prison system, came to Skagit County in 2011. He has been Skagit County Jail Chief for two and a half years, during which time increased inmate population levels and an aging facility have combined to create a law enforcement crisis that impacts every community in Skagit County.

The Skagit County Sheriff's Office Corrections Division is responsible for detaining pretrial defendants, convicted offenders waiting for transport to a state prison, and for incarcerating inmates sentenced to serve less than one year (or more than one year in the case of consecutive sentences).

Wend points out that while inmates are in custody, the Sheriff and his corrections staff are responsible for their supervision, safety, health and well being. Staff is called to ensure that inmates appear in court when needed – and are transported to other jurisdictions when necessary.

The existing jail, built in 1984 to hold 83 inmates (11 females and 72 males), is consistently overcrowded despite past efforts to accommodate a larger population. Since 1989 the number of beds has been increased by converting most individual cells to two- and three-person cells. Recreation areas have been converted to dorm-like housing spaces, bringing the total number of beds to 180.

In the meantime, the "core" of the jail -- laundry, medical, food service, recreation areas and the like -- are still in the same space designed to serve 83. There is only one multi-purpose space for programming, and this space is also utilized for other important jail activities.

Additional staff challenges, said Wend, include sharing break room space with work stations, making it impossible to separate from the pressures of the jail environment even for brief periods of time. The booking area designed to process a handful of inmates each day often sees 15-20 bookings daily. With already incarcerated inmates moving in and out of the space on the way to court appearances, attorney sessions and the like, the booking area becomes a significant "choke point."

Because of inadequate space, the jail has only one multi-purpose space which serves as library, chapel, and the jail's program space. Programming – which can lead to a positive future for inmates with root issues like substance abuse, becomes difficult to impose upon all of the inmates who need it.

"Often criminal behavior is tied to an addiction," said Wend, "so if you treat the addiction you can get a handle on the criminal behavior. That's a positive outcome for everyone."

In the jail's "north end," inmates are only allowed out of their cramped cells for very limited periods of time. Because of overcrowding, Wend said, an individual arrested for Driving Under the Influence (DUI) might find himself housed with someone with a history of violent offenses.

"It becomes a real challenge," he said. "Often we find high risk offenders mixed in just because we don't have space elsewhere. We also have no way to safely segregate inmates, to pull someone out into a more isolated or secure setting. That can be dangerous."

Design and inadequate space also prevent Wend and staff from the kind of "direct supervision and interaction with inmates" that he would like to see.

"You really diminish your problems when you are able to provide that kind of direct involvement," he said, "but that is just not possible as long as we are stuck with this space."

"We're playing a shell game," said Wend. "The risk in this place, to staff and inmates, is not small. There are many issues here, from inadequate space to poor design and outdated technology. The nature of the construction makes it expensive, or impossible, to do technology upgrades or remodeling. The location of the building makes it impossible to expand on site."

"Overcrowding has a negative impact not only on those here in the jail, but in our communities as well," Wend concluded. "In one recent week (June 2-June 8), we turned away 70 bookings due to overcrowding, which means people who should have been in jail were still on the street. Clearly we need a new facility at another location," said Wend.

Superior Court Judge says new jail 'vital' to public safety

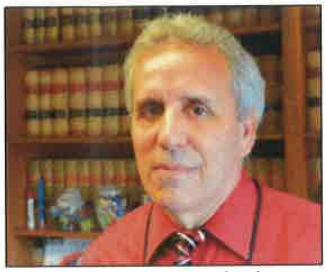
Ask Superior Court Judge Michael Rickert whether a new Skagit County Jail is necessary and he will tell you the verdict is clear: "We are at crisis level, with an inmate population that is critically over capacity."

Rickert, a Superior Court Judge for 21 years, brought his experience and courtroom perspective to the table as a member of the Skagit County Public Safety Jail Coordinating Council.

"In 1984 we opened a jail that we were told would serve us well into the future," he recalls. "Well, we didn't make it very far."

Rickert said safety issues apply not only inside the jail for inmates and law enforcement staff, but outside in Skagit County communities as well.

"Because we are over capacity we are releasing individuals who should be held, and more than ever we are making decisions not to book people because there is no place to put them."



Superior Court Judge Michael Rickert

"We are able to keep Class A felons," he continued, "but we are releasing a lot of 'frequent flyers' in the area of property crimes. Literally, some are not paying the price for committing property crimes – or they are paying the price at a reduced level."

The judge expressed support for a public process that led to the proposal to build and operate a new county jail.

"Skagit County residents should be aware of the fact that unlike Congress and many state legislatures, this council was able to come together with a solution," he said. "There was a lot of give and take in a process that ended up with the support of all mayors, council members and commissioners. People were able to put their differences on the back burner, coming together with a plan rather than kicking it down the road for a future generation."

Rickert also spoke of a common desire to reduce recidivism, a growing rate of inmates who repeatedly serve time in jail.

"The programs we have been able to run have been very successful, but there is no room for more programs or a higher rate of participation," he said. "The plan for a new jail was created with an eye to the future. We are not going to put ourselves in a position again of having no option for remodel or expansion. I have great optimism that given the space, our programs will play a much greater role in the day to day lives of our prisoners."

In regard to the suggestion that a new jail facility is a privilege criminals do not deserve, Rickert said: "The idea that jail is 'cushy' is a misnomer. I have visited many jails during my years as a judge, one of the most recent being the SCORE facility in King County. Listen, jail is jail. Once you walk inside it is stark – stainless steel with glaring light 24 hours a day. Prisoners sit on stainless steel seats, sleep on stainless steel with a two-inch mattress. Most often recreation is an indoors walk-around because of liability issues."

"Jails are a necessity, and they are expensive to operate," he concluded. "The only way to make it is to make things very spartan. That's the way our jail will be."

District Court judge notes challenges

There is a Washington statute requiring the county jail to accept and hold any person the Superior Court orders held, notes District Court Judge David Svaren.

"When the jail has inadequate capacity, District and Municipal Court bench warrants and jail commitments become a second priority," he said.

"In Skagit County," Svaren continued, "law enforcement officers routinely contact defendants with outstanding warrants and, instead of arresting them, give them a notice for a new hearing date. Some of these defendants attend court on the new date, but most don't. Even when the warrant reflects that booking the defendant into the jail is essential, sometimes there is simply no room and the defendant is turned away."

"This should concern the citizens of Skagit County for several reasons, the judge continued. "Sometimes the defendant in question is a serial DUI driver in an alcoholic or drug induced tailspin who is endangering anyone on our roads. At other times it may be a defendant charged with multiple counts of domestic violence crimes. In any event, the common knowledge that there is no consequence for defying a court order or refusing to come to court when summoned erodes respect for the rule of law upon which this country is based."

Mayors on Public Safety

Anacortes

Mayor Dean Maxwell

Mayor Dean Maxwell says: "There is absolutely no question that the cities and Skagit County government must partner to meet the needs of jail overcrowding in order to keep our valley safe. As a member of the Jail Coordinating Council I have worked first and foremost to help identify a solution to jail overcrowding. I am glad that we are looking to find solutions to the recidivism we see in the current system, whether it be mental health or drug related programming."

Sedro-Woolley

Sedro-Woolley residents approved a Public Safety sales tax of one-tenth of 1 percent last year, with a city pledge to commit funds to the purchase of fire and police equipment. Under terms of a provisional agreement with Skagit County, the city would commit an annual amount equal to 85 percent of the city's Public Safety sales tax for construction and operation of the County Jail. Anderson related a story that he said has become too common: a drug dealer with a record of convictions was arrested, but booked and then released due to lack of inmate space in the county jail. "It has become increasingly difficult to hold criminals accountable because you can't hold them in jail due to overcrowding," said the mayor. "The burglar who broke into your neighbor's house today will be at your house tomorrow. We can catch them, but we can't always keep them."

Mayor Mike Anderson

Proposed jail sites in Mount Vernon

Alf Christianson Seed site

Truck City site

What they are saying ...

Regarding work accomplished by the Skagit County Public Safety Jail Coordinating Council: "We ended up with a compromise that was well thought out. It would be duplicative and costly to run multiple jails. A single county-wide jail facility is the best option as it saves our police officers' time and taxpayers' money. We have a plan that will serve us for the foreseeable future."

Sedro-Woolley Supervisor Eron Berg

The case for new jail location

Project Manager Marc Estvold recalls his initial conclusion that a remodel and expansion of the existing facility was the seemingly obvious option for addressing the overcrowding crisis at the Skagit County Jail.

Closer examination of the situation, however, soon revealed that staying in the current building on the existing site was not an option.

Among the reasons a new jail site is required:

❑ Based upon Skagit County population projections, anticipated incarceration rates and local crime statistics it became overwhelmingly obvious that a new facility with an opening capacity of 400 inmate beds, and with significant future growth potential was necessary. Further study of the existing facility and site revealed that it would not be possible to meet future needs in the current location due to existing site restrictions.

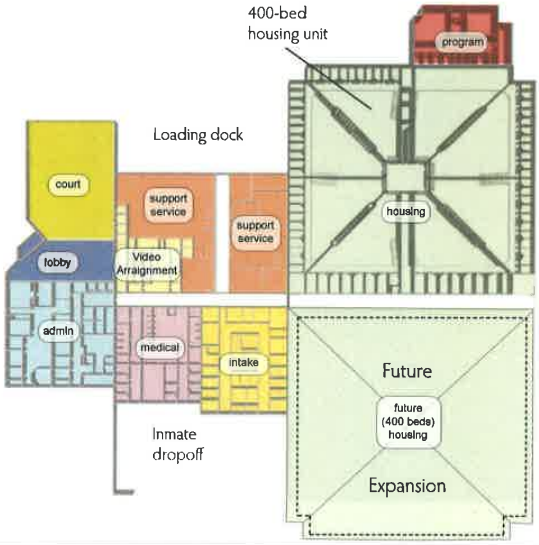
❑ The current jail site is "landlocked" in a downtown location straddled by a railroad line and high traffic city streets, plus poor soil conditions that make it impracticable to go up. Given the current highly competitive construction and real estate markets, cost studies show that it would be less expensive to purchase property and construct a new facility than it would be to renovate and add on to the existing Jail structure. New construction also allows an opportunity to design to today's standards, take advantage of today's technologies and provide for future expansion.

❑ Research into the existing structure determined that required technology and infrastructure upgrades, as well as expansion of the existing 30-year-old jail building, would be cost-prohibitive. In short, investment in the existing structure and site would provide an expensive, unsatisfactory, short-term solution to this public safety challenge.

Skagit County and the City of Mount Vernon will conduct an environmental review of the site selection process, which will assure early and continuous opportunity for public involvement and comment.

Marc Estvold

Conceptual layout of new county jail



Attributes of jail design

- New facility can be constructed with no impact on current jail operations
- Single story design will substantially increase operational efficiencies
- 400-bed plan meets and exceeds current need with forethought given to future expansion
- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation
- Facility designed to meet current codes and correctional facility standards
- Building and site design to accommodate substantial future growth

Prosecuting Attorney's office struggles with jail frustrations

Skagit County Prosecuting Attorney Richard Weyrich believes the negative community impacts from an overcrowded jail call for remedy as soon as possible.

"People used to ask me if we really need a new jail," said the prosecuting attorney. "Now the question is: '**When** are we going to get a new jail'?"

"The need," said Weyich, "is overwhelming."

Elements of the challenge posed by the existing jail are many, but most are related to building size and the fact that an expansion is not possible at the present Mount Vernon site.

One of the frustrations faced by the prosecutor is the fact that because of space limitations, many people who are guilty of property crimes are booked and released because priority for incarceration goes to violent criminals and others whose jail time is mandated by law.

Prosecuting Attorney Richard Weyrich

"What happens is that too many criminals are released time and again, or not even taken in because the jail is too full with murderers, rapists and other very dangerous individuals," said Weyrich. "But tell that to the people who come home to find their house ransacked and all of their valuables gone. Tell that to the crime victim whose sense of safety in their home has been shattered. The people who do these things have no regard for anyone and deserve to be locked up, but all too often there is simply no room in the jail."

"My office is frustrated when we have to deal with victims and tell them that someone who turned their lives upside down is going to receive the proverbial slap on the wrist, not due to anyone's fault except our inability to house these dangerous people in an inadequate facility," he said.

Weyrich emphasizes that no one in local law enforcement is to blame for this situation.

"The Sheriff's Office has done an amazing job of keeping the most dangerous in custody," he said. "But until we have more capacity, the people of Skagit County will continue to be the victims of criminals not going to jail merely due to the fact that 'the inn is full.' We need to act now to build a new jail so we can all sleep a little better at night."

Another prime area of concern for the prosecuting attorney is inadequate space for jail programs.

"I don't think it is an exaggeration that 85 to 90 percent of the people in jail are there due to substance abuse, alcohol abuse or mental health issues," he said. "For many of these people the jail is merely a revolving door without opportunity for treatment that might keep them from returning to jail. It has been shown that treatment works for most of these people. They may get their families back and they may get a job. With a new jail, we will have the ability to treat the criminals while they serve out their time."

Alternatives Program tapped

In Skagit County, alternatives to confinement in jail are utilized at double the national rate. The Skagit County Jail Alternatives Program, created in 1995 as way of reducing overcrowding in the jail, includes Electronic Home Monitoring, Community Service Work Program (such as litter cleanup, washing SKAT buses), Work Release, Litter Crew and In-Custody Work.

The goal of the Jail Alternatives Program is to provide options to total incarceration, or jail time.

For instance, the Work Release program allows participants the opportunity to retain their jobs by allowing them to go to work from the jail, and return to the jail after work. This allows them to pay their financial obligations, including victim restitution and court fees and fines. Most offenders also pay a fee to participate in the program.

Individuals on the Community Work Program and Litter Crew have been involved in numerous projects, with continuing benefits for the citizens of Skagit County. These include litter removal, clean up of dump sites, maintenance of courthouse and park grounds.

There is also a one-day program based at the Skagit County Fairgrounds (quarterly).

Programs such as these give individuals the opportunity to be involved in positive community projects, while at the same time fulfilling their obligations to the judicial system.

Jail Facts

The existing Skagit County Jail is "landlocked," limiting renovation/expansion options and making future expansion impossible. Outdated technology and overdue facility improvements to the 30-year-old building are cost-prohibitive. Although the site for a new jail is still under consideration (two alternatives, see page 6), both potential sites feature space for expansion of the jail to accommodate future demand.

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Drug and alcohol abuse, the greatest "root cause" sources of crime in Skagit County, have increased dramatically in recent years. Criminals with drug and alcohol abuse issues are the most receptive to treatment programs, but the space crisis at the Skagit County Jail prevents the opportunity for treatment programs.

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Technology improvements in the new Jail would include monitors for "real time" surveillance of confinement spaces with a recording option (potential source of evidence in the event of criminal activity by inmates). Video could also be provided for such activities as inmate visitations, arraignments and legal counseling.

Public monitors online Skagit 'Crime Map'

Among the most popular elements on our website (www.skagitcounty.net) is the up-to-date "Crime Map."

This detailed source of local crime data allows the user to search by address, road name or case number. Other options include selection of a region (for example, Guemes Island or Edison) or incident type (such as burglary, domestic violence, criminal homicide).

The detailed map can be viewed in small, medium or large format, with color graphics distinguishing types of incidents and the locations where they occurred.

Also available is a calendar search window that allows the user to search data within a particular period of time.

Sheriff and City Police Chiefs agree: New Skagit County jail is key to public safety

Anacortes Police Chief Bonnie Bowers

"The majority of prisoners currently housed in the Skagit County Jail are pre-sentence felons. Many have committed violent crimes, and if released would pose a safety risk to

Bonnie Bowers

our community. Because our county jail is full of the most dangerous offenders, some less dangerous criminals walk the streets. Very few thieves are booked into jail."

"Property crimes are a serious issue in Skagit County – one of the few crime categories that has not shown a significant decrease in recent years. Because of a perceived lack of consequences for their actions, many thieves will re-offend while awaiting trial on previous offenses."

"Not every offender belongs in jail. Not every offender poses a serious risk to our county. However, it is imperative that we have a large enough facility to house the most dangerous offenders as well as those offenders who need to know that there are serious consequences for repeatedly breaking the law."

Sedro-Woolley Police Chief Doug Wood

Overcrowding in Skagit County Jail routinely forces law enforcement officers to make decisions based not on law, but on the question of whether there is space to incarcerate an individual.

Doug Wood

"A new jail is vital to the safety of all our residents," said Sedro-Woolley Police Chief Doug Wood. "Nobody really wants to pay more to fund it, but it is necessary to have a facility to house prisoners. When all is said and done, we need a new jail."

Mount Vernon Police Chief Jerry Dodd

"The county jail is central to local public safety operations and criminal justice involvement. It houses the inmates involved in a wide variety of offenses (mostly felons), and is used by all of the local jurisdictions, including tribal police and in some cases even federal agencies. Inmate population will rise for years to come."

Jerry Dodd

"Our citizens deserve a new jail. The jail is overcrowded, outdated and not designed to be expanded – presenting a clear threat to public safety and taxpayer liability."

"Replacing the jail is a major undertaking that cannot be avoided. We need to end streaming tax dollars from our community to other counties to outsource our inmates."

"The new jail will offer a win/win situation for the corrections officers, inmates, law enforcement agencies, courts and most important the community. I strongly suggest that if you have an opportunity to tour the jail, please do so to see for yourselves the real problems Skagit County is facing. The need exists. This is the right time to meet our public safety need."

Burlington Police Chief Bill VanWieringen

"The Skagit County Jail is an essential tool for law enforcement in protecting the public from the criminal element."

"The current jail situation, with its overcrowding and booking restrictions, at times does not allow our officers to carry out their duties to the fullest. Many repeat misdemeanor offenders contacted by our officers are immediately released even when they have outstanding warrants."

"Without more jail capacity offenders are not and will not be fully held accountable for their actions."

Bill VanWieringen

Proposed Jail Project Timeline

✔ Determine Funding Source	Spring 2013
✔ Interlocal Agreement with Users	Spring 2013
Proposal to Voters	August 2013
Complete Facility Design	Summer 2015
Start Facility Construction	Fall 2015
Construction Complete	Fall 2017

Skagit County Government

1800 Continental Place, Suite 100
Mount Vernon, WA 98273
Questions or comments? Contact information below:
Telephone: (360) 336-9300 Email: commissioners@co.skagit.

Ken Dahlstedt

Sharon Dillon

Ron Wesen

The Board of Commissioners generally meets each Monday and Tuesday for regularly scheduled agenda items. Agendas are available on the website in the "Agenda" section, or you can listen to a recorded agenda for the upcoming week by calling (360) 419-7600.

www.skagitcounty.net

NORTHERN WHATCOM COUNTY

SMALL CITY CAUCUS

Blaine · Everson · Ferndale · Lynden · Nooksack · Sumas

June 18, 2015

The Honorable Carl Weimer, Whatcom County Council Chair
311 Grand Avenue
Suite 105
Bellingham, WA 98225

Dear Council Chair Weimer,

The Bellingham City Council voted June 15 to decline participation in Whatcom County's jail initiative. We are writing today on behalf of the Small Cities Caucus to strongly urge the Whatcom County Council to continue moving forward with its plan to build the jail, with or without the help from the City of Bellingham.

The need to build a new jail is unavoidable. No one disputes that the existing facility is decrepit, bordering on dangerous, and dilapidated, bordering on inhumane. As important as it is to prevent some individuals from going to jail, there is no disagreement that we have a moral obligation to provide a safe place for those who are in jail serving time.

The disagreement is not about "if" there is a need for a jail, it is about "how" it will be built. In its June 9th memo to Mayor Kelli Linville, City of Bellingham staff identified four specific areas of concerns: How shall costs be shared fairly? How would the City control funds be raised from its residents? How can it make certain funds are used as the City wishes? How can the City continue to have access to the Jail into the indefinite future?

You may not be aware that our Caucus had very similar concerns, and in fact rejected the proposal when Executive Louws first presented it to us earlier this year. But we agreed that a new jail needed to be built, and that we needed to support the County initiative to build one. The leadership in the Small Cities Caucus recognized that, as a provider of regional services, the County is best positioned to build that facility. It is good public policy to make that effort a success.

Somewhat to our surprise, the County Administration proved flexible in its position and willing to modify its proposal to allay our greatest concerns. We disagreed over some issues - and still do. But we agreed that the alternative – not building a new jail – is not an option. So we compromised, which we believe is in the best interest of all our residents.

We absolutely respect the Bellingham City Council's right to do what it believes is best for Bellingham residents, and we fully acknowledge its obligation to fight for things that best serve them. As such, we encourage the County Administration to try one more time to work through differences with Bellingham and ask the City to identify specific concerns so they may be addressed.

However, time is not our ally. The $97 million price tag on this project increases about $450,000 each month of delay. We have already missed the opportunity to include the jail initiative in the August primary election, and in just a few weeks the chance to place it on the General Election ballot in November will be lost as well.

So we ask: If not this, then what? If not now, then when? The cities in the county, except Bellingham, have formally recognized the need for the jail. The Small Cities have agreed to the finance plan and have all signed on with our commitment to build and fund the jail. Now, with Bellingham declining to participate, we strongly recommend revising the documents to allow for participation from each city. This will give Bellingham one more opportunity to join the rest of the community, but also allows the County the latitude to proceed without Bellingham.

If, for some reason, all of this cannot be accomplished, and the Sherriff decides to downsize the existing jail, we respectfully ask that we, as members of the Small Cities Caucus, be allowed to participate in this process so we can be assured that we have the necessary jail space. Collectively the Small Cities use less than 5% of the current jail space and we would hope that any downsize in jail capacity could accommodate our needs, provided we worked together to avoid overcrowding. We have worked with you to this point in the process, and for that we hope you can work with us to assure us of jail space.

We respectfully request you move forward with the jail plan as soon as possible.

Sincerely;

Harry Robinson
Mayor of Blaine

David Wilbrecht
City Manager, Blaine

John Perry
Mayor of Everson

Gary Jensen
Mayor of Ferndale

Scott Korthuis
Mayor of Lynden

Jim Ackerman
Mayor of Nooksack

Bob Bromley
Mayor of Sumas

Cc:
Barbara Brenner, County Council Member
Rud Browne, County Council Member
Barry Buchanan, Council Member
Pete Kremen, County Council Member
Ken Mann, County Council Member
Satpal Sidhu, County Council Member

Jack Louws, Honorable County Executive

WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082

Jack Louws
County Executive

MEMORANDUM

TO: Carl Weimer, Council Chair
Whatcom County Council

FROM: Jack Louws, County Executive

DATE: October 27, 2015

RE: Whatcom County Community Report – Whatcom County Jail

After 5 years, we are at a point in time where next Tuesday November 3rd the voters of Whatcom County will decide to support or oppose a sales tax measure for the construction of a replacement jail on LaBounty Road in Ferndale. The Council and the Administration have taken very deliberate and crucial steps to prepare our organization and the community for this vital decision;

- In April 2011, the Council passed Resolution 2011-14 "Establishing a Jail Planning Task Force"(JPTF) for study and recommendations on a proposed direction for the County jail;
- In September of 2011, the Whatcom County JPTF unanimously agreed that "due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail";
- In early 2013, based on the JPTF findings and recommendations, the Council and Executive retained DLR Group for jail planning, architecture, engineering and other services to plan for the replacement jail;
- In late 2013, on recommendation from the Executive and other team members the Council made the decision to purchase the LaBounty Road property in Ferndale, (appraised and purchased for approximately $6 Million) for the future location of the Whatcom County Jail and Sheriff's Office;
- In September 2014, the Council and the Executive approved a contract with DLR Group to seek a Conditional Use permit, which was issued in March 2015 by the City of Ferndale;
- In June and July 2015, The Council adopted Ordinance 2015-025 and amended Ordinance 2015-037 establishing the Incarceration Prevention and Reduction Task Force;
- In June 2015, the Council approved Resolution 2015-024 authorizing the jail facilities sales and use tax ballot measure to be brought before the people.

The September 30th, 2014 contract with DLR Group authorized public outreach on the project. This outreach included providing a coordinated informational publication, including images of the existing facilities and renderings of the new facility. The planned public information schedule for the project included developing materials for presentations and for the ballot measure mailers.

The Council's role related to the mailers, while important, was limited to the authorization of funds within the budget and contract that approved the preparation and distribution of the ballot measure mailers. I take full responsibility for the design, delivery and content of the informational mailer.

During the preparation of the mailer, my team, the Prosecuting Attorney's office and I worked closely together to ensure consistency with state law on this matter. According to the Public Disclosure Commission (PDC) guidelines, "**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate;**"

> *"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "**it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies.**" Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

Simultaneously we reviewed the PDC guidance on informational mailers, and consulted with DLR, who has experience in preparing informational mailers requiring PDC compliance. We sought PDC review. However, the PDC stopped providing review of mailers last year, due to their budget constraints. We worked diligently to make the mailer factual and objective. My team and DLR Group consulted with the PDC, and to the best of our knowledge the mailer follows their guidelines and is consistent with state law. DLR Group received specific guidance from the PDC that;

- one mailer is appropriate,
- the list of registered voters may be used,
- the mailer should not directly advocate for or against the proposition,
- there are no specific timelines designated as it relates to the mailer and the election date.

The informational mailer content was informed by the Skagit Community Report that was issued just prior to their sales tax ballot measure in the August 2013 election. I would like to submit a copy of that report for your review and comparison. In our community you will find similar informational reports developed by school districts, fire districts and other jurisdictions that have communicated to their voters on important ballot issues. The mailer was designed to give the voters of our community solid and accurate information on a large and complex jail project.

After so many years of good work and so many good decisions by the Council we stand today with a solid project now poised to be decided by the voters of Whatcom County. While I am proud of all of our work on this most significant of criminal justice challenges I do regret that this entire jail project and the associated public informational mailer have resulted in controversy among some people in the community. With that controversy in mind, I stand before you, ready to move forward, shoulder to shoulder, to achieve a sensible solution to this longstanding community challenge of a replacement jail.

I do want to state that the entire jail plan, the documents and agreements associated with the plan, as well as the informational mailer was developed and distributed with all good intent by competent, ethical and conscientious people working within Whatcom County Government. I am proud to serve alongside each of them. These people are committed to the mission of Whatcom County and strive every day to protect our residents and ensure the health and prosperity of Whatcom County.

Again, we are all looking forward to the decisions that the voters of Whatcom County will make on November 3rd. We can always learn from the work we do together and I am willing to use what I have learned from this project in our important work together in the future.

Respectfully,

JL

Bill Elfo Interview Summary – 1/25/16 (1:00:18) Interview under oath
Ph: 360-778-6605
Email: sheriff@co.whatcom.wa.us

Summary:

- Bill Elfo is the Sheriff of Whatcom County. He served as the interim Sheriff from January 2003 through November 2003. He was elected Sheriff in November 2003 and re-elected in 2007, 2011, and 2015. In November 2015, he ran unopposed.

- The Sheriff's office is responsible for providing law enforcement services to the unincorporated areas of Whatcom County, and in some areas, county-wide. He is also the director of emergency management, and he operates the Whatcom County jail. He is also in charge of search and rescue operations. There are also other statutory duties, such as Sheriff's sales, executing process, and like functions.

- The jail accepts people who are arrested in Whatcom County, and from cities, and one of the Tribes. The Sheriff is risible for the operation of the jail. Wendy Jones is the Chief of Corrections, and he has an Undersheriff that help oversee jail operations. The Whatcom County Facilities Department is responsible for the maintenance of the jail.

- In the criminal context, the Sheriff's office makes arrests and provides investigative reports to the Prosecutor's office. On the civil side, the Prosecutor's office provides legal advice to the Sheriff's office, and defends the Sheriff's office if they are sued.

- The County contracts for behavioral health services through the Whatcom County Health Department.

- In 2003, when Sheriff Elfo became Sheriff, the jail was grossly overcrowded, and was deteriorating. There were six or seven years of studies on the condition of the jail. Shortly after he took office, he asked the National Institute of Corrections, an arm of the U.S. Justice Department, to conduct a complete review of the jail. They warned of the danger of "pancaking" if the event of a seismic event. They noted exposure of the County to liability due to the condition of the facility.

- Sheriff Elfo said he began trying to persuade County Council people and the Executive, to replace the existing jail shortly after he became Sheriff. He said the Executive was unwilling to take the matter to the voters. The Executive was willing to commit to building an interim work center that would last from five to seven years, and during that time, plan for a new replacement facility.

- In 2004, the 0.1% sales tax increase was to construct and operate the interim work center. The voters were told that when the work center was sold in five to seven years, the proceeds would be used to help build a new jail. Starting in 2009, money from that account was used to make repairs on the main jail facility, the juvenile detention facility, and paying the increased cost of jail operations.

- In 2008, there was councilmatic action for a behavioral health tax (mental health and chemical dependency tax) to fund behavioral health services. It was used to fund a detox center, to pay for crisis stabilization, for school districts to hire mental health counselors, to pay for community based mental health services, and it provided money for the mental health services that are provided within the jail.

- The Jail Mailer: According to Sheriff Elfo, on June 3, 2015, a meeting was held in the Executive's office with DLR Group to discuss a public outreach effort concerning Proposition 2015-1. Justin Stranzl of DLR Group was at the meeting. He was purported to be an expert in helping public agencies communicate about ballot measures. Chief Civil Deputy Prosecuting Attorney Dan Gibson was also at the meeting. He made some cautionary statements about distinguishing between campaigns that support ballot initiatives and providing neutral outreach to inform citizens. Executive Louws was also at that meeting, and he highlighted the need to adhere to requirements and laws, and directed the legal advisors from the Prosecutor's Office to work closely with his staff and the Executive's office during this process of providing public outreach for the ballot proposition. Sheriff Elfo said what he understood from that meeting was an overriding theme of ensuring compliance with the laws relating to the use of public facilities during an election campaign. He said he was more concerned about this theme of compliance than about the content of the flyer.

- Executive Louws stated that DLR Group and Tyler Schroeder from the Executive's office would work with the County's legal staff to ensure that any effort comported with PDC laws and requirements. It was also stated that the information in the flyer would be submitted to the Public Disclosure Commission for review prior to final printing or distribution. At the meeting, DLR Group asked Sheriff Elfo to provide some information for inclusion in the flyer. Sheriff Elfo told DLR Group that he would limit his comments to the areas for which he is responsible. For example, he was not willing to speak to finances or environmental issues, but said he would only speak to the operation of the jail. He said the facilities maintenance, structure, and life safety systems affect the operation of the jail, and while he has been speaking out on these issues for 13 years on a WordPress blog he has been maintaining through the Sheriff's Office and through about 100 public talks, he limited his comments in the flyer to the conditions in the jail and how those conditions affect operations.

- Sheriff Elfo said he informed Justin Stranzl of DLR Group that he had already provided editorials to the Bellingham Herald and other local media since 2003 that describe the failing structure, life safety systems, and overcrowding, as well as a dire need to replace the jail. Sheriff Elfo told Mr. Stranzl he had provided detailed memorandums to the Council on April 9, 2015 and testified to the same at a public hearing in April 2015 before the Whatcom County Council. He told Mr. Stranzl that he had provided a memorandum to Executive Louws on April 22, 2015 and responded to the Council about whether the jail needed to be replaced or remodeled. The April 9, 2015 memo contained most of the pictures that depict the conditions of the jail that were used in the jail mailer. The photos of the jail are also posted on WhatcomCountySheriff.org, a website that

Sheriff Elfo has maintained for the past five or six years to educate the public on the need for a new jail. Sheriff Elfo said he did not see a need to produce any new information since there was already so much information in the public domain. DLR Group agreed to do a web search to find the information already in the public domain.

- Sheriff Elfo said the quote attributed to him in the jail mailer was taken from the editorial he sent to the Bellingham Herald in early June 2015, that had been requested by the Herald in late May 2015. He said a lot of the statement under the heading "Citizens and Experts Develop Plan for the New Whatcom County Jail" also appears to have come from the same article submitted by Sheriff Elfo to the Bellingham Herald in June 2015 even though it is not attributed to him. He said some of the language appears to have been edited, but is accurate.

- Sheriff Elfo said he wrote the editorials as Whatcom County Sheriff. He said the editorial submitted in June 2015 was done at the request of the Bellingham Herald to explain the condition of the existing jail.

- Sheriff Elfo said the photos used in the jail mailer were not staged. He said he asked his staff to be alert to the conditions in the jail, and to photograph scenes that show the actual conditions of the jail. He said the photos were not taken in advance of the 2015 election, but had been taken earlier to document the conditions of the jail. He said he has been publishing these photographs for five or six years. He said the Executive's office has included pictures of the jail on the County's website for several years to inform the public about the condition of the jail and to address what the County is doing to address the problems with the jail.

- Sheriff Elfo said he was not involved in the scope or design of the flyer. He said DLR Group asked for a photo, and he provided three photos. He said DLR Group did not use any of the photos he supplied, but used a picture they pulled from the internet. He said he assumed any pictures or quotes he provided to DLR Group would be approved by the PDC before they were used. Sheriff Elfo said he did not provide any information to DLR Group, but gave them permission to use the quotes that were attributed to him.

- Sheriff Elfo noted that the 2013 Skagit County Jail flyer, sent out prior to the August 2013 Primary Election, was much more robust than the 2015 Whatcom County jail mailer. He said the Skagit County flyer contained multiple pictures of uniformed people and elected officials, some of whom were up for election and appeared on the August 2013 ballot. DLR Group had developed the Skagit County flyer. Sheriff Elfo said he did not believe his picture in the flyer affected his election in 2015. He ran unopposed. He said in 2011 he received 75% of the vote, and in 2007 he ran unopposed. He said he did not need a photograph of him on a brochure asking citizens to raise taxes to ensure that he would prevail in the election. He said because the issue was controversial and divisive, it probably diminished his popularity for future elections.

- Sheriff Elfo said he has appeared on a number of radio stations, including KGMI, for 12 years talking about the need for a new jail. He does not believe he spoke on the radio

about the ballot measure after the measure was put on the ballot. Sheriff Elfo said if he was called by a radio station, he would only provide factual information.

- Sheriff Elfo said he did not take steps to form a PAC to support the ballot measure. He said the people who support the PAC have been involved for years. He identified Ray Baribeau, who has served for a number of years as a volunteer in the jail providing volunteer religious services. He also served on the Jail Planning Task Force. Several individuals who are involved in working to get a new jail formed an educational group that is not a PAC called Public Safety Now. They researched jail issues and attended County Council meetings. These same people later formed a PAC. Sheriff Elfo said he attended some of the PAC's meetings as a private citizen. He said none of the meetings were held at the Sheriff's Office. He was not involved in finding a co-chair. He said he attended five or six PAC meetings.

- Sheriff Elfo attended meetings of the County Council appointed Jail Planning Task Force. He was not a member of the task force, but was asked to attend to answer questions.

- Sheriff Elfo said the jail has been off of booking restrictions since the Interim Work Center was opened following the 2004 election. He said he found out recently that inmates are able to kick the doors, and the locks will fail, and the doors will open.

- Sheriff Elfo said he had no responsibility for approving the time DLR spent working on the flyer. Sheriff Elfo said he is not aware of any new evidence that would alter the basis for the statements in staff's Executive Summary stating that no evidence was found supporting a violation.

- Summary: The Mayor of Bellingham was adamant that they would not build their own jail. Sheriff Elfo said he did not have any control over whether the flyer contained cost information about the proposed jail.

- Sheriff Elfo said he has been in law enforcement for 42 years and he has never had a negative finding and he asked that as professionals PDC staff I give this a fair shake. He said he knows there is a lot of pressure being applied by people in the community, and he hopes the Public Disclosure Commission itself will do what is right.

Flooding in Whatcom County

What to do Before, During, and After a Flood

My parents-in-law lived on the Emmerson Road near Everson for many years. They were right next to the river, and flooding was a fact of life for them. Like them, many in Whatcom County have earned a healthy respect for our rivers and streams. They have learned that it pays to be prepared when waters rise beyond their banks.

Your county government strives to minimize the hazards and perils of flood season. This newsletter is distributed as part of our advance planning to give you the information you need to deal with flooding. It describes the hazards, shows the general locations of our flood-prone areas, and explains what to do and what to expect when flooding occurs.

Flooding in Whatcom County is a reality. Our ability to safely respond to a flood event is a partnership between the County and you - please do your part. Be aware. Be prepared.

Jack Louws
County Executive

Flooding Hazards in Whatcom County

Whatcom County floods occur between the months of November and February. The Nooksack River and its tributaries impact the largest area of the county, including the overflow corridor between Everson and Sumas. The Sumas River, Samish River, numerous alluvial fan areas, lakes, and coastal areas of Whatcom County are also susceptible to flooding. Significant floods occurred in 1935, 1945, 1951, 1955, 1975, 1989, 1990, 1995, and 2009, and more major floods are likely in the future.

Natural & Beneficial Functions of our Floodplain

The floodplain – the low land adjacent to a river or stream that is susceptible to flooding – is essentially nature's "safety valve" for managing floods. One of its crucial functions is to store and slow down excess water. When a river has access to its floodplain, floodwaters from rain or snowmelt spread over a wider area, reducing and slowing the amount of water heading downstream. When the size of a floodplain is reduced by dikes or altered by impervious surfaces like pavement, the speed, depth, and peak flows of floodwaters increase and may cause greater damage to both natural and manmade resources.

Floodplains are shaped by a river's movement. In the Nooksack basin, the floodplain contains old river channels and side channels that are critical for fish and wildlife, particularly for local salmon runs that use them for spawning and rearing. Old river channels provide storage for floodwaters and sediment, and help to dissipate the force and energy, of floodwaters. Fresh sediments deposited by floodwaters on floodplains help to enrich soils, making for fertile agricultural areas.

South-easterly view of Guide Meridian at the Nooksack River during January 2009 flood.

Debris flow in the South Fork Valley during January 2009

Flood Warning System

Whatcom County and the National Weather Service work together before and during a potential flood event to try to warn county residents of imminent flooding. If warranted, the Emergency Alert System (EAS) may be activated. The following local stations broadcast emergency information:

- KGMI – AM 790
- KISM – FM 92.9
- KPUG – AM 1170

Flood information is also aired on NOAA Weather Radio at 162.425 MHz (Puget Sound), 162.525 MHz (Blaine) and WeatherRadio Canada 162.55 MHz.

The Whatcom County Division of Emergency Management records important information on an Incident Hotline during floods and other emergencies. You can reach the hotline at (360) 738-4551. To request sandbags during a flood, please call (360) 778-8500.

If an evacuation is advised, you will be notified either by telephone, the Emergency Alert System, door-to-door visits, or public address systems. During times of heavy rain, listen closely to one of the radio stations listed above, or call the hotline.

If you have internet access, visit these sites for flood information:

- Weather warnings: www.wrh.noaa.gov/sew
- River forecast: www.nwrfc.noaa.gov
- River levels: wa.water.usgs.gov/data/realtime/adr/interactive/index2.html

This newsletter is published by:

Whatcom County River and Flood Division
322 N. Commercial Street, Suite 120
Bellingham, WA 98225
(360) 676-6876
www.whatcomcounty.us/publicworks/riverflood

Before A Flood

Protecting Your Property

Before flood season starts in earnest, take steps to limit your losses.

- Buy flood insurance.
- Elevate your house above the 100-year flood elevation.
- Floodproof structures – either make them watertight or able to withstand flooding with little or no damage.
- Construct barriers or berms between the river and your home.
- Fight floods using sandbags, plywood and plastic during a flood event.

For more details or for help in selecting and planning property protection measures, stop by the Whatcom County River and Flood Division at 322 N. Commercial Street, Bellingham, or call (360) 676-6876.

Flood Insurance

You don't need to live in a floodplain to purchase flood insurance. In fact, because Whatcom County participates in the National Flood Insurance Program (NFIP), any property owner is eligible for flood insurance. About 50% of all flood damages nationwide occur outside of the mapped 100-year floodplain area. Note that flood damage is not covered under standard homeowner's insurance policies, and lenders require flood insurance for most floodplain home loans.

There is a 30-day waiting period, so contact an insurance agent about getting flood insurance now.

For more information about NFIP visit www.fema.gov/business/nfip, or call 1-877-FEMA-MAP (1-877-336-2627).

Floodplain Development Permits

Before you build, remodel, repair, fill or re-grade your property, you should check with the county or city government in which you live as to what permits and conditions will be required. It is always wise to check into requirements before you commit to any plans, construction, or materials.

If your proposed repair or improvement is valued at 50% or greater of the value of the existing structure, then your improvement is "substantial" and will be considered new construction. To get the latest information or requirements for construction, substantial improvements, or filling and grading in the floodplain, please contact either the River and Flood Division at (360) 676-6876 or Planning and Development Services at (360) 676-6907.

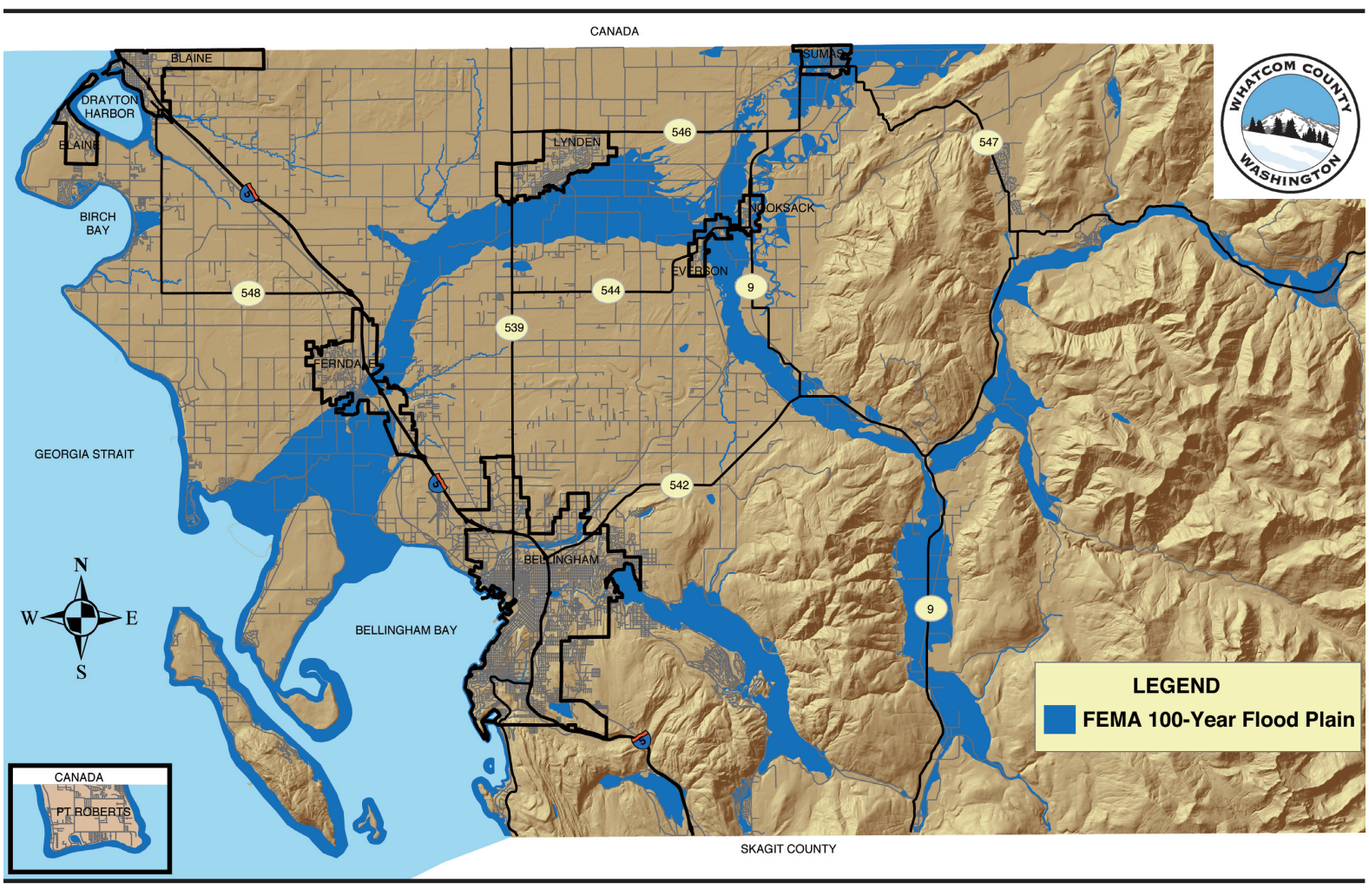
Drainage System Maintenance

When flooding occurs, a common problem is improper functioning of drainage systems. It is important to inspect systems frequently for damage and remove debris that may clog or reduce drainage capacity before flood water arrives. A plugged channel cannot dissipate floodwaters.

Where Will It Flood?

The blue areas of the map show Whatcom County's 100-year floodplain – the high-risk flood hazard areas in the county. These areas are lands in the floodplain that have a 1% or greater chance of flooding in any year. If your property is in the 100-year floodplain, it has about a 25% chance of being flooded over the term of a 30-year mortgage.

If you would like more information regarding historic flooding, flood insurance, or flood preparedness, including whether your property or one you may want to purchase is in a floodplain, please contact the River and Flood Division of Whatcom County Public Works at (360) 676-6876, or visit the Reference sections of the Bellingham and Whatcom County public libraries.



During A Flood

Flood Advisories

When there is a possibility of a flood, the National Weather Service issues flood advisories. The advisories may use these terms:

River Forecast Point: A river gauge site that represents a specific reach of the river and has a flood stage established by local emergency management officials and the National Weather Service.

Flood Stage: The water level height in feet at a river forecast point where flood waters begin to potentially damage buildings, roadways and bridges.

Flood Outlooks, Watches and Warnings: These are the three levels of flood awareness that provide communities lead time and raise awareness and preparedness before and during a flood.

- *Hydrologic (Flood Potential) Outlook:* The initial level, which raises awareness of and preparedness for a possible flood event in 2 or 3 days.
- *Flood Watch:* The next level of community flood awareness and preparedness, when conditions are becoming more likely for flooding in a day or so, but are not yet imminent or certain.
- *Flood Warning:* The highest flood level message, when flooding is imminent within 12 hours or is occurring. Since there are many variables in a flood forecast, they are issued with an accuracy of plus or minus one foot.

Flood Safety

Flooding can be extremely dangerous and unpredictable. Long periods of rain may cause slowly rising floodwaters over several hours or days, but a dam or levee failure could cause a rapid and dramatic rise in floodwaters.

To decrease the potential for injury due to flooding:

- Know the flood warning procedures.
- Move to a safe area before access is cut off.
- Don't drive where water is over the road; the road may be washed out.
- If your vehicle stalls in a flooded area, abandon if it is safe to do so, and seek higher ground.
- If you are caught in the house by suddenly rising waters, move to the second floor and, if necessary, the roof.
- Keep children away from floodwaters, ditches, culverts and storm drains.

After A Flood

Food and Drinking Water Safety

- Do not use food or water that has been exposed to floodwaters, it may be contaminated.
- Until the public water system or your private well has been declared safe, water for drinking and preparing food should be boiled vigorously for 10 minutes.

Re-Entering Your Home

- Return home only when local officials say it is safe to do so.
- Before entering, check for structural damage that could cause collapse. Turn off any outside gas lines at the meter, or tank, and let the house air for several minutes.
- Do not strike a match when entering your home. There may have been a gas leak.
- Be careful about turning the power on again. Watch for electrical shorts or live wires. Do not use water-damaged appliances.
- Document your flood losses and contact your insurance agent for flood loss claims.
- Dry your house slowly. Carpets and drywall may have to be removed. Remember, water can be trapped between walls and will not dry.
- If your home or business has suffered extensive structural damage, this may be the time to elevate or floodproof the structure.
- Contact the Whatcom County chapter of the American Red Cross for disaster assistance at (360) 733-3290. The Red Cross provides shelter, food, and health and mental health services to address basic human needs.

If You Evacuate

- Secure your home. Cut off all electrical circuits at the fuse panel or disconnect switches. If you can't, turn off or disconnect all electrical appliances. Shut off the water and gas.
- Pack your disaster supplies kit, prescription drugs, eyeglasses, clothing, money, ID, child supplies and personal items.
- Don't forget about your pets. Most shelters don't allow any animals other than service dogs, so make arrangements before a flood for your household pets.

Debris from the November 1990 flood lies across Ferndale Road. Photo courtesy of The Bellingham Herald.

Whatcom County River and Flood Division
322 N. Commercial Street, Suite 120
Bellingham, WA 98225

Sandbags can provide temporary protection from floods. During a flood emergency, county residents can request sandbags by calling (360) 778-8500.
Photo courtesy of The Bellingham Herald.

Create a 72-Hour Kit

When a disaster strikes, your community emergency services and government agencies may not be able to respond to your needs immediately. Their buildings, equipment, personnel, communications and mobility may be serverly hamperd by the event. They will be overwhelmed.

Experts warn that you should be prepared to be on your own for a minimum of three days after a disaster. One of the most important elements of this preparedness is the 72-hour kit for your home or office. The contents of this kit will vary, but in every case it should contain the things you need to survive for three days on your own.

Your home 72-hour kit should contain at least the following items:

- One gallon of water per person per day. This means at least three gallons of water per person.
- Sufficient non-perishable food for three days. Ideally, these foods will be lightweight and high in energy. If you pack canned foods, remember a can opener!
- Prescription and non-prescription medications. If you wear glasses, include a spare pair.
- Battery-powered portable radio. This may be your only source of information during a disaster.
- First aid kit. The small camping kits work well. Remember to get enough supplies for the number of people who may be using them.
- Personal hygiene items.
- Clothing and bedding. A spare pair of socks and a space saver blanket would be a minimum.
- Special items such as baby needs or contact lens supplies, etc.
- Personal comfort items. Books, games, personal electronics, etc.

Remember, this is only a bare bones kit. You can add things to this list that you or your family will need.

This information was taken from the Whatcom County Division of Emergency Management's website. For more details, visit www.whatcomcounty.us/dem.

Contact Information

Before a Flood

Whatcom County Public Works, River and Flood Division: **(360) 676-6876**

Whatcom County Division of Emergency Management: **(360) 676-6681**

Whatcom County Planning and Development Services: **(360) 676-6907**
www.whatcomready.org

American Red Cross – Whatcom Chapter: **(360) 733-3290**

During a Flood

Incident Hotline: **(360) 738-4551**

Sandbag Requests: **(360) 778-8500**

After a Flood

American Red Cross: **(360) 733-3290**

Damage Report: **(360) 778-8500**

Emergency Information

Radio and Internet

Emergency Alert System messages are broadcast on:
KGMI – AM 790
KISM – FM 92.9
KPUG – AM 1170
NOAA Weather Radio – Puget Sound (162.425 MHz)
NOAA Weather Radio – Blaine (162.525 MHz)
WeatherRadio Canada (162.55 MHz)

Weather information is available at:
www.weather.gov/seattle

Incident Hotline: (360) 738-4551

During incidents, call this number for up-to-date information.

Evacuation

If an evacuation is advised, you will be notified either by telephone, the Emergency Alert System, door-to-door contact or public address systems.

Ag News

Issue 3 Spring 2015

Whatcom County Planning and Development Services

Inside this issue:

2016 Comprehensive Plan Update	1
Protecting Prime Soils in Whatcom County	2
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Ag Watershed Project	4

Whatcom County Ag Organizations:

- Washington Red Raspberry Commission: www.red-raspberry.org
- Washington Blueberry Commission www.blueberrycommission.com
- Washington Seed Potato Commission: www.waseedpotato.com
- Whatcom County Cattlemen's Association : Call Wes Kentch ~ wwkentch@comcast.net
- Whatcom County Dairy Federation www.wadairyfederation.org
- Whatcom County Farm Bureau www.whatcomfarmbureau.com
- Whatcom Farm Friends www.wcfarmfriends.com
- Sustainable Connections www.sconnect.org

Whatcom County Entities Related to Ag:

- Whatcom Conservation District www.whatcomcd.org
- WSU Extension whatcom.wsu.edu
- USDA Service Center 6975 Hannegan Rd, Lynden 98264

2016 Comprehensive Plan Update

Whatcom County Planning and Development Services (PDS) is working to amend the Comprehensive Plan as part of our 2016 update. Chapter 8 Resource Lands describes policies in place to protect and support agriculture in Whatcom County.

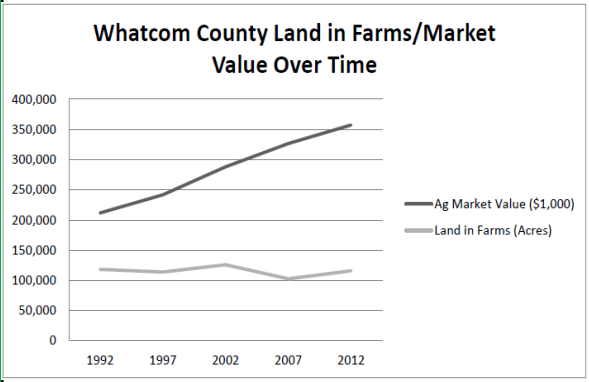
Whatcom County has been actively farming a little more than 100,000 acres for the past 20+ years, according to the United States AgCensus. In that same period the market value produced on that acreage continues to increase. The chart below illustrates the significant value of agricultural products in Whatcom County and reinforces our resolve to protect it.

The 2016 Update of the Comprehensive Plan has amended language to encourage continued protection of agricultural lands and includes the following highlights.

Policy 8A-2 Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base may include (only a few highlighted for this article):

1. Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.

2. Implementing a Transfer of Development Rights (TDR) Program in which the development potential of a site could be transferred to another location where development is more favorable.



4. Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.

6. Mitigation for loss of productive agricultural lands.

Policy 8A-2 can be found on page 8-6 in the 2016 Comprehensive Plan update draft.

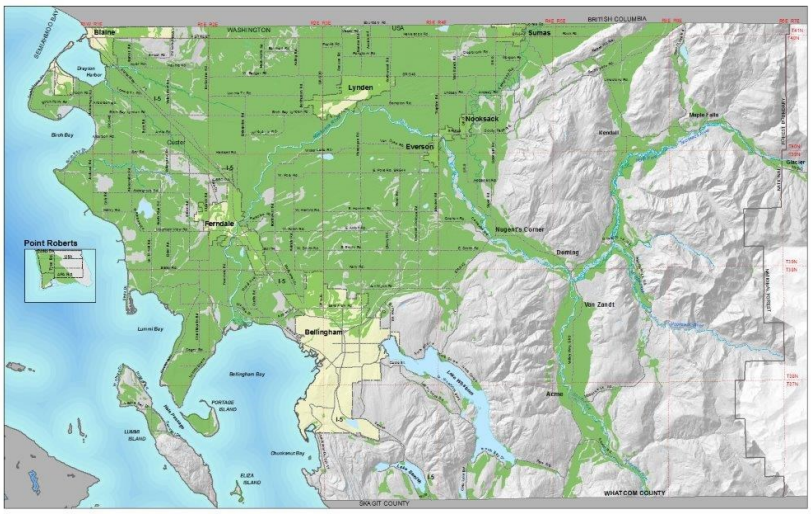
The drafts of the comprehensive plan elements are currently posted online at www.whatcomcounty.us/1170/Comprehensive-Plan-Updates. Whatcom County PDS is currently accepting public comments on the draft elements as well as the draft Environmental Impact Statement of the Update. The Planning Commission is currently scheduled to review Chapter 8 at the June 25 meeting (Meeting time is subject to change). The public is encouraged to attend and address the Planning Commission with any comments or concerns. Planning commission meeting schedule can be found at http://www.whatcomcounty.us/552/Planning-Commission.

Comments can be mailed to:

Whatcom County Planning Attn: Becky Boxx 5280 Northwest Drive Bellingham, WA 98226

Or emailed to: PDS_Planning_Commission@co.whatcom.wa.us

Protecting prime soils in Whatcom County



According to the Natural Resource Conservation Service (NRCS), Whatcom County has 222,932 acres of prime farmland soils. Of the prime soil acreage 81,996 acres are protected through agricultural zoning. Of course, just because soil is prime does not mean that it is actively being farmed, contains ideal farming characteristics, or should be protected for agricultural use. But these numbers do illustrate that there is a very significant amount of prime soil in Whatcom County beyond that zoned agriculture.

The NRCS published policy and procedures on prime and unique farmlands in the "Federal Register," Vol. 43, No.21, January 31, 1978, p.4030 through p. 4033. This document states that prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods.

In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

Rural Study Areas

Whatcom County completed the Rural Land Study Area Report in 2007. This report addresses the impacts of development on rural zoned agricultural land and was drafted due to the rapid residential development of agricultural and forest lands resulting in the need for greater protection efforts by the community. The Rural Land Study Areas (RSAs) are made up of 21,950 acres of agricultural soils in the county zoned rural, not agriculture, but in close proximity to the heart of actively farmed land within Whatcom County. The Agricultural Advisory Committee recommended that Whatcom County develop heightened agricultural protection measures for the rural areas identified by this study. This study was updated in 2013 with the Whatcom County Agricultural Land Cover Analysis.

Staff recently released a report that analyzes potentially rezoning these RSAs from their respective Rural district (R-5 and R-10) to a Small Lot Agriculture District (Ag-5, Ag-10, or Ag-20) at densities higher than the County's current Agriculture zone (Ag-40). Such a small-lot ag district could add heightened protection to these productive agricultural areas by: 1) reducing the types and number of non-agricultural uses and increasing the types and number of permitted agricultural uses in these areas: and 2) reducing the likelihood of the affected parcels being taken out of agricultural use by rezoning them to increase residential density in the future.

Whatcom County could help mitigate losses through both its existing Purchase of Development Rights (PDR) Program and by implementing a new Transfer of Development Rights (TDR) Program.

Purchase of Development Rights Program

Through the PDR Program, Whatcom County has preserved 826 acres and removed 118 development rights from prime agricultural soils in the past 13 years. Willing property owners can apply to sell development rights on their prime agricultural land to permanently preserve farmland for current and future farmers. If you have additional questions about the program or would like to know whether your property is eligible, please contact PDR Outreach Coordinator Chris Elder at celder@whatcomcounty.us or at (360)676-6907

Farmer Spotlight: Chris Paul

Chris Paul and her husband Clarence operated the Paul Dairy for many years off of Haynie Road. They loved dairying and enjoyed the open space and agricultural nature of Northwest Whatcom County. But Chris and Clarence were not immune to the challenges of being a dairy family. They hadn't taken a vacation in over a decade and each year they continued the cycle of borrowing money to keep the operation running and paying it back with each gallon of milk sold. In 2003, the Paul's lost their son who played an important role in the dairy operation. This prompted them to take advantage of that year's dairy buyout and sell off their herd. But this didn't completely clear them from some of the debt they had acquired from running the dairy.

At that time they heard about the Purchase of Development Rights Program from some friends with a dairy who were also exploring the program. The Paul's worked with the current PDR Program Administrator through the process of applying and getting their development rights appraised. In the end, Chris and Clarence sold 31 development rights on 157 acres of prime farmland to permanently preserve their land for current and future farmers. Through the sale of these development rights, the Paul's were able to finally pay off all of their debts and continue on with the next phase of their life debt-free.

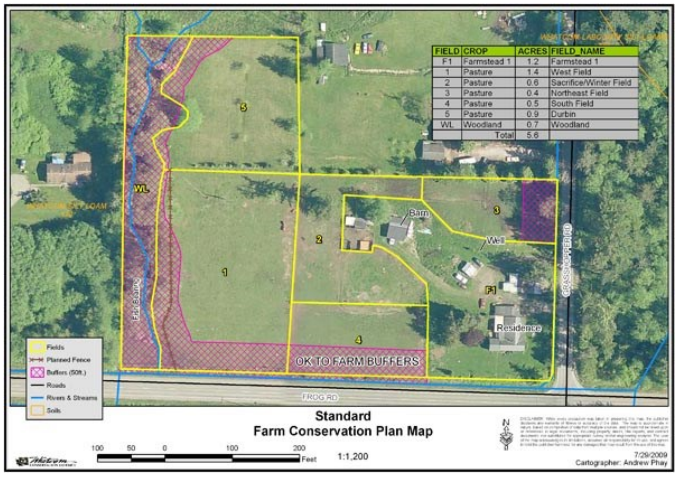
Chris Paul is also a local hero. She is one of the founding members of the Whatcom County Youth Fair. This is an organization that began primarily teaches young people how to care for livestock and how to compete in livestock shows but has expanded over the years to include other areas such as photography, chess, homemaking, and much more. This year's fair had over 500 young people in attendance. This included many of our Whatcom County 4H and FFA youth but also many others from around the state. Chris believes in the next generation of farmers. She supports their learning process and wants to see the land remain for them to use. She is concerned about a possible future when there are no farmers left. She has taken many steps to ensure that farming remains a viable opportunity for current and future residents of Whatcom County.

Farm Plans and how they can work for you

A farm plan is a living document that can provide a number of benefits to a property owner. A farm plan supports a property owner in developing a land management system that encourages productive land use as well as the maintenance of a healthy ecosystem.

Many things are considered in a farm plan including farm acreage available for grazing/ hayland, soil types, slope of the land, location of well head and septic system, proximity to streams, wetlands, and/or water bodies (i.e. swales, ditches, ponds, etc.), type and numbers of livestock or crops, and resources such as machinery or buildings.

A farm plan can provide the property owner with relief from the standard buffers required by the County's Critical Areas Ordinance and still ensure that watershed values are being protected. Through the process of creating and following a farm plan, a property owner can assess farm goals and objectives. This acknowledges ways to actively (rather than passively) manage your animals and your land in a way that is protective of water quality and critical areas habitats. You'll find that what protects our environment also benefits you through better livestock health and through better forage production that can save you money in the long run! Debbie VanderVeen of Veen Huizen Farms, LLC says that "A Farm Plan assists the farmer in his efficiency of using Best Management Practices to grow highly productive crops, keep water clean, and soils nutrient rich."



You don't have to be a commercial operation to benefit from developing a farm plan! The Whatcom Conservation District works with farms of all sizes, from backyard horse or llama owners to dairy and beef operations with larger numbers of livestock.

For more information on Farm Conservation Plans contact the Whatcom Conservation District at (360)526-2381, wcd@whatcomcd.org, or at 6975 Hannegan Road just South of Lynden. Whatcom Conservation District is a non-enforcement subdivision of the State of Washington and is supported by grants. The District is charged with the duties of protecting the soil and water of Whatcom County, particularly in relation to farming and animal keeping practices, through technical assistance and education. Development of farm plans is a free service offered by the District.

Whatcom County Planning and Development Services

Northwest Annex
5280 Northwest Drive
Bellingham, WA 98226-9099

Mailing Address Line 1

Mailing Address Line 2

Mailing Address Line 3

Mailing Address Line 4

Mailing Address Line 5

AG NEWS ~ SPRING 2015

We're On the Web!
www.whatcomcounty.us

Ag Watershed Project

The Ag-Watershed Project (June 2012-June 2015) is examining how incentive-based tools can work with current regulation to strengthen agricultural viability while enhancing large-scale watershed processes and functions.

The project research team has been testing various scientific measurement tools with the help of landowners, project review committee members and partners.

The prototype Ag Metric tool has been designed to quantify changes in ag function and viability resulting from specific actions taken by landowners on ag lands (e.g., protection of land from conversion, provision of adequate drainage, protection of ag fields from flooding etc). For more information see *Ag News*, Spring 2014.

Other scientific measurement tools tested in this project have focused on quantifying the watershed benefits of specific actions (e.g., wetland function, stream function, stream shading by riparian vegetation) that could be taken at a site (a farm or group of farms). The tools have been tested at two pilot sites on farmland in the North Lynden watersheds.

Phase 1 work identified *potential* projects involving specific voluntary actions on agricultural lands in the project focus area that could advance both watershed and ag land planning objectives in Whatcom County.

Phase 2 focused on adapting and testing tools for measuring, tracking and accounting for specific ag and watershed benefits that could be achieved in these potential projects, in order to examine how an incentive-based marketplace approach might be used to encourage voluntary actions that go above and beyond what is required.

The project ends in June 2015. The research reports will be released via the website. Karin Beringer will be accepting comments and can be contacted for notification when scientific tools and technical reports are posted. Karin can be contacted at kberinge@co.whatcom.wa.us

For more information visit the project website https://sites.google.com/site/wcwatershedag/

Whatcom County Planning and Development Services has applied for a Department of Ecology National Estuary Program Grant to continue refining the metrics and mapping that were developed in the first phases of the AgWatershed Project. The grant proposal also focuses on developing a mitigation program for the loss of agricultural land.

If you liked this newsletter, and would like to see more like it in the future, email kberinge@co.whatcom.wa.us and let us know!

Whatcom County Public Works Stormwater
322 N. Commercial St., Suite 301
Bellingham, WA 98225
360.778.6210

our Watershed

BBWARM Newsletter • Issue 4 • Summer 2015

Look Inside For Information On

- 3rd Annual Run with the Chums & Whatcom Water Weeks
- Stormwater capital improvement projects
- Birch Bay subwatershed master planning
- The Chums of Terrell Creek
- Birch Bay 4th of July clean-up
- Water quality monitoring information
- Community solutions for clean water
- Getting ready for the rain

What is BBWARM?

The Birch Bay Watershed and Aquatic Resources Management (BBWARM) District is the stormwater management district for the Birch Bay watershed. BBWARM was established by the Whatcom County Council to address citizen concerns about water quality, flooding, and the loss of aquatic habitat.

www.bbwarm.whatcomcounty.org

Visit our website to learn about BBWARM programs, history, and funding. Sign up to receive email notifications of meetings and special events.

BBWARM District location

our Watershed

BBWARM Newsletter • Issue 4 • Summer 2015

Run with the Chums & Whatcom Water Weeks

Join the Chums of Terrell Creek for the 3rd Annual Run with the Chums 5k fun run during Whatcom Water Weeks. Run or walk on a scenic loop through the BP highlands and learn more about watershed health while taking care of your own health. This family friendly event offers a kids' Smolt Sprint, prizes, and more. Free registration, T-shirts, and fun for all ages!

Saturday, September 19
10 a.m. (come early to park and walk to the start)
Jackson Road south of Grandview
To register: www.chumsofterrellcreek.org

Whatcom Water Weeks is a two-week long event that celebrates our local water resources. Events are happening all over Whatcom County September 12-26.
www.whatcomwaterweeks.org

2014 Run with the Chums Celebration

Improving Stormwater Systems with Capital Projects

BBWARM constructs stormwater capital improvement projects to address flooding and water quality problems in places where the existing infrastructure is undersized, failing, or non-existent.

Beachway Drive and Fern/Park Stormwater Improvements 2014-2015 —This project replaced a failing drainage system with a new high-level system from Park Lane and Fern Street down Beachway Drive to the bay and a new low-level drainage system along Birch Bay Drive. A treatment vault was installed at the intersection of Fern Street and Beachway Drive to remove pollutants from stormwater as it flows to Birch Bay.

Seaview Drive Drainage Upgrade 2015—Construction is scheduled for this fall to replace the failing drainage system along Seaview Drive. The new system will capture stormwater flows and direct them to the bioswale at the corner of Seaview Drive and Maple Crest Avenue.

Current Projects Under Development:

- Birch Point Collaborative Drainage System Repair
- Harborview Road High and Low Drainage Systems
- Harborview Road Culvert Replacement

Installing a new stormwater vault on Beachway Drive

Want more information on BBWARM capital projects?
www.bbwarm.whatcomcounty.org/programs/cip

Community Involvement Beach Clean-Up

Every 4th of July, Birch Bay is a popular destination for beach parties and fireworks. This year, Birch Bay's beaches were especially full and the fireworks impressive. Unfortunately, the amount of trash left behind was staggering, damaging wildlife habitat, polluting the water, and impacting beachgoers. Every summer, the Birch Bay community steps up to clean-up, and this year your efforts were impressive.

- More than 75 volunteers
- Over 100 hours spent
- 5.43 tons of trash removed
- 258 garbage bags used
- 3 dumpsters filled

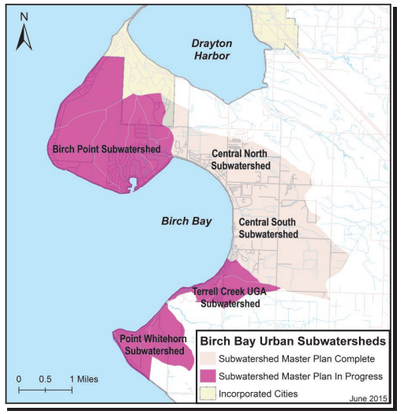
Clean-up efforts are organized by the Birch Bay Chamber of Commerce with help from the Sanitary Service Company, Whatcom County Health, and the Alternative Jail Offender Crew.

Trash waiting for pick up after the 4th of July beach clean-up

CHUMS of Terrell Creek

www.chumsofterrellcreek.org

Subwatershed Master Plans—Taking a closer look at drainage problems



Download completed plans at www.bbwarm.whatcomcounty.org/programs/swmp

BBWARM is completing subwatershed master plans for developed subbasins in the Birch Bay watershed. Each plan identifies and evaluates stormwater problems and solutions. BBWARM uses these plans to identify and prioritize capital improvement, small works, and maintenance projects.

Your input is important. In 2015, BBWARM will begin field work for the remaining subwatersheds (see map). To receive notification of future subwatershed master plan meetings and provide your input on stormwater problems in these areas, sign up to receive BBWARM email notifications at www.bbwarm.whatcomcounty.org.

Chumming Around with Elie

Elie at the Chums 2015 Earth Day celebration

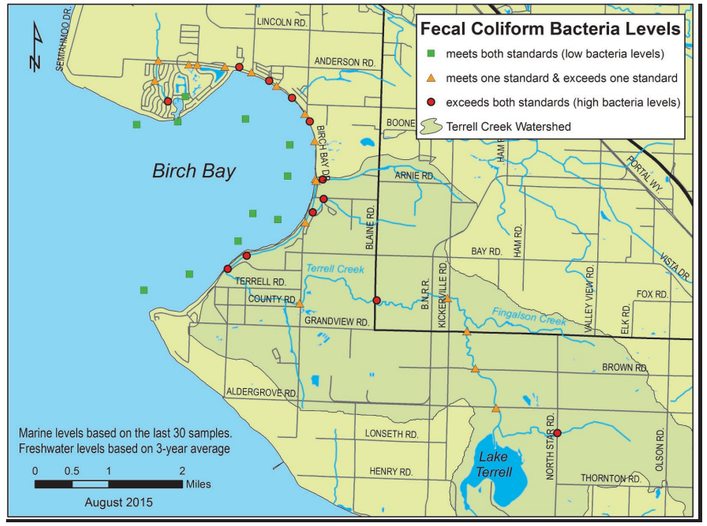
In 2003, the Nooksack Salmon Enhancement Association reached out to Terrell Creek area residents and asked for their help with salmon recovery. Elie Friedlob responded with enthusiasm and started working with other community members as the Chums of Terrell Creek. The Chums have been working hard ever since organizing tree planting parties, monitoring a chum egg incubator, and increasing community awareness of salmon restoration and water quality issues. Elie shared important lessons she has learned from her work with the Chums.

- Success comes from perseverance; it is critical to not ever give up.
- Everything is related; doing the right thing for salmon helps every species in the ecosystem, including people, thrive.
- Nature is very resilient, and salmon represent incredible strength.

Join Elie and the Chums of Terrell Creek and make a difference!
www.whatcomcd.org/volunteer-opportunities

BBWARM is partnering with the Chums and Whatcom Conservation District to support the **Terrell Creek Landowner Stewardship Program**. This program helps rural landowners make improvements on their land that benefit both them and the watershed. For more information or to schedule a free and confidential home visit, contact Rachel Vasak, Terrell Creek Watershed Steward, at (360) 715-0283 or rvasak@n-sea.org.

Water Quality Update



Visit www.bbwarm.whatcomcounty.org/programs/wq for more information.

Your Backyard—Keep it clean

Keeping our water clean requires a little help from everyone. There are many possible sources of pollution in your backyard.

What can you do to keep pollutants out of stormwater runoff?

- ✓ Pick up pet waste and put it in the trash.
- ✓ Inspect and maintain septic systems.
- ✓ Compost yard waste away from waterways or use FoodPlus!*
- ✓ Don't feed wildlife and secure your garbage (reduces bacteria from wildlife waste).
- ✓ Use a farm plan.
- ✓ Plant streamside vegetation.
- ✓ Limit your use of chemicals and fertilizer in yard care.
- ✓ Fix engine leaks.
- ✓ Use a commercial car wash.

**FoodPlus! is a curbside compost service. Visit www.ssc-inc.com for more information.*

Getting Ready for Rain

It's easy to forget about rain during this long, dry summer, but Birch Bay residents are frequently faced with soggy yards, wet crawl spaces, and other drainage problems during the winter time. Most drainage problems are due to poorly draining clay soils and/or poorly functioning drainage systems. Some areas have no drainage system at all. Now is a good time to take stock of drainage problems you experienced last winter and do what you can to address them before the fall rains return.

Flooding on Morrison Avenue, December 2014

What can you do?

- Make sure your gutters and downspouts are clean and in good repair.
- Direct the water from your downspouts to a location where it won't cause flooding (ditch, catch basin, rain barrel, or rain garden)
- Talk to your neighbors about installing a shared drainage system and get two dry yards for the price of one!
- Install a sump pump if your crawl space fills up with water. Pump the water to the nearest ditch or catch basin.

Call the BBWARM Stormwater 1-call Hotline to report drainage or water quality problems

(360) 778-6300

Please note our <u>new</u> hotline number.

Terrell Creek & Birch Bay
State of the Watershed Report

10,000+ people make this area their home along with a wonderful variety of fish, birds and other wildlife.

Do you live, work, or play in the Terrell Creek & Birch Bay watershed?

CHUMS of Terrell Creek
6975 Hannegan Road
Lynden, WA 98264

Nonprofit Organization
U.S. Postage Paid
Lynden, WA
Permit No. 192

What's Inside:

Watershed & Who Lives Here .....2 & 3
History.....4
Health Concerns.....5
Map & Places of Interest.....6 & 7
Chums of Terrell Creek.....8
Water Quality.....9
What can you do?.....10 & 11
Community Resources.....12

What is a Watershed?

A *watershed* is an area of land where water falls and drains to a common place.

The Terrell Creek/Birch Bay watershed is home to about 10,400 people and a large variety of fish and wildlife. A healthy watershed has healthy water quality, healthy flows, and healthy habitat. The future of Terrell Creek and Birch Bay will be shaped by the efforts of the community to keep water clean and restore habitat today.

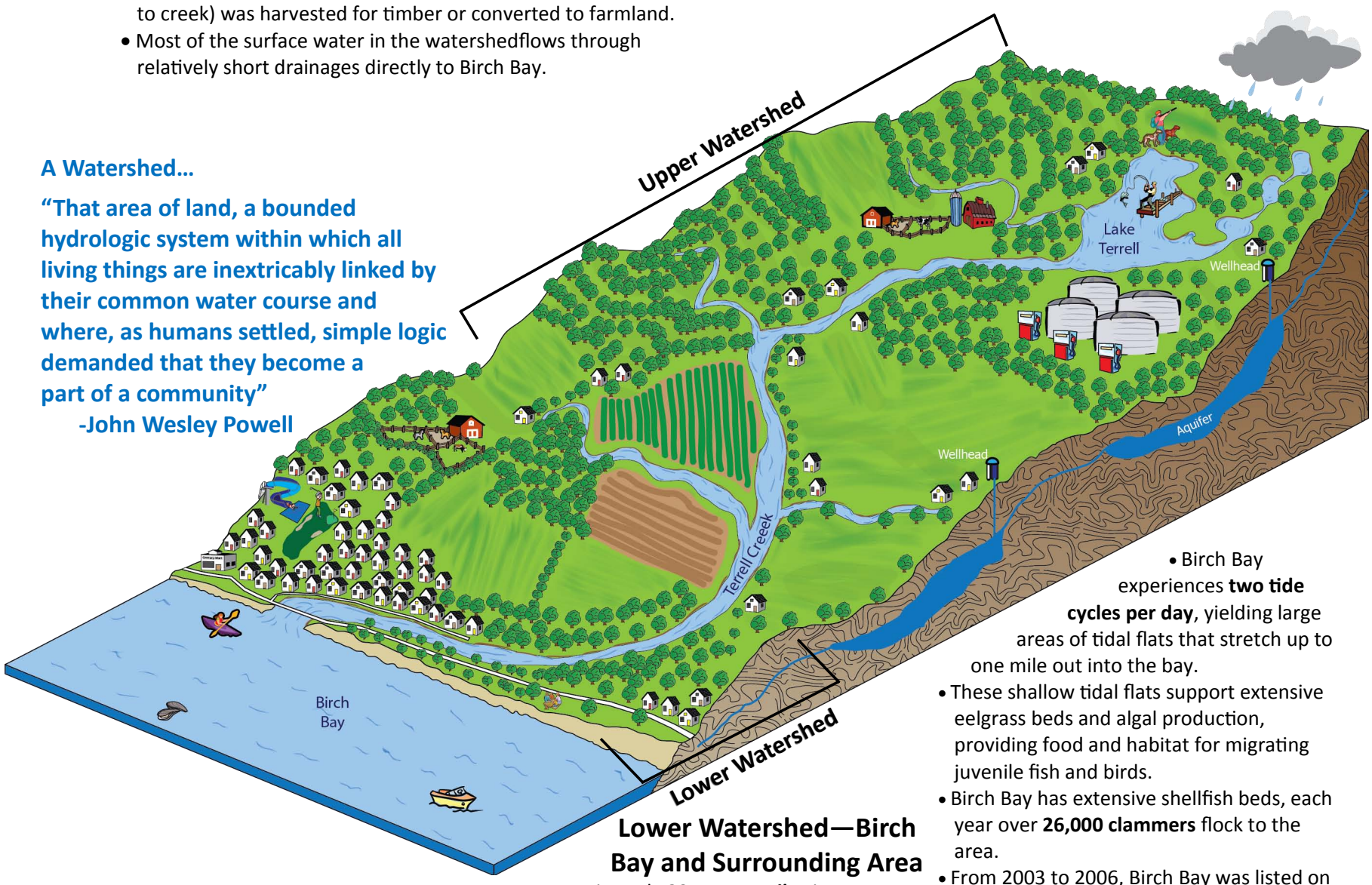
Upper Watershed—Terrell Creek Highlands

- The upper watershed is the area of land surrounding Lake Terrell east to Ferndale and west towards Point Whitehorn.
- Approximately **17 square miles** in area.
- The highest point in the watershed is **240 feet above sea level**.
- Historically, 58% of the Terrell Creek riparian zone (area next to creek) was harvested for timber or converted to farmland.
- Most of the surface water in the watershedflows through relatively short drainages directly to Birch Bay.
- Terrell Creek is approximately **9 miles long** and originates in a large area of ponds and wetlands including Lake Terrell.
- Historically, **coho salmon** and **steelhead trout** had prolific runs in Terrell Creek. Currently, these fish are found in significantly lower numbers along with **chum salmon**.

A Watershed…

"That area of land, a bounded hydrologic system within which all living things are inextricably linked by their common water course and where, as humans settled, simple logic demanded that they become a part of a community"

-John Wesley Powell



Lower Watershed—Birch Bay and Surrounding Area

- Approximately **20 square miles** in area.
- 19 miles of **marine shoreline**.
- **Birch Bay State Park** was established in 1954, totals 194 acres, and includes a campground.
- **8,000+ people** live in the Birch Bay community.
- Birch Bay experiences **two tide cycles per day**, yielding large areas of tidal flats that stretch up to one mile out into the bay.
- These shallow tidal flats support extensive eelgrass beds and algal production, providing food and habitat for migrating juvenile fish and birds.
- Birch Bay has extensive shellfish beds, each year over **26,000 clammers** flock to the area.
- From 2003 to 2006, Birch Bay was listed on the Washington State Dept. of Health's list of "threatened" shellfish harvesting areas due to poor water quality.
- **Since 2008, marine water quality in Birch Bay has consistently been good, meeting the Department of Health's highest standard for marine water quality.**

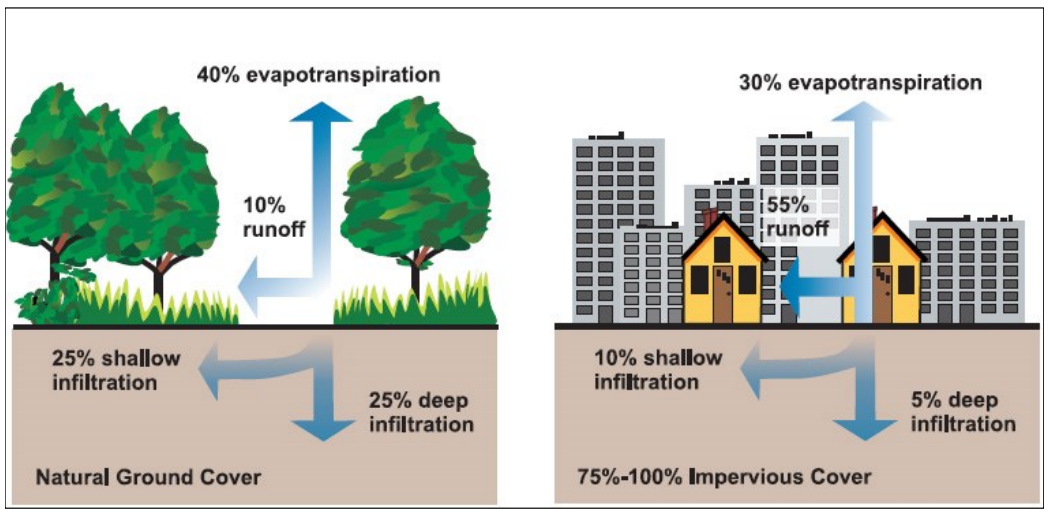
How does this watershed flow?

Rain and snow falls in the watershed. Some of it soaks into the ground to **recharge underground aquifers**. The rest becomes surface flow traveling downhill through ditches, then creeks, and then into Birch Bay.

The upper most reaches of the Terrell Creek watershed begin as small streams and ditches flowing into a large wetland area that includes **Lake Terrell**. Terrell Creek then flows through a rural residential area with a mix of open space, agriculture, and industry where it picks up more water from **Fingalson Creek** and other small tributary streams.

At **Birch Bay State Park**, Terrell Creek takes a right-hand turn and runs parallel to the marine shoreline through residential and commercial properties before entering Birch Bay. Smaller systems of ditches and unnamed streams drain the remainder of the watershed around Birch Point, central Birch Bay, and Point Whitehorn.

How development effects natural watershed function



Credit Environmental Protection Agency.

Development increases the volume and rate of potentially unhealthy runoff from a site, and reduces groundwater recharge and evapotranspiration (evaporation from soil, plants, and other surfaces into atmosphere).

Who Lives Here?

People and Their Animals

From multigenerational families to short term vacationers, people live, work, and play in this watershed.

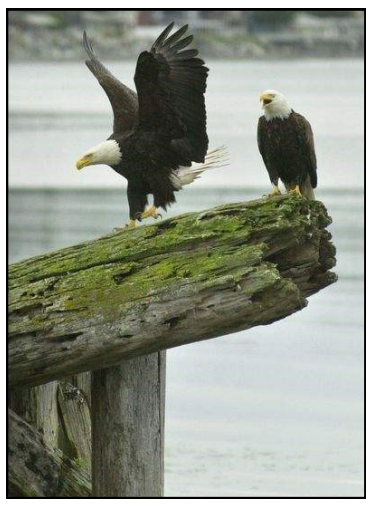
Enjoying Birch Bay with a canine friend.

- Fishing, clamming, and crabbing in Birch Bay are as popular as ever.
- Domestic animals found in this watershed include cows, horses, sheep, llamas, alpacas, goats, chickens, ducks, rabbits, dogs, and cats. All of these animals contribute to quality of life in the watershed, but they can also be sources of pollution.
- Over 3,000 acres of the watershed are owned by British Petroleum and Intalco Alcoa, both of which lease a portion of their land to agricultural operations and Department of Fish and Wildlife for wildlife reserves.

Landowner enjoys the company of his Scottish Highlander cattle and sheep.

Birds

The wetlands, fields, forests, streams, saltwater estuaries, and Birch Bay itself are home to many bird species from Bald Eagles to hummingbirds.



Bald Eagles and Great Blue Heron found in Birch Bay.

- Great Blue Herons are a fixture in Birch Bay and elsewhere in the watershed. No visit to Birch Bay would be complete without viewing herons feeding in the mudflats.
- Waterfowl use Lake Terrell, Birch Bay, and other wet areas for feeding, nesting, and migration stopovers. Lake Terrell is one of the premier duck and goose hunting sites in the state and is also frequented by swans and other waterfowl.
- Birch Bay provides incredible overwintering habitat for a variety of water loving birds like Dulin, brant, and goldeneye.
- Resident and migratory song birds frequent all habitats in the watershed. Avid birdwatchers love the area for Pileated Woodpeckers, Red-winged Blackbirds, and many more.
- Birds of prey like Great Horned Owls, Red-Tailed Hawks, and Marsh Hawks are common in the area and are invaluable allies in controlling rodent populations.

Mammals

By land or by sea, wildlife love this watershed with impressive populations closest to the water. Many residents have learned to "share" their gardens with local deer. Others are occasionally surprised to find that beavers also like their trees.

- River otters, beaver, mink, and muskrat all use Terrell Creek and other streams.
- Harbor seals can be found feeding in Birch Bay.
- Coyotes and weasels help the hawks and owls control rodent populations.
- Beavers can be aggravating when they build dams and flood property, but they also fill an essential role by storing water in their ponds and creating incredible stream habitat.
- Raccoons may be the most commonly seen wild mammal in the watershed. They are drawn to human neighborhoods where they can find an easy meal in a garbage can or pet dish.

Black-tailed deer at a Butler Creek restoration site. 'Blue tubes' protect the plants from foraging wildlife.

Salmon & Trout

Can you see the fish?

Terrell Creek was once home to robust fish populations. Now salmon are making a comeback thanks to the efforts of volunteers, improving spawning habitat with the Chums of Terrell Creek and the Nooksack Salmon Enhancement Association (NSEA).

- Coho and chum salmon can often be seen in Terrell Creek in November and December.
- Juvenile fry emerge from spawning gravels in the spring and either migrate directly to the salt water or spend a year growing in the stream.
- Threatened Chinook salmon and bull trout use Birch Bay for overwintering and foraging.
- Eelgrass beds in Birch Bay provide habitat for young salmon and other marine species.

Forage Fish

Healthy eelgrass.

Small forage fish in Birch Bay are food for many other animals including salmon, other marine fish, birds, and mammals.

- Eelgrass in Birch Bay provides critical habitat for these fish.
- Pacific herring, pacific sand lance, and surf smelt all provide an important link in the Birch Bay food chain and make excellent bait fish for salmon fishermen.

Seagull eating a clam in the Birch Bay tidal flats.

Shellfish

Family trying their hand at clamming on the Birch Bay tidal flats.

Shellfish are an important and delicious food for humans, birds, and other mammals in this watershed.

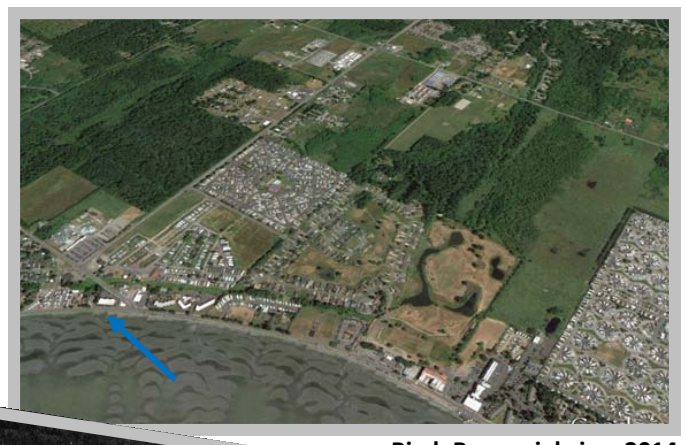
- Dungeness crab shells and claws are among kids' favorite beach treasures.
- Crab harvest seasons are posted annually.
- Horse, butter, native littleneck, and manila littleneck clams can all be found and harvested in Birch Bay.
- **Know Before You Dig**: www.doh.wa.gov/ShellfishSafety.htm
- Recreational Shellfish Safety Hotline: 1-800-562-5632

Fresh butter clams cleaned and ready to be cooked.

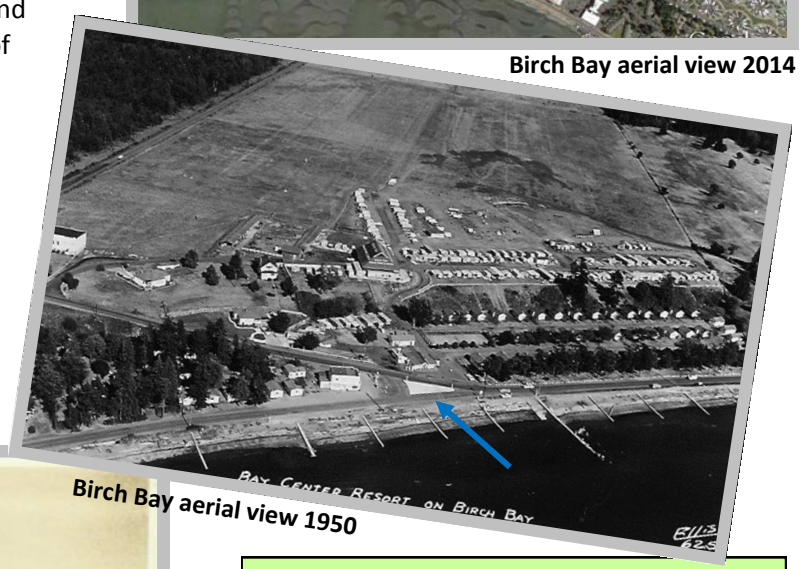
Watershed History

Prior to 1800, the Semiahmoo tribe, a group of Coast Salish people, inhabited the area from Boundary Bay to Point Whitehorn. Archaeological evidence indicates the Lummi and the Nooksack Tribes used Birch Bay seasonally as foraging and ceremonial grounds. The Lummis called the area *Strav-a-wa*, which means 'the place for clams'. The Spanish and British explored Birch Bay in the late 1700s. The Spanish called the area Garzon, but the British named it Birch Bay because of the thick stands of black birch trees that grew in abundance near the shore. Like much of the Puget Sound region, early explorers and settlers were attracted to Birch Bay and the surrounding areas by the abundance of natural resources.

The Fraser Valley Gold Rush and the Boundary Survey of the 49th Parallel created a short lived wave of new settlers in the late 1850s. In the 1870s, homesteading brought a second influx of settlers to the small but growing community at the northern terminus of the Union Pacific Railway. By the early 20th century, much of the timber resources in the area had been depleted and new regulations banning the use of fish traps served to further dissolve the local natural resource-based economy. By the 1920s, local entrepreneurs in the Birch Bay area were focusing their efforts on an international recreation and resort community serving Canadian and U.S. residents.



Birch Bay aerial view 2014



Birch Bay aerial view 1950

Bay Center Resort, Birch Bay. C. 1946. Presently it is Bay Center Market at the intersection of Harborview and Birch Bay Drive.

Clam Bake Anyone?

According to Robert Hawley's *Skqee Mus, or Pioneer Days on the Nooksack*, Lynden residents established an annual community clam bake near the turn of the 20th century that still exists today.

The tradition started in November 1891, when four men from Lynden traveled all day by wagon to Birch Bay. They collected butter and horse clams by night when the tides were low enough and celebrated with a community clam bake the following day when they returned to Lynden creating the Clam Diggers Club.

Clam Diggers at Birch Bay display their catch.

Lake Terrell

A large wetland historically known as Lake Terrell was expanded into a much larger open water lake in 1950 following construction of the Lake Terrell dam.

The lake and land around it was acquired by the Washington State Department of Fish and Wildlife in the 1940s primarily for waterfowl habitat preservation and recreation. The area was historically used by Native American tribes now known as the Semiahmoo and Lummi for deer and elk hunting and beaver trapping.

Prior to dam construction in 1950, Lake Terrell was primarily a wetland.

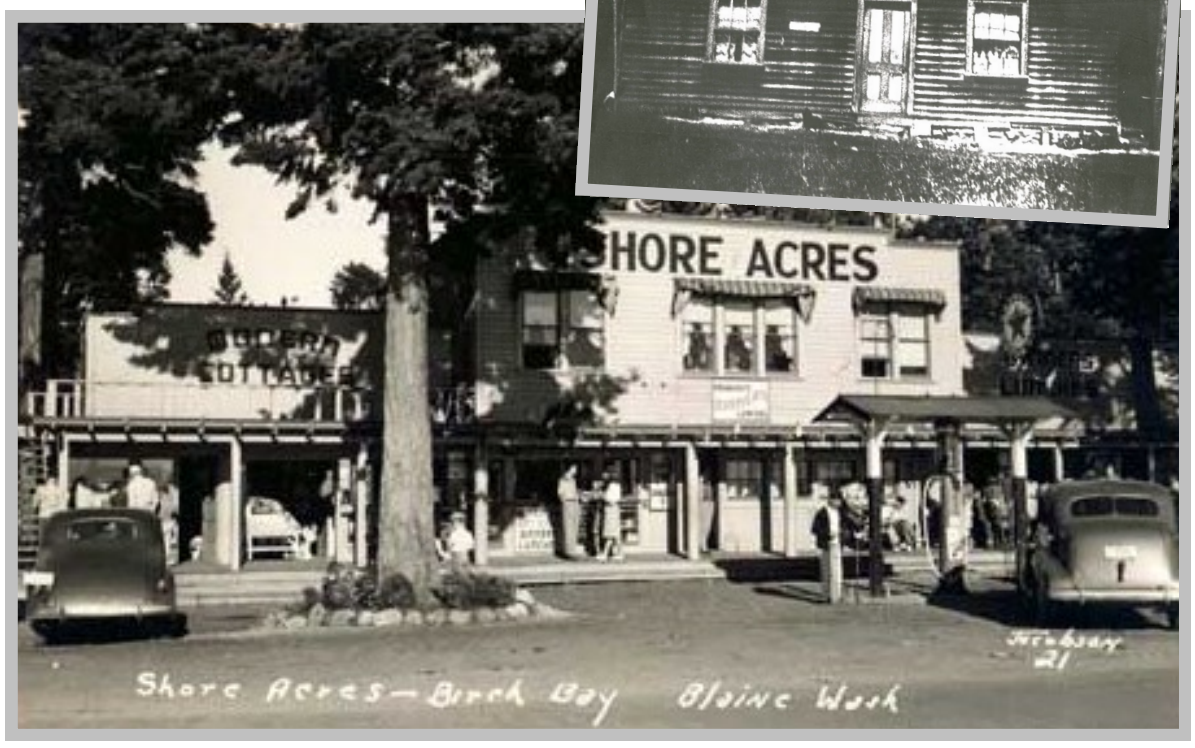
Birch Bay's first post office in 1853.

Agricultural History of Whatcom County

As the harvest of timber continued to clear land, the agriculture economy grew. By the 1880s, agriculture was established throughout the county. Hops fields appeared in Everson, Nooksack, Lynden, and Birch Bay. Ferndale farmers grew sugar beets, while others grew potatoes, lettuce, and celery.

Dairy and poultry production was also gaining ground during this time and the first creamery was opened in Custer in 1892. Lynden and Sumas opened creameries in 1894 and Bellingham followed in 1896. In 1919, the Whatcom Dairyman association formed and in 1920 started another Lynden creamery which is now the site of the Darigold powdered milk plant.

Today, dairying is still prominent, while poultry production has significantly decreased. Hops are no longer grown commercially in Whatcom County, but the last decade has seen a significant increase in the production of blueberries and raspberries. Agriculture in Whatcom County now supports over a $326 million economy.



Many women and men are captured here socializing on the veranda of the vacation resort Shore Acres at Birch Bay in 1937.

Watershed Health

Healthy People and Communities

The people living in the Terrell Creek/Birch Bay watershed depend on healthy water quality, adequate stream flows, and healthy habitat for fish, shellfish, and wildlife.

- Safe water to wade or play in.
- Reduced risk of flooding.
- Safe shellfish harvesting from Birch Bay.
- Backyards free of bacteria and pathogens from pet waste.
- Fish and wildlife to see and enjoy.

Children explore the tide flats.

Marine Resources Committee volunteers conduct a shellfish population surveys in clam seeding areas.

Healthy Water

Healthy watersheds need clean water. In the Terrell Creek/Birch Bay watershed, the focus is on keeping pollutants that threaten public health and harm wildlife out of the water. Pollutants include nutrients, pathogens, and bacteria come from yard fertilizers, animals manure, and septic systems.

Warm summer water causes an algae bloom in lower Terrell Creek that can lead to low dissolved oxygen levels.

Native trees shade creeks throughout the summer keeping water temperatures low and dissolved oxygen high.

Bacteria

Fecal coliform bacteria live in the intestines of warm-blooded animals. When found in water, they indicate that human or animal waste has entered the water upstream and it may be contaminated with disease-causing organisms. Keeping sources of bacteria out of the water is necessary to keep Terrell Creek and Birch Bay safe for swimming, fishing, and shellfish harvesting.

Temperature & Dissolved Oxygen

When it comes to healthy water, cold is good. Salmon, especially vulnerable juvenile salmon, need cold water (less than 16°C or 60°F) to avoid stress or death. Cold water holds more dissolved oxygen (DO) which fish and other aquatic animals need to live. Increasing shade trees, protecting wetlands, and restoring stream channels can help lower summer water temperatures in Terrell Creek and keep DO levels from getting too low.

Healthy Flows

Healthy watersheds need reliable stream flows—not too much or too little. With development, hard surfaces like pavement and roof tops have replaced forests and wetlands changing stream flows in our watershed. However, retaining or planting trees and native plants, protecting wetlands, and using building techniques that limit hard surfaces and allow stormwater to soak into the ground help maintain healthy stream flow. This also ensures adequate groundwater recharge to keep the aquifer full and support the needs of county wells for both drinking and agriculture.

Too Much Water

Hard, or impervious, surfaces don't allow rainfall to enter the soil for groundwater recharge. As a result, water rushes downstream during storms causing flooding, erosion, and property damage.

Too Little Water

Summer flows diminish because of increased temperature and less precipitation. Low flows harm fish and wildlife when temperatures get too high and dissolved oxygen levels get too low. Low flows also lead to unpleasant, stagnant water in Terrell Creek which increases the growth of bacteria and algae.

Just the Right Amount

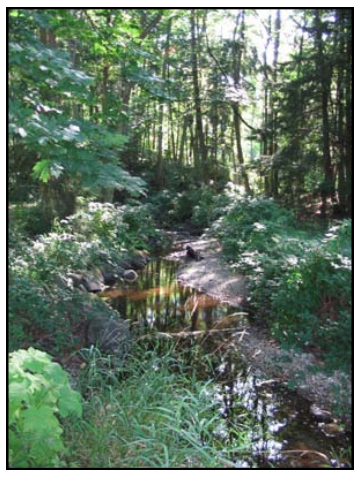
There will always be winter floods and summer droughts, but taking steps to limit impervious surfaces and retain native plants as streamside vegetation helps keep seasonally appropriate flows in our streams.

Healthy Habitat

Healthy watersheds provide good habitat for fish and wildlife. Good habitat has good water quality, healthy stream flows, natural stream channels, and lots of native plants.

<u>Left</u>: A channelized reach of Terrell Creek.

<u>Right</u>: A natural reach of Terrell Creek with bends and low banks provides good habitat.



Natural Stream Channels

Natural stream channels that change over time have bends, pools, flood plains, and downed trees which offer great habitat for fish and wildlife. People have altered these natural stream channels over time, like when the Lake Terrell dam was built, upper Terrell Creek was dug straight and deep. Lower Terrell Creek may have once entered the bay at Birch Bay State Park. Now its channel is locked in place behind Birch Bay Drive. Many smaller stream channels that used to flow into Birch Bay have been replaced with pipes. Stream restoration projects recreate a more natural channel and improve habitat in areas where the channel has been altered.

Native Plants

Maintaining native plants along our waterways creates healthy habitat and protects water quality. Native plants provide food and shelter for fish and wildlife. They also keep the water cool and filter pollutants out of stormwater. In many areas, native plants have been removed from streambanks and invasive plants like reed canarygrass or Himalayan blackberry have taken over. Replanting native species in these areas creates healthy habitat in our watershed for people and wildlife.

Explore Terrell Cr

Cottonwood Bioswale

Bioswales are engineered drainage features that use soils and plants to naturally filter pollutants from stormwater. The Cottonwood Bioswale was built in 2013 at the corner of Seaview Drive and Maple Crest Avenue. Stormwater runoff from the neighborhood is directed into a series of six cells with plants and a special soil mix that trap pollutants. Clean water collects in a layer of drain rock and flows out through a pipe to Birch Bay.

Mutt Mitt Stations

Protect Birch Bay water quality by picking up after your pet. You will find these stations all along the bay and at most parks. Please remember, dogs must be on leash.

Birch Bay Beaches

Birch Bay is a popular destination for summer fun, clamming, and crabbing. There are multiple public beach access point around the bay.

Point Whitehorn Marine Reserve

This park offers a 0.75 mile interpretive trail that meanders through forested wetlands on a level, gravel path interspersed with boardwalks and passes four viewpoints with benches to enjoy the views, and ends with stairs down the final bluff to the beach. Going left from the stairs you can walk along the Cherry Point Aquatic Reserve. This is a hiker only trail, no pets.

Birch Bay Visitor Center

7900 Birch Bay Dr

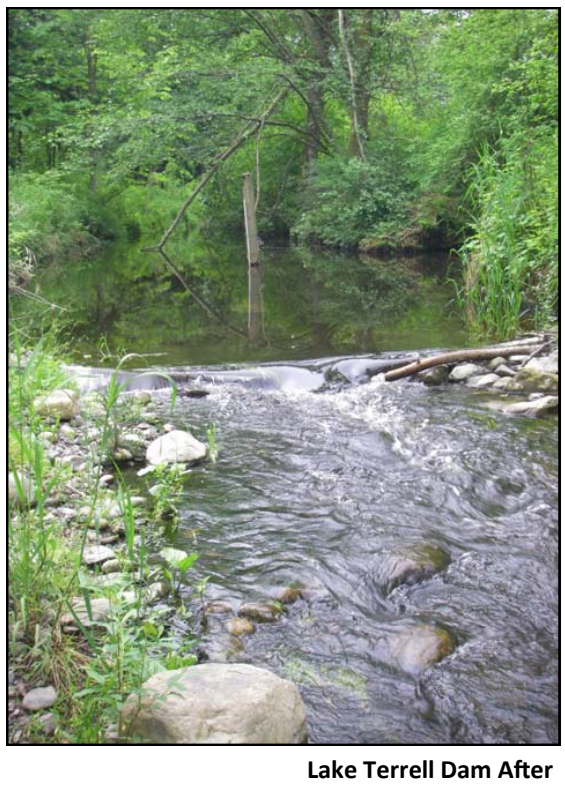
Birch Bay State Park

BBSP has 8,255 feet of saltwater shoreline on Birch Bay and 15,000 feet of freshwater shoreline along Terrell Creek. The park has an active summer interpretive program, a half mile Terrell Marsh Interpretive Trail, and four interpretive signs throughout the park.

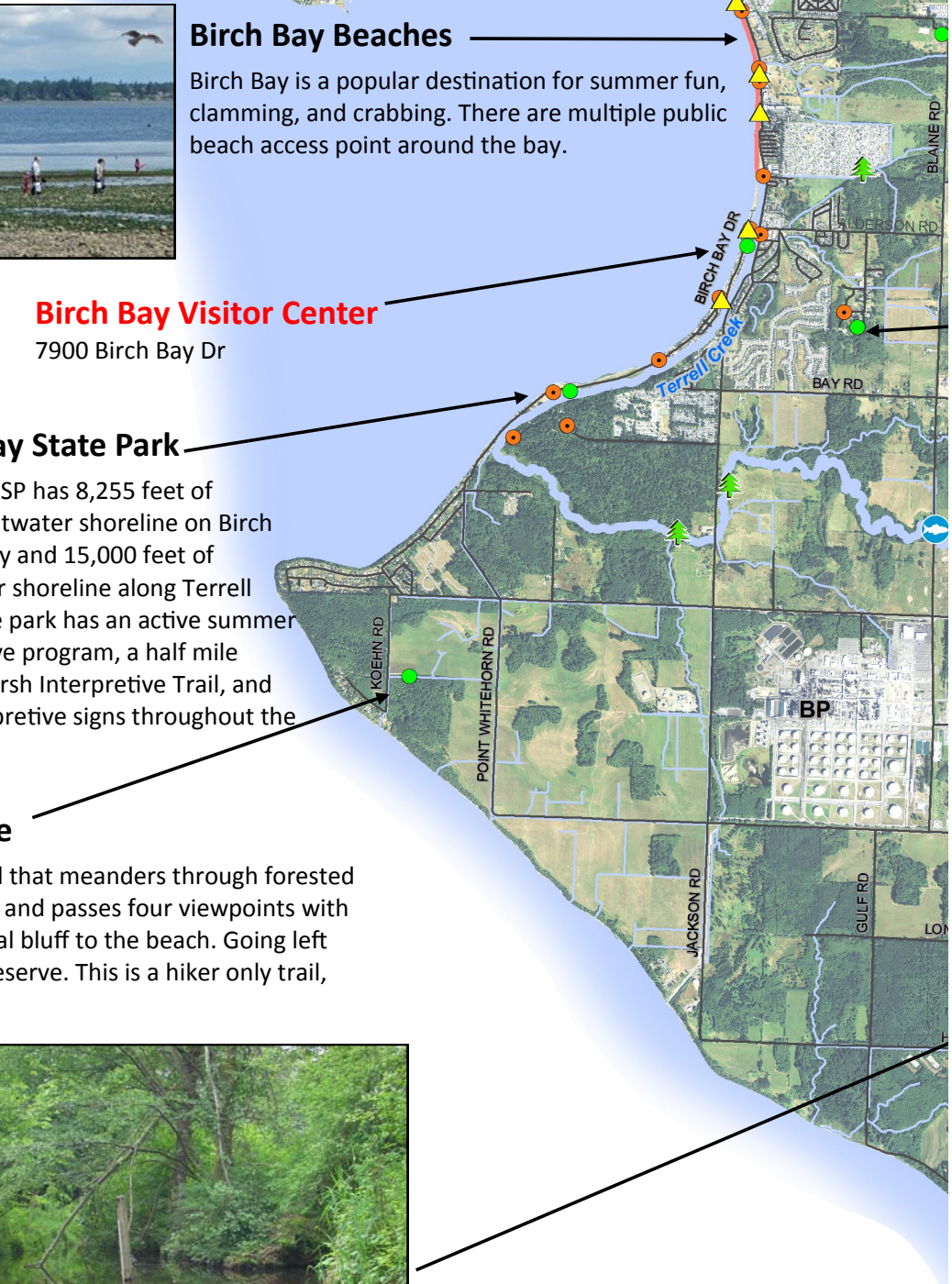
Lake Terrell Dam Before

Lake Terrell Dam

The Lake Terrell dam was modified in 2012 to restore fish passage and improve flows in Terrell Creek. The dam was replaced with a concrete weir that meters out summer flows and an elevated stream channel to provide fish passage over the dam. Funding for this project came from the National Fish and Wildlife Foundation and British Petroleum.



Lake Terrell Dam After



Legend

- Stormwater Projects
- Mutt Mitt Stations
- Fish Passage Projects
- Place of Interest
- Remote Site Incubator
- Restoration Projects
- Beach Access Parking
- Birch Bay Drive & Pedestrian Facility

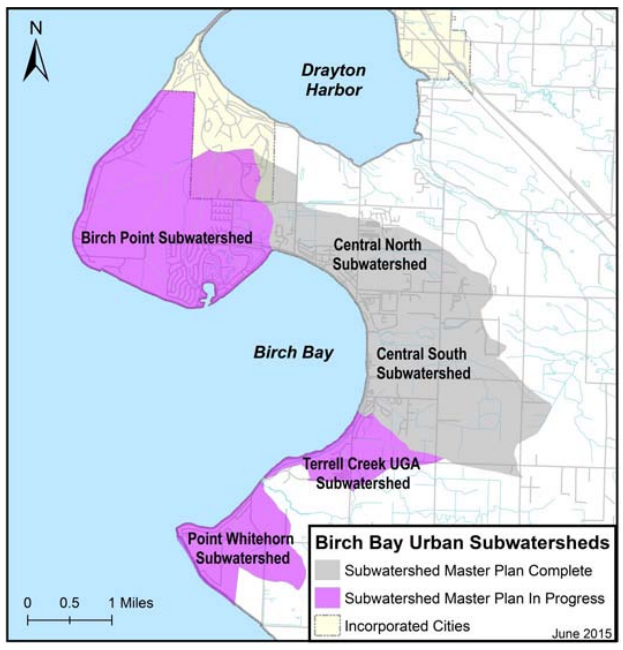
eek and Birch Bay

Beach Restoration

Restoring the beach along Birch Bay has been a long-term community goal. Plans to build a more natural, soft shoreline and berm to protect Birch Bay Drive from storm damage started in the 1970s. Whatcom County completed a portion of restored beach berm in 1986 and is currently planning to extend the area of restored berm with improved pedestrian facilities.

Subwatershed Master Plans

BBWARM is completing subwatershed master plans for developed subbasins in the Birch Bay watershed. Each plan identifies and evaluates stormwater problems and recommends solutions. To learn more and download completed plans visit www.bbwarm.whatcomcounty.org/programs/swmp



Sunset Farm Equestrian Park

70 acre horse park is open to the public and includes riding trails, a cross country jump field, round pen, and all weather arena. For more information visit: www.friendsofsunsetfarm.org

Bay Horizon Park

7467 Gemini St, Blaine, WA 98230
This 6.82 acre neighborhood park features a basketball court, playground, open grassy fields and activity center. This park was home to the Blaine Air Force Station from 1951 - 1979 and was acquired by Whatcom County in 2005.

Salmon Remote Site Incubator

The Nooksack Salmon Enhancement Association, assisted by the Bellingham Technical College fisheries program and the Chums of Terrell Creek, are reintroducing chum salmon to Terrell Creek by incubating salmon eggs and releasing the fry to migrate downstream. The incubator has a capacity for up to 100,000 eggs, but the number incubated yearly depends on how many eggs the hatchery can supply.

Lake Terrell

Perhaps the most well known feature of the upper watershed is 500 acre Lake Terrell. The lake and surrounding areas are managed for recreation and as a wildlife refuge. Bird watching, waterfowl hunting and fishing are among the activities making Lake Terrell popular among residents and visitors alike.

WDFW Intalco Unit– Archery Range

The Intalco Unit is 1,000 acres of industrial property, leased by Washington Department of Fish and Wildlife (WDFW) for public hunting, fishing, and other wildlife recreation. A walk-through archery range includes a two-mile loop through woods with 21 shooting stations, several water impoundments and associated wetlands.

Meet your Chums

The Chums of Terrell Creek (Chums) were organized in 2003 to promote salmon recovery in the Terrell Creek watershed. In response to community concerns about safe shellfish harvesting and clean recreational water they have expanded their efforts to improve water quality in Terrell Creek and Birch Bay. **Clean water is not just an environmental concern, it's also a health concern for everyone using water for recreation.**

Samantha the Salmon and Chums Advisory Committee members Elie and John along with WCD staff at the Earth Day community work party.

Chums and NSEA organize a work party to clean up a stretch of Terrell Creek that was historically used as a dumping area.

Community Driven Group

The Chums work with many other organizations towards the common goal of improved water quality, healthy fish, and safe shellfish harvesting. Other partners include: British Petroleum (BP), Birch Bay Water and Sewer District, Marine Resources Committee, Birch Bay State Park, Washington State Department of Fish and Wildlife, Whatcom Conservation District (WCD), Nooksack Salmon Enhancement Association (NSEA), and Birch Bay Watershed and Aquatic Resources Management (BBWARM) District.

Chums making a difference: Earth Day community work party on Jackson Road. 192 volunteers planted 1000 trees along Terrell Creek.

Clean Terrell Campaign

A scenic lake, a meandering stream and a beautiful bay; these are the natural features that make the Terrell Creek watershed and Birch Bay a special place to live, work, and play. However the health of these features depends upon one very real constraint: clean water (water quality).
Humans, fish, and shellfish all need clean and cool water. Clean water is free of harmful pathogens and other pollutants. Cool water provides habitat for native fish, helps to keep dissolved oxygen levels high for fish and other aquatic organisms, and inhibits the growth of harmful and unsightly algae.

Run with the Chums

The annual Run with the Chums occurs in September during Whatcom Water Weeks. This is a family friendly 5k Fun Run or Walk and 1k kids Smolt Sprint. The event promotes watershed stewardship by exploring the watershed you live in; what fish, wildlife and animals live here; how the water quality is impacted; and how you can reduce your run off through stormwater management.

Asher Louis finishes the 1K Smolt Sprint.

Over 250 folks take off from the start line and run 5K around BP Highlands.

Making a Difference

Since the Chums and NSEA began rallying resources for the watershed, six major barriers to fish passage have been removed and native tree and shrub buffers have been planted along nearly five miles of stream bank, improving habitat from the bay, upstream to Lake Terrell and beyond.

Interested in joining the Chums?

Contact **Rachel Vasak**,
your watershed steward

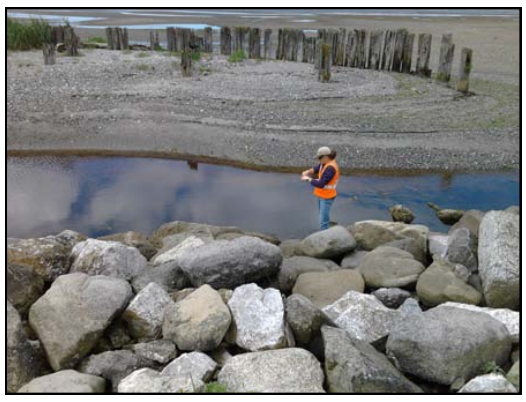
(360) 715-0283 x 108
rvasak@n-sea.org

Rachel Vasak
NSEA, Executive Director

Replacing fish passage barriers, like this culvert, with bridges improves the opportunity for returning salmon to navigate upstream toward Lake Terrell. NSEA replaced this culvert in 2014.

Water Quality

What's happening in YOUR watershed?



Collecting a water quality sample at the mouth of Terrell Creek (Ingrid Enschede, BBWARM).

Bacteria

When fecal coliform bacteria is in your water, it indicates that animal waste has entered the water upstream and that water could carry disease-causing organisms. This creates a public health concern for people wading, playing, or harvesting shellfish. To protect public health, **monitoring for fecal coliform bacteria occurs at over 40 sites** throughout the Birch Bay and Terrell Creek watershed. Look at the map on this page for a monitoring site near you to see if water quality standards have been met over the past three years in your neighborhood.

Where does the bacteria come from?

Fecal coliform bacteria comes from many different sources including: pet and wildlife waste, failing septic systems, leaks in sewer connections or sewer lines, farm animals, and poorly managed manure. Waste from these sources enters waterways flowing to Birch Bay.

Is the water clean?

We have good news. Thanks to all of the farm improvements, septic maintenance, and stream restoration projects by local citizens, **the marine water in Birch Bay is clean with low bacteria levels** well within state marine water quality standards. In addition, the State Department of Health is considering lifting a shellfish harvest closure area around the mouth of Terrell Creek due to improving water quality. But sections of Terrell Creek still have elevated bacteria levels, so continued efforts by watershed residents to protect water quality essential. Keeping animal waste and bacteria out of Terrell Creek and the many small drainages entering Birch Bay through stormwater pipes in an on-going challenge. These freshwater streams and ditches have variable bacteria levels—sometimes very low and sometimes very high, exceeding fresh water quality standards. Comparing the one year and three year geometric mean (average bacteria level) at each monitoring site is one way to evaluate if water quality is improving or declining at that location. **Look at the graph on this page and see for yourself.**

Who is doing the monitoring?

Water quality monitoring is performed by different organizations and citizen volunteers. Whatcom County Public Works (WCPW) Natural Resources manages the water quality monitoring program in the Birch Bay and Terrell Creek watershed with assistance from BBWARM, Whatcom County Marine Resources Committee, Nooksack Salmon Enhancement Association (NSEA), Whatcom Conservation District (WCD), and volunteers.

Want to get involved?

Visit www.whatcomcd.org/volunteer-opportunities

Want more information?

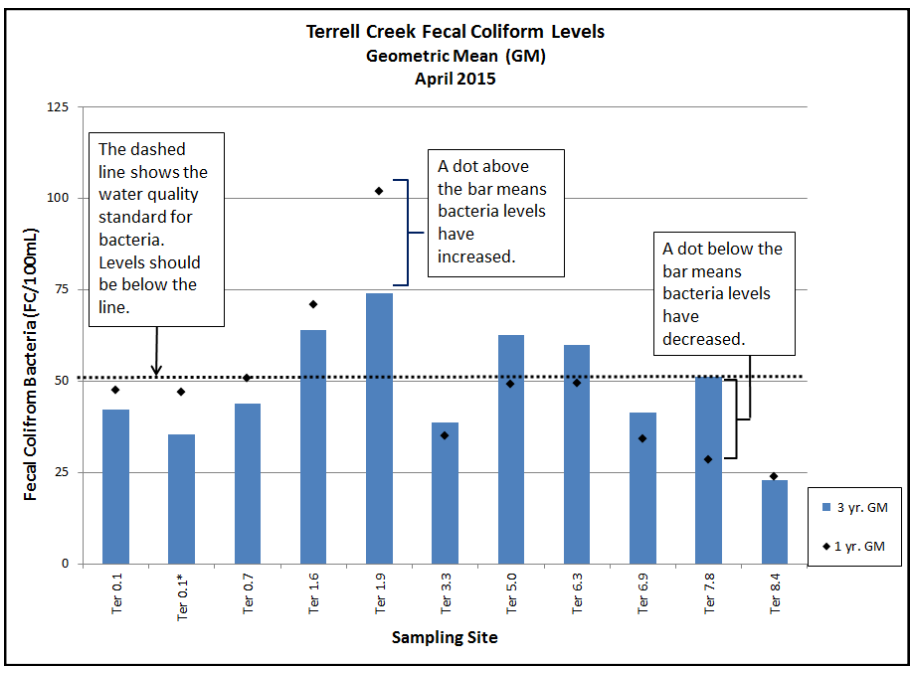
Water quality data summaries, maps, and monitoring reports are posted on the BBWARM website at **www.bbwarm.whatcomcounty.org/programs/wq**.

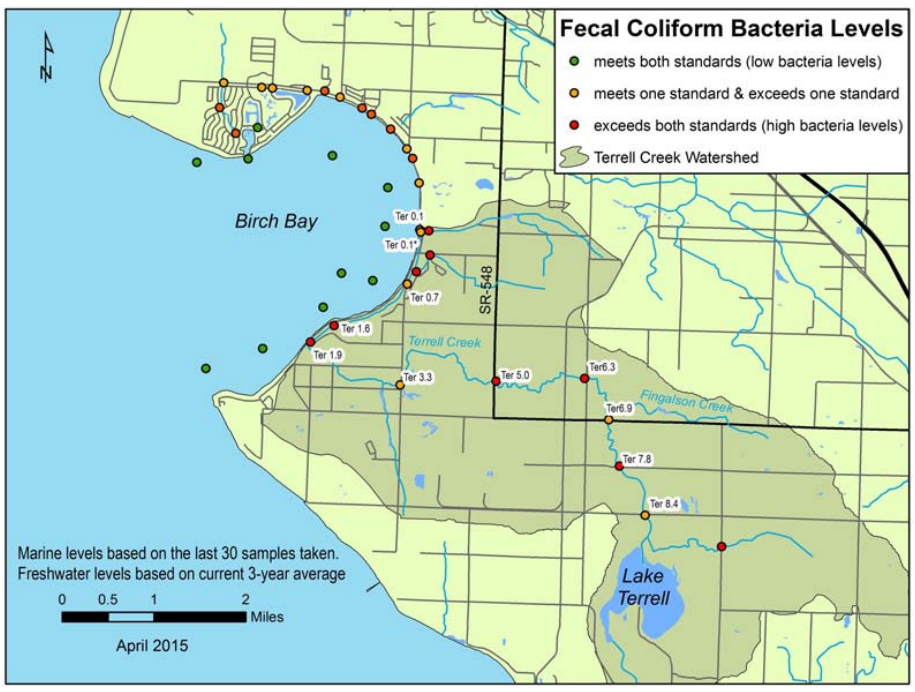
BBWARM WCD

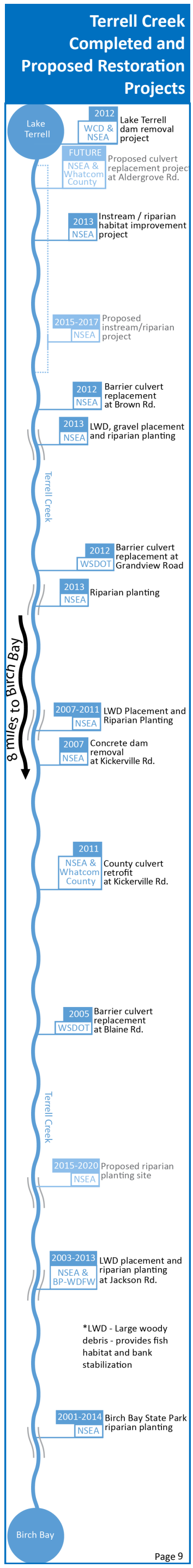
An up to date map on fecal coliform water quality throughout Whatcom County is available from Whatcom County Public Works at:
www.wa-whatcomcounty.civicplus.com/1072/Water-Quality

and Whatcom Conservation District at:
www.whatcomcd.org/watershed-health-assessment

Collecting a water quality sample from Terrell Creek (Melissa Roberts, BBWARM).







Keep Your Watershed Healthy

From Lake Terrell to Birch Bay, the entire watershed needs out help. Clean beaches, an abundance of fish and shellfish, and healthy streams will take all of our efforts to protect.

Watershed Health Goals

Water Quality

GOAL: Meet freshwater standards for Fecal Coliform established by the state (<50 FC/100mL) to ensure safe swimming and shellfish harvesting downstream.
GOAL: Decrease amounts of excess nutrients and harmful pesticides entering the stream system through improved landscaping and farming practices and by regular inspection and maintenance of septic systems.
GOAL: Maintain high levels of dissolved oxygen to support aquatic life.
GOAL: Maintain cool summer water temperatures to allow salmon and other aquatic organisms to survive.
GOAL: Minimize sediment runoff through wetland preservation and replanting riparian areas.

Water Quantity

GOAL: Work with Lake Terrell management to release adequate flows from Lake Terrell through the summer months.
GOAL: Minimize water use to sustain resource.
GOAL: Reduce impervious surfaces to decrease stormwater runoff.
GOAL: Minimize runoff through wetland preservation and enhancement to facilitate increased groundwater storage.

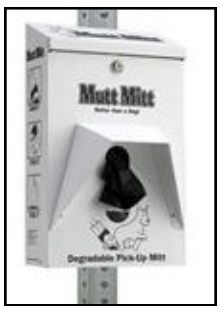
In-stream Habitat

GOAL: Replace culverts that are fish passage barriers.
GOAL: Replant stream channels with native plants and remove invasive species.
GOAL: Improve fish spawning habitat with placement of large woody debris in channel and re-naturalize altered channels.

What can you do?

Keep Bacteria and Pathogens Out of Water

Do you have a pet?
Pick up pet waste and put it in the trash both in your backyard and on walks. Check for Mutt Mitt stations at beaches and parks.



Mutt Mitt station

Where do you keep garbage?

Secure trash from wildlife

Raccoons create latrines in ditches and creek bottoms where pathogens from their feces enter water. Make sure raccoons can't find their next meal at your house. Keep pet food inside. Secure garbage cans and compost bins.

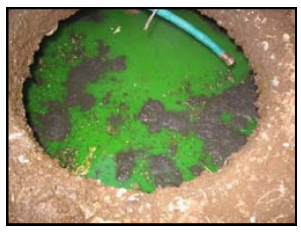
Keep Water Clean and Clear

Do you compost?
Dispose of lawn clippings and yard waste away from waterways to prevent flooding and pollution. Decaying plant material and extra nutrients reduce oxygen available in streams, harming aquatic life. Yard waste may contain chemicals, fertilizers, or pet waste that can harm water quality. Use a compost bin or the Food Plus composting service.

Porta potties are placed along Birch Bay drive every summer for visitors to use.

Inspect your Septic System

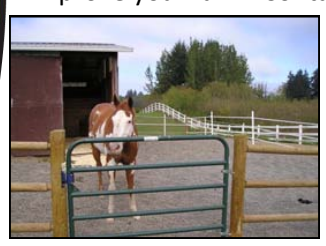
A regularly inspected and maintained system will decrease the need for expensive repairs and ensure that only clean water leaves your property. Contact the Whatcom County Health Department for more information. www.whatcomcounty.us/health


Septic System dye test to check for system failures.

New risers installed on septic tank for easier inspection and maintenance.

Have a Farm Plan

Do you have livestock or crops?
A free confidential, consultation may help you save money, improve animal health, increase production, and ensure that water leaving your farm is clean. Developing a farm plan is an easy way to both improve your farm and protect water quality in your watershed. Financial assistance may be available to assist you with good stewardship practices that will improve your farm. Contact Whatcom Conservation District for more information.


Heavy Use Area

www.whatcomcd.org

Cross fencing is used to improve forage through pasture rotation.

Do you have a landscaped yard?
Native plants are beautiful, and they are easy to grow without extra water, fertilizer, or chemicals. Native plants slow down rainfall and help filter pollutants out of stormwater before it enters the bay.

New riparian planting in progress

Plant Native Plants

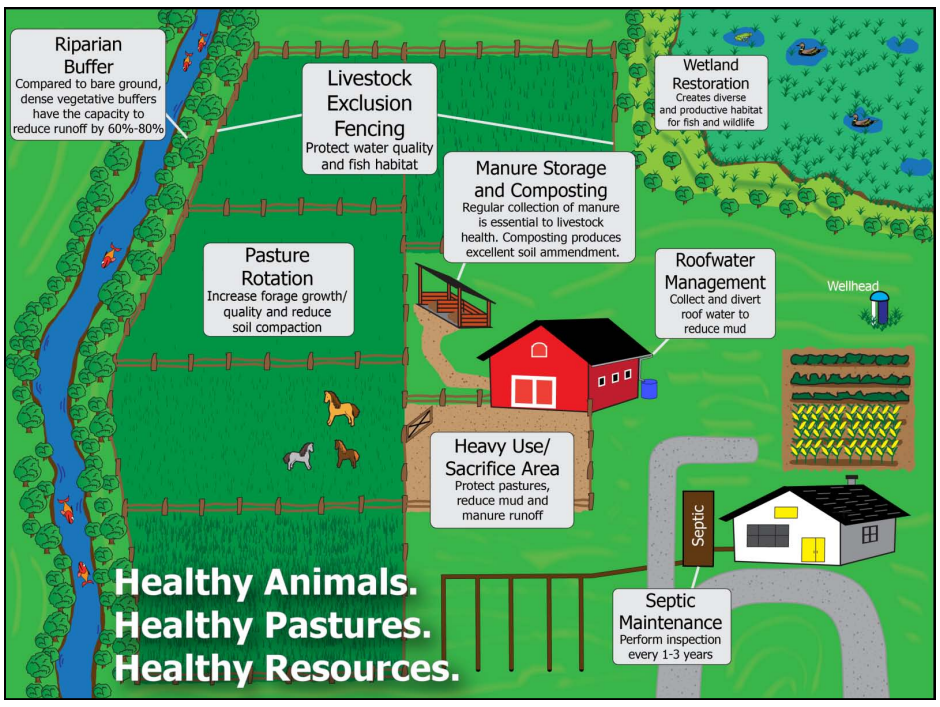
Are there streams, ditches, ponds, or wetlands on your property?
Improving the area along your waterway by planting native trees and shrubs is an easy way to help keep the water clean. You may qualify for programs to fund planting along your stream or wetland.

www.whatcomcd.org

Native plant garden provides habitat and filters surface water.

Every Action Makes a Difference

Landowners, organizations, agencies, and businesses have been hard at work installing best management practices (BMPs).



Scott and Kristy Mcallister have been living in the Terrell Creek area with their daughters for the last eight years. The Mcallisters raise alpacas, pigmy goats, chickens, donkeys, and a pony.
They learned how to build their small farm through trial and error along with advice from 4H and FFA. They were thrilled to work alongside a Whatcom Conservation District (WCD) farm planner to develop a **pasture rotation system, wetland restoration site,** and **roof water management** on their five acre farm.

"We learned so much from WCD, it was actually embarrassing some of the things we didn't know. We found simple, easy solutions to mud management, healthier animals, and greener pastures."

After hearing about the efforts by the Chums, Harry and Mary Pardue enrolled in the Conservation Reserve Enhancement Program (CREP) through WCD to improve the functionality of 3.9 acres of stream banks and wetland on their property. Their **riparian buffer** and **wetland restoration** included 1,350 native trees and shrubs. These plants will help protect water quality, reduce erosion, create shade, provide habitat, and add an aesthetic backdrop to their lovely home.

"We didn't know how degraded our backyard wetland had been because of all of the invasive plants; the scotch broom, blackberries and reed canary grass. Knowing all that, and at our age, we couldn't have done it ourselves. CREP was a package deal and how could we say no? They did everything for us."

Dave Klieber and his family moved from Seattle about nine years ago to the Terrell Creek area for more space for his kids and to enjoy a more rural lifestyle. Their early 1900s farm house, however, had an aging **septic system**. They were thankful for the WCD's financial assistance to help with the cost of a new system.

"Programs like this are great motivators to keep you moving down the path toward doing the right thing. The Whatcom Conservation District had plans in place, the steps to take and motivation to get the work done, we would not have done it as quickly otherwise."

Birch Bay and Blaine area residents are installing **rain barrels** to reduce stormwater runoff from their property, conserve water, and save money on their summer water bill. BBWARM and the Birch Bay Water and Sewer District have been hosting free rain barrel workshops every spring since 2011. Participants receive a free barrel and learn how to install their barrel at home. Look for rain barrels around your neighborhood. For more information visit **www.bbwarm.whatcomcounty.org/programs/education/rainbarrels.**

Credit A. Dalgliesh

Stormwater Capital Improvement Projects

The BBWARM stormwater program is building stormwater capital improvement projects around the Birch Bay watershed to replace or improve old stormwater drainage systems that no longer work properly. These construction projects are designed to reduce the risk of flooding and erosion and improve water quality. In 2013 and 2014 improvements included:

- Installing a bioswale and a storm filter vault to remove pollutants from stormwater flows.
- Building new high level/high flow stormwater systems down Cedar Avenue, Park Lane, Fern Street, and Beachway Drive.
- Building new low level/low flow stormwater systems along Birch Bay Drive.
- Removing a derelict concrete boat ramp to improve the shoreline.

Installing a new culvert under Birch Bay Drive.

- ☑ 5,276 feet of exclusion fence installed
- ☑ 5 manure/composting storage facilities installed
- ☑ 163 rain barrels installed (8,965 gallon storage capacity)
- ☑ 9 septic systems inspected, 3 repaired and 2 replaced
- ☑ 23 Farms Assessed, 9 Farm Plans Developed

- ☑ 6 fish barriers replaced
- ☑ 15 stream miles opened to fish
- ☑ 2012 Lake Terrell Dam made fish passable through improvements
- ☑ Up to 100,000 fish eggs incubated yearly in the Lake Terrell Remote Site Incubator

- ☑ 5 Miles of Terrell Creek restored
- ☑ 18,000 native plants planted by landowners, volunteers, NSEA and CREP
- ☑ 14 large woody debris structures installed
- ☑ 14 Volunteer work parties, 610 volunteers

Community Resources

The Chums of Terrell Creek
A community group made of Terrell Creek/Birch Bay citizens and associated organizations that work to improve water quality and fish habitat in the watershed. www.chumsofterrellcreek.org

Birch Bay Watershed and Aquatic Resources Management District (BBWARM)
Works to protect water quality and reduce storm water impacts.
c/o Whatcom County Public Works (360) 715-7450 or www.bbwarm.whatcomcounty.org

Birch Bay State Park
Provides great public waterfront access and educational opportunities.
(360) 371-2800 or www.parks.wa.gov/170/Birch-Bay

Friends of Birch Bay State Park
Supports education programs at Birch Bay State Park. www.fobbsp.org

Nooksack Salmon Enhancement Association (NSEA)
A community based nonprofit organization dedicated to restoring sustainable wild salmon runs in Whatcom County.
(360) 715-0283 or www.n-sea.org

Whatcom Conservation District (WCD)
Helps landowners plan and implement best management farming practices, assists landowners with riparian restoration, and sponsors an annual native plant sale.
(360) 526-2381 or www.whatcomcd.org

Marine Resources Committee (MRC)
A citizen-based group committed to revitalizing and preserving marine resources for future generations.
c/o Whatcom County Public Works
(360) 676-6876 or www.mrc.whatcomcounty.org

Butler Ditch District
Maintains agricultural drainage provided by the Butler Ditch from Northstar Rd. east to Olson Rd.
c/o Whatcom County Public Works (360) 676-6876

Washington Department of Fish and Wildlife (WDFW)
Whatcom Wildlife Area—Provides public recreation opportunities on lands around Lake Terrell and manages public access on lands owned by British Petroleum and ALCOA.
(360) 384-4723 or www.wdfw.wa.gov
Hunting, fishing, and shellfish harvesting permits and regulations
Shellfish Rule Change Hotline (866) 880-5431

Washington State Department of Health
Water quality monitoring and shellfish safety programs. Establishes marine biotoxin closures.
Shellfish Safety Hotline (800) 562-5632 or ww4.doh.gov/gis/mogifs/biotoxin.htm

Restoration of Butler Creek, a Terrell Creek tributary that begins west of Ferndale.

Whatcom Land Trust
Preserves and protects wildlife habitat, scenic, agricultural, and open space lands in Whatcom County for future generations by securing interests in land and promoting land stewardship.
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WSU Whatcom County Extension
Provides educational and volunteer opportunities for agriculture, gardening, composting, nutrition, food safety, health, and natural resources.
(360) 676-6736 or www.whatcom.wsu.edu

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Public Works Natural Resources (WCPW) and Stormwater Divisions—Manages water quality monitoring and improvement programs, species recovery, and stormwater projects.
(360) 676-6876 or www.whatcomcounty.us

RE Sources for Sustainable Communities
The North Sound Baykeeper Team is charged with protecting and restoring the marine and nearshore habitats of the northern Puget Sound region.
(360) 733-8307 or www.re-sources.org

Other Contacts
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STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action Against Whatcom County Officials (Jack Louws, Executive, Bill Elfo, Sheriff, and David McEachran, Prosecutor) Respondents.	PDC Case No. 1122 Notice of Administrative Charges

I. JURISDICTION

1. The Public Disclosure Commission (PDC) has jurisdiction over this proceeding pursuant to Chapter 42.17A RCW, the state campaign finance and disclosure laws; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC. These charges incorporate the Report of Investigation and the Addendum to the Report of Investigation, and all related exhibits by reference.

II. ALLEGATIONS

2. PDC staff alleges that Jack Louws, Whatcom County Executive and a candidate for re-election in 2015, Bill Elfo, Whatcom County Sheriff and a candidate for re-election in 2015, and David McEachran, Whatcom County Prosecutor, violated RCW 42.17A.555 by 1) using and authorizing the use of Whatcom County facilities for the promotion of Proposition 2015-1, a ballot measure on the November 3, 2015 ballot, and 2) by using and authorizing the use of Whatcom County facilities for the purpose of assisting the re-election campaigns of Executive Louws and Sheriff Elfo.

3. The Respondents violated RCW 42.17A.555 by: 1) sending out a mailer that was targeted to registered voters rather than to all households; 2) including pictures of Executive Louws and Sheriff Elfo at a time when both individuals were candidates for re-election and engaged in campaign activities; and 3) failing to include the cost of constructing a new jail based on the participating cities.

III. FACTS

4. Proposition 2015-1 was a proposed 0.2 percent sales and use tax increase for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

5. Jack Louws, Bill Elfo, and David McEachran (Whatcom County Officials) sent out a mailer concerning Proposition 2015-1 that was targeted to registered voters rather than to all households. The mailer was sent out in two batches, arriving at households with at least one registered voter, on or around October 16, 2015. The mailer was sent to 62,172 households at a cost of $27,670.76. The mailing failed to include households of residents where there were no registered voters, thus depriving those citizens of the information being distributed by the County concerning Proposition 2015-1.

6. The jail mailer included pictures of Executive Louws and Sheriff Elfo at a time when both individuals were candidates for re-election and engaged in campaign activities, including promoting Proposition 2015-1 while campaigning for re-election. This additional exposure assisted their re-election campaigns, and added credibility to the County's request for approval of Proposition 2015-1.

7. The jail mailer failed to include the cost of constructing a new jail based on the participating cities. At the time the mailer was sent out, the County and several small cities had agreed to a financing plan and operating agreement to build and operate a new jail using the sales and use tax revenue if Proposition 2015-1 passed. However, the City of Bellingham had chosen not to participate in the financing plan and operating agreement,

meaning that the new jail would be smaller and the City of Bellingham would retain its share of the sales and use tax revenue to fund their correctional needs, as they were not party to the agreement with the County. The difference in the cost and size of the new jail was approximately $97 million with 521 beds with Bellingham participating, and $75 million with 400 beds with Bellingham not participating. By leaving this information out of the jail mailer, it was not a fair and objective presentation of relevant facts.

IV. LAW

RCW 42.17A.555 states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

RESPECTFULLY SUBMITTED this 31st day of December, 2015.

Philip E. Stutzman
Sr. Compliance Officer

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PUBLIC DISCLOSURE COMMISSION
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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH RCW 42.17 and RCW 42.17A Whatcom County Officials (Executive Jack Louws; Sheriff Bill Elfo; Prosecutor David McEachran) Respondent.	PDC Case No. 1122 Report of Investigation

I.
Background

1.1 In 2015, the Whatcom County Council passed a resolution to send a proposed 0.2 percent sales and use tax increase to voters to pay for construction and operation of a new jail facility in Whatcom County. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. The measure was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

1.2 Between October 18, 2015 and November 2, 2015, PDC received 14 complaints, five of which were filed as 45-day citizen action complaints under RCW 42.17A.765(4), which allows a citizen to prosecute an alleged violation of RCW 42.17A in Superior Court if, after receiving proper notice, the Attorney General and prosecuting attorney in the county in which the violation occurred, have failed to commence an action. On November 17, 2015, PDC received a 15th complaint. The 15 complaints make similar allegations, that Whatcom County Officials used County facilities in a variety of ways to promote Proposition 2015-1, an alleged violation of RCW 42.17A.555.

II.
Allegations

2.1 The 15 complaints alleged that a flyer paid for by Whatcom County concerning a sales and use tax increase to pay for constructing and operating a new jail facility, and for other public safety purposes, authorized and approved by Jack Louws, County Executive, and Bill Elfo, County Sheriff, and reviewed and approved by David McEachran, County Prosecutor, promoted Proposition 2015-1 and the re-election campaigns of Sheriff Bill Elfo and Executive Jack Louws because of its content and because it was mailed to all households in Whatcom County that included at least one registered voter. The

complaints also alleged that the flyer promoted Proposition 1, a ballot measure concerning district-only voting for Whatcom County Council positions, because the flyer erroneously referred to the new jail facility ballot measure as Proposition 1.

2.2 Some of the complaints refer to the alleged violations as being civil rights violations in addition to violations of RCW 42.17A, citing such concerns as "systemic racism," illegal "mass incarceration policies," and "deliberate overcrowding." The PDC has no jurisdiction over civil rights violations and no authority to investigate those concerns.

2.3 The 15 complainants are listed below, followed by a brief summary of the allegations in the complaints:

1. Richard Jenn, received October 18, 2015 **(Exhibit 1)**
2. Debra David, received October 18, 2015 **(Exhibit 2)**
3. Douglas Starcher, received October 21, 2015 **(Exhibit 3)**
4. Marissa McGrath, received October 21, 2015 **(Exhibit 4)**
5. Sara Holodnick, received October 21, 2015 **(Exhibit 5)**
6. Rosalinda Guillen, 45-day citizen action, received October 30, 2015 **(Exhibit 6)**
7. Omar Jordan, 45-day citizen action, received October 30, 2015 **(Exhibit 7)**
8. Kimberly Harris, 45-day citizen action, received October 30, 2015 **(Exhibit 8)**
9. Maria Mora Villalpando, 45-day citizen action, received October 30, 2015 **(Exhibit 9)**
10. Neah Monteiro, 45-day citizen action, received October 30, 2015 **(Exhibit 10)**
11. Marinel Kniseley, received October 31, 2015 **(Exhibit 11)**
12. Tina McKim, received November 1, 2015 **(Exhibit 12)**
13. Liisa Wale, received November 2, 2015 **(Exhibit 13)**
14. League of Women Voters of Bellingham and Whatcom County, received November 2, 2015 **(Exhibit 14)**
15. James Ace, received November 17, 2015 **(Exhibit 15)**

Summary of Allegations

A. The jail mailer is not a fair and objective presentation of facts because it does not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures are inflammatory because they show incarcerated citizens in deplorable housing conditions.

B. The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a Public Service Announcement by Sheriff Elfo and Executive Louws that was prohibited because they were candidates on the ballot during the year the mailing was made.

C. The jail mailer promoted Proposition 2015-1 because it targeted all Whatcom County households in which there was at least one registered voter.

D. The jail mailer failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years.

E. The jail mailer, with its information about the ballot measure, was a coordinated campaign effort.

F. The jail mailer promoted Proposition 2015-1 and Proposition 1 by creating confusion when it misidentified Proposition 2015-1 as Proposition 1, a measure concerning district-only voting.

G. Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273.

H. The jail mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

III.
Findings

3.1 Whatcom County's jail is 32 years old, and the County began preparing to build a new jail more than 17 years ago due to what it states are well-documented operational and maintenance problems due to its age, including overcrowding. During that time, the county has spent over $800,000 researching and informing the public about the issue, which has included assembling panels, conducting studies, and commissioning plans to address the issue. The county also approved the purchase of a $6 million site for the proposed new jail.

3.2 During this 17-year process, the county has notified the public of its jail research findings through website postings, open public meetings, and interviews with the media. The county's research consistently indicated that the jail needed to be replaced. In September 2014, the County Council contracted with DLR Group, in part, to "inform the general public of operational and maintenance issues facing" Whatcom County concerning its jail issues. DLR was authorized by the Whatcom County Council to create two jurisdiction-wide mailings to inform the public of the maintenance and operational issues, the proposed solution, and the cost of the tax that would pay for the solution, if passed by voters. In 2015, the Council passed Resolution 2015-024 to send to voters a proposed sales tax increase of 0.2 percent to pay for construction of a new jail facility in Whatcom County.

3.3 In preparing for making its informational mailings, DLR and Whatcom County studied the law and confirmed that a single jurisdiction-wide factual mailing was the legal and customary method for informing the public about the upcoming ballot proposition. They read PDC staff member Tony Perkins' January 12, 2015 letter to Local Government Agency Officials, and decided to send out only one mailing. DLR and Whatcom County researched examples of fact sheet mailings from other jurisdictions, including a recent Skagit County jail proposal sent out during the summer of 2013. DLR and Whatcom County decided on a four-page fold-out newsletter to describe its 2015 ballot measure, consistent with other mailers issued by Whatcom County in the past. **(See Exhibit 24)**

3.4 After developing its fact sheet, DLR and Whatcom County sought official review by PDC staff, but were told the PDC was no longer providing reviews of individual fact sheets due to budget cuts and staffing levels. DLR and Whatcom County then contacted

PDC staff to obtain advice before sending out its fact sheet. After a conversation between a DLR staff member and a PDC Filer Assistance Specialist, DLR and Whatcom County reviewed and revised its mailer to conform to the advice they stated they received from the PDC. That advice included: (1) If regular informational mailers are not sent to the public, then only one mailer per ballot measure may be sent out; (2) An indication that a list of Registered Voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms; and (3) The mailer should not directly advocate, and should only present the facts of the project and information to allow voters to make an informed decision of the funding question. Whatcom County also used the statutory references provided by PDC staff and several examples of prior advice given to other counties. The fact sheet was then distributed jurisdiction-wide to households with at least one voter, on a non-partisan basis. **(See Exhibit 17)**

3.5 Within a few days of the fact sheet being mailed, a newspaper article was written about the mailer, and five complaints were received by the PDC. Nine additional complaints, including five 45-day complaints, were received between October 30 and November 2, 2015, and a 15th complaint was received November 17, 2015. Some of the complaints argued against a larger jail facility citing "systemic racism," illegal "mass incarceration policies," "deliberate overcrowding," and other objections to Whatcom County's incarceration policies. Proposition 2015-1 failed. **(See Exhibits 16-25 for the County's response to the complaints.)**

Allegation A - The jail mailer is not a fair and objective presentation of facts because it does not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures are inflammatory because they show incarcerated citizens in deplorable housing conditions. **(See Exhibits 18, 20, 21, 25)**

3.6 Some of the complaints include political argument against Proposition 2015-1, and fault the county for not making those arguments in its mailing. There is no evidence that the county failed to accurately present the cost to the taxpayer and other anticipated impacts of the proposition in its mailing.

3.7 The mailing presents a condensed summary of the county's findings about its jail over the past 17 years. Those findings resulted from the county's studies, panels, and reports. The mailing included the following elements:

- Quote from Executive Jack Louws concerning the cost of programs for behavioral health programming.
- Neutral statement from Prosecutor David McEachran about the lack of programming space in the existing jail.
- Statement from Sheriff Bill Elfo expressing law enforcement concerns about the existing jail, including overcrowding, safety, liability, and programming space.
- A site map without comment showing the layout and design of the proposed new jail facility.

- Neutral comments about a "Proposed design" explaining six modern features of the new facility that would remedy maintenance and operations issues in the existing jail.
- Photos of the existing jail and drawings of the proposed jail.
- Jail capacity statistics.
- Factual statement that the current jail cannot operate at current population levels or expand at its current site.
- Statement that Whatcom County must, by law, house felons.
- Statement that the County Council has determined the existing jail does not meet the County's needs, and that a new jail facility will be built in Ferndale if the measure passes.
- Current sales tax rates in the region.
- The language of the ballot measure, including the exact rate.
- Statement of the percentage increase the tax would add.
- The procedural history of the process for planning the new jail.
- A timeline for a new facility if the proposition passed.

3.8 Whatcom County officials stated that they followed PDC's January 12, 2015 advisory memo to local government agency officials on election-related communications, and as a result, the elements in the mailer:

- Are not overtly promotional or oppositional.
- Do not speculate about secondary or tertiary impacts.
- Do not minimize the cost through comparisons to small ticket items.
- Do not purport to describe or promise responsible fiscal management.
- Do not offer detailed tax exemption information.
- Do not offer information about the conduct of the election.

3.9 Whatcom County officials stated that they also reviewed samples of past advice provided by the PDC. They stated that based on the advice given, the Whatcom County mailing: **(See Exhibit 17)**

- Does not refer readers to outside sources.
- Does not encourage voter participation.

- Does not use emotionally laden language.
- Does not convey a tenor of support through words telling the voters they "should, need, must" support this tax to fix the existing jail problem.
- Does not indicate that this is a good time for financing or job creation.
- Does not describe the tax as "small."
- Does not ask voters to ask themselves whether the tax is right for them and to make a decision.
- Does not "sell" the tax by minimizing the financial impact.
- Does not discuss the "fairness" of the proposed tax.

3.10 Whatcom County demonstrated that they researched this issue extensively, used PDC resources for guidance, and then condensed the information they had gathered about the jail for 18 years into a mailing to inform the public about the issue before them.

Cost

3.11 The cost of the ballot proposition to voters was expressed as a proposed increase in the sales and use tax of two tenths of one percent. The cost to individual taxpayers is directly related to their purchases subject to sales or use tax. Thus, the increased tax burden would vary for each taxpayer. The mailer stated that half of the tax would expire upon payment of bonds issued to finance the facilities, no later than 30 years after issuance. The mailer included a list of current sales tax rates from the Puget Sound region. Although the flyer did not include the sales and use tax rates for Anacortes or Sedro-Woolley, they are each .085, which is the same rate listed for several of the jurisdictions listed in the flyer. The flyer did not include any statements about secondary cost concerns, such as rising construction costs if construction of a new jail is delayed, or job creation if the measure is accepted. **(See Exhibit 25)**

3.12 The mailer did not state the cost to construct and operate the new jail facility, nor did it state the estimated revenue that would be generated from the proposed sales and use tax increase of 0.2 percent. Whatcom County stated that the cost of constructing a new jail facility is dependent on Bellingham's agreement to the Jail Facility Use Agreement. With Bellingham's participation, they would add their inmates to the population, which would require a larger jail and create higher operating costs. With Bellingham's participation, the larger jail would have 521 beds and would cost an estimated $97 Million. Without Bellingham's participation, the inmate population would be lower, and the jail would have 400 beds and cost an estimated $75 million. At the time the informational mailer went to press, the County Executive was still discussing with the City of Bellingham the opportunity for Bellingham's participation. The mailer did not provide an estimated cost to construct the new jail facility because negotiations with the City of Bellingham were still going on, and the County did not want to misidentify the cost of $75 million versus a potential $97 million.

3.13 A draft of the mailer that was not used included the following language: "If Proposition #1 passes, the County and 6 of the 7 cities will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new $75 million jail facility will house up to 400 inmates plus space for behavioral health, medical and administration areas. The City of Bellingham will receive a portion of these tax proceeds per state law and is authorized to use the funds as described in the ballot measure."

3.14 Because negotiations were still going on, and Whatcom County did not want to misidentify the cost, the final mailer included the following language: "If Proposition #1 passes, the County and participating cities will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas."

Photos

3.15 The jail mailer includes three pictures that include incarcerated individuals. The first photo shows three inmates in a room with two bunks and a cot. Its caption reads, "Existing cell." A second photo shows three inmates sitting on a bench. Its caption reads, "Existing inmate programs space." A third photo shows eight inmates in a room with four bunks and four cots. Its caption reads, "Existing shower room converted to cell." The photos are not captioned with charged language. Whatcom County contends that the photos are factual and depict the actual condition of the jail. They also contend that the photos do not depict the condition of the jail in an inflammatory manner, intended to trigger an emotional response. They state that the photos provide a fair and objective look at the actual maintenance and operations problems facing the County. The photos appear to be informative and not inflammatory. **(See Exhibit 25)**

Allegation B - The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a Public Service Announcement by Sheriff Elfo and Executive Louws that was prohibited because they were candidates on the ballot during the year the mailing was made.

3.16 Whatcom County states that it appears the complaints are not sworn under oath, a requirement when a complaint is filed against a candidate or elected official. The complaints were filed through the Commission's on-line portal for receiving complaints which includes a certification checkbox that is equivalent to a complaint being sworn under oath.

3.17 The jail mailer included pictures of Sheriff Bill Elfo, Executive Jack Louws, and Prosecutor David McEachran. Sheriff Elfo was up for election, but was unopposed. Executive Louws was up for election, and was opposed. Prosecutor McEachran was not up for election. DLR developed the mailing and requested the photos from Sheriff Elfo and Executive McEachran. Each individual authorized DLR to use a photo, with the understanding that the mailer would be reviewed by PDC staff and by and the Whatcom County Prosecuting Attorney's Office for legality before dissemination.

3.18 Sheriff Elfo stated that when he first saw a mockup of the flyer it already included a picture of him that he believed was taken from the public domain. He said the County Executive's office asked for higher resolution pictures, which he sent, but they were not used in the final version of the flyer. Sheriff Elfo said while he did not specifically authorize the picture that was used, he expressed a positive view that it would assist voters in making a decision.

3.19 Executive Louws indicated that DLR Group designed the mailing and chose to use a photo of him. He then approved using his photo with the understanding that the legality of the entire mailing would be reviewed with the PDC and the Whatcom County Prosecuting Attorney's Office.

3.20 The elected officials who appeared in the mailing are responsible for jail operations and programs or budgeting for the facility, or are experts regarding jail operations and programs. Sheriff Elfo is the chief law enforcement officer in the County and is responsible for the operation of the jail. Executive Louws is responsible for capital improvements, such as a new jail facility, and the budgeting and administration of capital projects. He is also responsible for jail maintenance. The pictures allowed the reader to see who was making the statements about the jail and its operations, and did not appear to be a gratuitous appearance on behalf of a popular cause, such as might be done in a public service announcement. No evidence was found that the statements made by Sheriff Elfo and Executive Louws, or the use of their pictures next to their statements, were for the purpose of assisting their campaigns for re-election.

3.21 State law prohibits state-elected officials and municipal officers from speaking or appearing in a Public Service Announcement (PSA) from January 1 to the date of the general election in a year in which the official is a candidate. A PSA is a communication that is designed to benefit or promote the community's health, safety or welfare or nonprofit community events. Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

3.22 A public agency fact sheet concerning a ballot proposition does not meet the definition of a PSA even though it included the pictures of three elected officials and statements from those officials concerning an issue of public concern.

Allegation C - The jail mailer promoted Proposition 2015-1 because it targeted all Whatcom County households in which there was at least one registered voter. **(See Exhibit 17)**

3.23 Whatcom County officials decided that sending the fact sheet to an Auditor's Office list was the best option to ensure a broad audience for a jurisdiction-wide mailer in Whatcom County. Officials stated they contemplated using the Assessor's Office tax information as a resource but it became clear that the Assessor's list would include thousands of vacant properties (non-household addresses) and addresses located outside the USA (bulk mailers cannot be mailed to foreign addresses). Officials said they were unaware of any

other option to gather a "jurisdiction-wide" list of Whatcom County's households since they do not maintain a current distribution list of households.

3.24 DLR Group compiled and recommended using a list of households that voted in the last three elections. However, Whatcom County asked DLR to contact the PDC to determine whether that limiting the distribution in this manner would be consistent with PDC guidance concerning not mailing to "specific subgroups." DLR contacted PDC staff for advice. On September 2, 2015, an employee of DLR spoke with a PDC Filer Assistance Specialist about the mailer. According to the DLR employee, the advice included: (1) If regular informational mailers are not sent to the public, then only one mailer per ballot measure may be sent out; (2) An indication that a list of Registered Voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms; and (3) The mailer should not directly advocate, and should only present the facts of the project and information to allow voters to make an informed decision of the funding question. Based on the DLR staff member's understanding of the advice from PDC staff, Whatcom County distributed the fact sheet jurisdiction-wide to households with at least one voter, on a non-partisan basis.

3.25 The PDC employee did not have written notes of the conversation, and does not believe he would have provided advice that it would be acceptable to send a fact sheet to a list of registered voters, as opposed to all households in the jurisdiction. The PDC employee stated that he typically directs people with such questions to the appropriate PDC Interpretation found on the PDC website. However, it appears that the DLR Group staff member and the PDC staff member likely had a conversation that included a brief discussion of the appropriateness of sending a single jurisdiction-wide mailing to a list of registered voters, and in a good-faith attempt to follow the advice received, DLR sent the jail mailing to a list of registered voters.

Allegation D - The jail mailer failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years.

3.26 The tax proposed by Proposition 2015-1 was a 0.2 percent sales and use tax increase. As such, there was no known fixed amount of revenue being generated by the proposition. Whatcom County stated a discussion of the alleged secondary effect of the proposition on the County's statutory taxing structure and ability to raise money in the future to address other public safety issues that do not yet exist, would be prohibited in an informational mailer requesting funds to construct a new jail.

Allegation E - The jail mailer, with its information about the ballot measure, was a coordinated campaign effort.

3.27 Whatcom County denied that its informational mailer about Proposition 2015-1 was coordinated with any campaign efforts, and no evidence of coordinated campaign activities was cited in the complaints.

Allegation F - The jail mailer promoted Proposition 2015-1 and Proposition 1 by creating confusion when it misidentified Proposition 2015-1 as Proposition 1, a measure concerning district-only voting. **(See Exhibit 22)**

3.28 Whatcom County's mailing referred to the proposition as "Proposition Number 1" which differed slightly from the number that appeared on the ballot, which was "Proposition 2015-1." A separate Proposition 1 appeared on the ballot regarding a different measure, concerning district-only voting for County Council positions.

3.29 The complaints suggest that Whatcom County's use of Proposition 1 to describe the jail mailer may have been done to confuse voters, and somehow result in votes for Proposition 2015-1 and Proposition 1 that were not intended by voters.

3.30 Whatcom County produced evidence showing that on August 19, 2015, the Whatcom County Auditor's Office sent the County Executive's office an email that stated, "I believe this is the final version (see attached)" with an attachment that included the ballot proposition language. The proposition was titled "Proposition Number 1." The Executive's Office forwarded the email to DLR, and the mailing was created using Proposition Number 1.

3.31 No evidence was provided showing that the County intentionally used the wrong Proposition number, or demonstrating how using the wrong number would result in incorrect votes.

Allegation G - Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273. **(Exhibits 17-21 & 24)**

3.32 In September 2014, Whatcom County contracted with DLR Group to provide a variety of jail development services, including permitting, design, engineering, and on-going public outreach. The public outreach took on many forms, and included the development of mailers about the jail proposal. The mailings were planned more than a year before the 2015 election as part of the County's public information process.

3.33 For Proposition 2015-1, Whatcom County sent out a single mailing, as contemplated by PDC Interpretation 04-02, which states in part, "It is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." The interpretation goes on to state that, "The PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure." Whatcom County also uses mailings to inform the public of maintenance and operations issues, and to provide facts about relevant research and studies. **(See Exhibit 19)**

Allegation H - The jail mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

3.34 An Electioneering Communication does not include a communication that is exempted by the commission through rule consistent with the intent of RCW 42.17A. RCW 42.17A.555(3), WAC 390-05-271, WAC 390-05-273, and Interpretation 04-02 allow public agencies to produce and disseminate fair and objective fact sheets about ballot propositions the agencies place on the ballot. Therefore, including an image of an elected official who is on the ballot, in an agency's fact sheet, does not make the fact sheet an Electioneering Communication.

IV.
Scope

4.1 PDC staff reviewed the following:

- Fourteen complaints filed between October 18, 2015 and November 2, 2015, five of which were filed as 45-day citizen action complaints under RCW 42.17A.765(4), and a 15th complaint received November 17, 2015.

- The response from Whatcom County Officials, prepared by Royce Buckingham, Whatcom County Deputy Prosecuting Attorney.

4.2 Staff spoke with Mr. Buckingham.

4.3 Staff spoke with Chip Beatty, PDC Filer Assistance Specialist.

V.
Laws, Rules & PDC Interpretations

5.1 **RCW 42.17A.555** states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

5.2 **WAC 390-05-271(2)** states that RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

5.3 **WAC 390-05-273** defines the "normal and regular conduct" of a public office or agency as "conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

5.4 **Interpretation 04-02** Guidelines for Local Government Agencies in Election Campaigns - This document is an educational tool that is an expression of the Commission's view of the meaning of RCW 42.17A.555 and relevant administrative rules and case law involving local government and election campaign activity. It is intended to provide guidance regarding the Commission's approach and interpretation of how the statutory prohibition on the use of public facilities for campaigns impacts activities that may be contemplated by government employees and other persons who may seek to utilize those public facilities. Readers are strongly encouraged to review the statute and rules referenced in these Guidelines. For ease of reference, the majority of this interpretation is in chart form. In

part, the chart identifies categories of persons, some possible activities, and some general considerations. These illustrative examples in the columns of the chart are not intended to be exhaustive.

5.5 **RCW 42.17A.005(19)(a)** defines an electioneering communication as any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

Under subsection (b), the definition states that an "Electioneering Communication" does not include: ... (ix) any other communication exempted by the commission through rule consistent with the intent of this chapter.

5.6 **RCW 42.17A.575** prohibits state-elected officials and municipal officers from speaking or appearing in a public service announcement from January 1 to the date of the general election in a year in which the official is a candidate.

5.7 **WAC 390-05-525** states the following concerning "Public service announcements." (1) Public Service Announcement (PSA) means a communication that is designed to benefit or promote the community's health, safety or welfare or nonprofit community events; not selling a product or service; sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization; of primary interest to the general public and is not targeted to only voters or voters in a specific jurisdiction; not coordinated with or controlled or paid for by a candidate's authorized committee or political committee; ... (2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

Respectfully submitted this 23rd day of November, 2015.

Philip E. Stutzman
Sr. Compliance Officer

List of Exhibits

Exhibit 1	Richard Jehn Complaint
Exhibit 2	Debra David Complaint
Exhibit 3	Douglas Starcher Complaint
Exhibit 4	Marissa McGrath Complaint
Exhibit 5	Sara Holodnick Complaint
Exhibit 6	Rosalinda Guillen 45-day Complaint
Exhibit 7	Omar Joran 45-day Complaint
Exhibit 8	Kim Harris Complaint 45-day Complaint
Exhibit 9	Maru Villalpando 45-day Complaint
Exhibit 10	Neah Lin Monteiro 45-day Complaint
Exhibit 11	Marinel Kniseley Complaint
Exhibit 12	Tina McKim Complaint
Exhibit 13	Liisa Wale Complaint
Exhibit 14	League of Women Voters of Bellingham-Whatcom County
Exhibit 15	James Ace Complaint
Exhibit 16	Response Letter – Whatcom County Officials
Exhibit 17	Response Letter – Whatcom County Officials – Exhibit A
Exhibit 18	Response Letter – Whatcom County Officials – Exhibit B
Exhibit 19	Response Letter – Whatcom County Officials – Exhibit C
Exhibit 20	Response Letter – Whatcom County Officials – Exhibit D
Exhibit 21	Response Letter – Whatcom County Officials – Exhibit E
Exhibit 22	Response Letter – Whatcom County Officials – Exhibit F
Exhibit 23	Response Letter – Whatcom County Officials – Exhibit G
Exhibit 24	Response Letter – Whatcom County Officials – Exhibit H
Exhibit 25	Response Letter – Whatcom County Officials – Exhibit I

by **Richard D. Jehn** on **Sun, 18 Oct 2015 at 3:23 PM** via **Portal**
File a Formal Complaint - Richard Douglas Jehn

I question the integrity of Messrs. Louws, Elfo, and McEachran in sending out a glossy mailer (which I received in my mail on October 16, 2015) itemizing the reasons I should support their intention to construct a brand new jail north of Bellingham. I also note that they have broken the law by using their offices to prepare and send this advertising to me and, no doubt, everyone else in the county. According to RCW 42.17A.555, "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition."
(**http://apps.leg.wa.gov/rcw/default.aspx?cite=42.17A.555**)

More information can be found
here: **http://www.bellinghamherald.com/news/local/article39560088.html**

If Mr. Louws believes that the glossy mailing I received meets the criterion that "**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate,"** then I really take issue with his sense of reality.

What is, in effect, an independent audit of the jail proposal that has emanated from county offices finds that the proposal is "an extreme case of attempted fiscal misappropriation …" ("Just Say No – to the Incarceration-Industrial Complex," David Camp, *Northwest Citizen*, October 2, 2015, **http://www.nwcitizen.com/entry/just-say-no-to-the-incarceration-industrial-complex**). A number of important questions about costs associated with the new jail are asked and no one has yet addressed these questions. "What happened to all the money we have been providing for upkeep? Why wasn't the old jail properly maintained? Why should we give more money to the sheriff and the county administration when they appear to be spending it so imprudently?" (*ibid*)

Further, it seems a few highly questionable property dealings are associated with the land around the proposed location of the new jail complex ("That Louwsy Jail Deal," Tip Johnson, *Northwest Citizen*, September 15, 2015, **http://www.nwcitizen.com/entry/louwsy-jail-deal**). No one has answered the questions raised about this topic either.

It seems to me that a number of questions about this jail proposal are left unanswered by the glossy mailer, and for you to believe it is an "objective and fair presentation of the facts" is a slap in the face to every voter in Whatcom County.

Timeline for New Facility

- ✓ April 2015 - Authorizing Permit Issued by City of Ferndale
- ✓ July 2015 - County Council Authorizes Sales Tax Ballot Measure
- ✓ August 2015 - Cities and County Agree to Construct and Operate Jail
- **November 2015 - Public Vote for Sales Tax**
- **Winter 2015-2016 - Following vote approval, final Design Work**
- **Spring 2017 - Start Jail Facility Construction**
- **Spring 2019 - Occupy Jail**

Citizens and Experts Develop Plan for the New Whatcom County Jail

In 2011, the County Council tasked a 13-member Jail Planning Task Force (JPTF) to recommend size, location and programming to replace the main jail and conducted 16 public meetings soliciting community input and comments from citizens and stakeholders. In 2013, the JPTF presented unanimous findings to reporting, "Due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail." It described the need as "critical" echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

County Executive Jack Louws developed a proposal to replace the jail and implement the JPTF recommendations. The County Council approved the purchase of the Labounty Road Property in 2013, a centrally located site near I-5, reasonably close to the courthouse and sufficiently sized to accommodate long-term growth if needed. The site selection was unanimously endorsed by the County Police Chiefs' Association.

Modern design features will maximize operational efficiencies and help control expenses and provide needed areas for behavioral and other health issues. Additional medical, counseling and classroom space will facilitate education, literacy, substance abuse, life-skills and other training and treatment programs.

The Ballot Measure

WHATCOM COUNTY,
WASHINGTON PROPOSITION NUMBER 1
JAIL FACILITIES SALES AND USE TAX

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

Should this proposition be:

Approved _____

Rejected _____

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas.

Current Sales Tax Rates from Puget Sound Region

Unincorp. Whatcom County	.085
Bellingham	.087
Blaine	.085
Everson	.085
Ferndale	.087
Lynden	.087
Nooksack	.085
Sumas	.085
Burlington	.085
Mount Vernon	.085
Everett	.092
Bellevue	.095
Seattle	.096
Tacoma	.095

WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225

WHATCOM COUNTY JAIL

Whatcom County Community Report

Existing Jail - Overcrowded and Unsafe

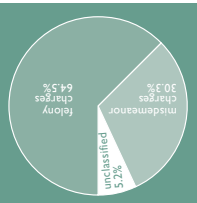
Sheriff Bill Elfo

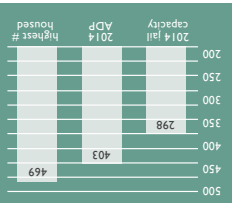
"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."

The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





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Our jail population is at 137% percent of capacity, 4th highest in the state.

Whatcom County's Commitment to Behavioral Health Services

Executive Jack Louws

Whatcom County spends $11.5 million annually on a wide and varied behavioral health continuum of care services for citizens designed to make it possible for people to stay out of jail, or to re-enter society after jail with the tools needed for success. This financial commitment to programming is very close to equaling the amount we spend to operate the jail annually. Whatcom County Council has established a task force to target enhanced alternatives to corrections, that would reduce or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personal;
- School and community programs focused on prevention, treatment, intervention and family support programs;
- Juvenile court/detention behavioral health services;
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Budgeted-for Alternatives

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$ 11,500,000

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$ 12,300,000

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Prosecuting Attorney

"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space limits the care the jail can provide which often exacerbates mental health conditions. Mental health and chemical dependency issues are a significant issue for law and justice and the community as a whole. The new jail facility is designed with dedicated programming space. This space will allow for treatment opportunities for those offenders receptive to programs that give them the best chance of staying out of jail."

Existing Jail Conditions

Existing cell.

Existing shower room converted to cell.

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Existing central control room.

PROPOSED DESIGN
Modern Jail Features

Dayroom with inmate video visiting

Central control room.

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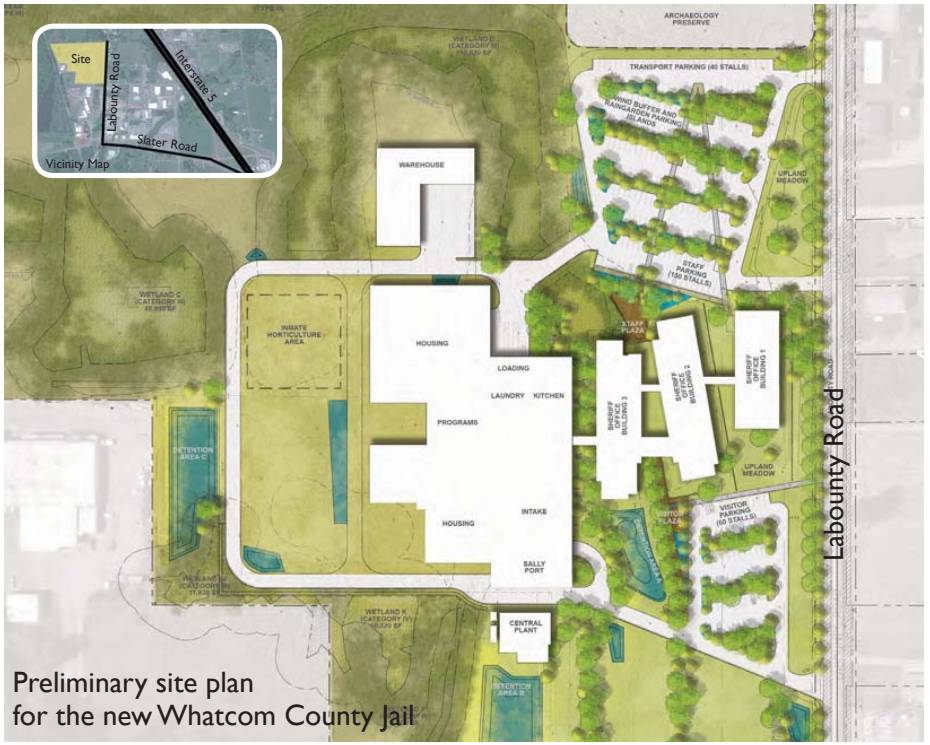

Preliminary site plan
for the new Whatcom County Jail

Four person cell.

Secure outdoor recreation area.

Medical clinic and infirmary for observation.

by **Debra David** on **Sun, 18 Oct 2015 at 11:59 PM** via **Portal**
File a Formal Complaint - Debra David

If the intention of the mailer, titled "Whatcom County Community Report – Whatcom County Jail" was public outreach services, as the email response from County Executive Louws Administrative Coordinator, Tawni Helms indicated, then why did the mailer only target registered voters? All Whatcom County citizens will be impacted by the proposed jail sales tax and subsequent construction project.

Also, the information in the mailer refers to the jail sales tax as Proposition 1 when in fact the correct information for the jail sales tax on the ballot is Proposition 2015-1. Proposition 1 is a Charter Review issue and therefore misinforms the public.
Whatcom County Contract 201409013 with the DLR Group references an amount on page 27 for public outreach expense, not to exceed $86,138. If in fact the DLR Group was responsible for the co-production of this mailer, why then was no credit/reference that the DLR Group was involved the proposed design?

The photos in the jail mailer are inflammatory as they show incarcerated citizens in deplorable housing conditions.

Lastly, the mailer references a "Timeline for New Facility" which is misleading and presumptive since no timeline will in fact exist unless Proposition 2015-1 is approved by voters.

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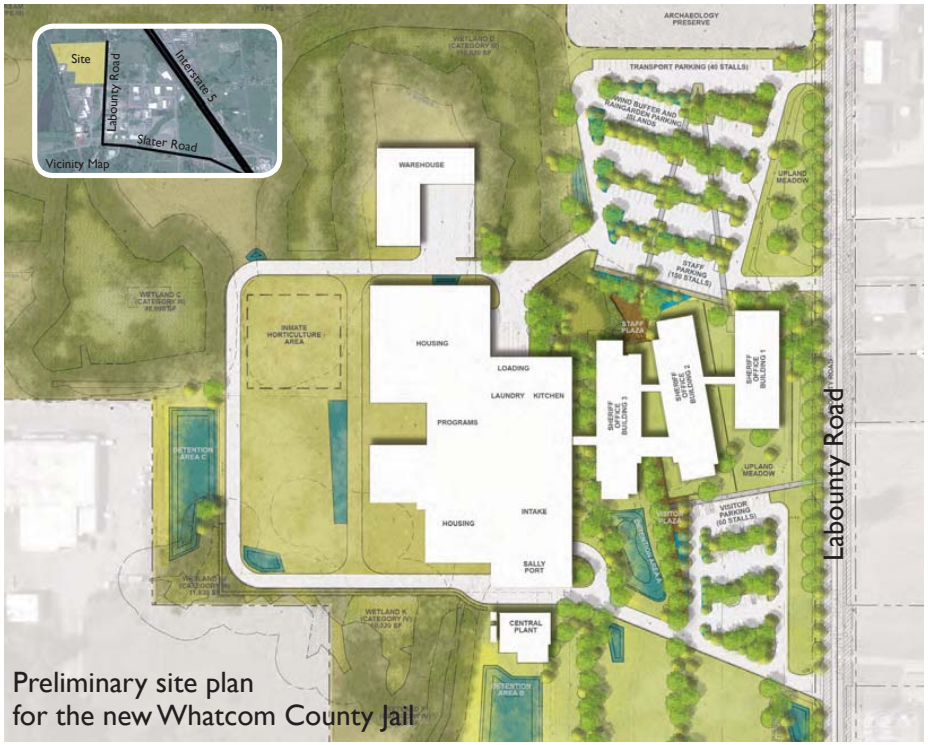


Preliminary site plan
for the new Whatcom County Jail

Four person cell.

Secure outdoor recreation area.

Medical clinic and infirmary for observation.

Gmail by Google

Debbie David <debb.david@gmail.com>

Jail Mailer

Tawni Helms <THelms@co.whatcom.wa.us> Thu, Oct 15, 2015 at 4:54 PM
To: "debb.david@gmail.com" <debb.david@gmail.com>
Cc: Tyler Schroeder <tschroed@co.whatcom.wa.us>

Good afternoon Debra,

I am writing in response to your inquiry regarding the jail flyer you received today. The flyer was produced by the DLR Group working under contract for Whatcom County. They 've been contracted for the provision of professional design services for conditional use permitting and public outreach services. They are paid out of the New Jail Project Fund.

Thank you,

Tawni Helms, PHR

Administrative Coordinator

Whatcom County Executive Office

311 Grand Avenue, Suite 108

Bellingham, WA 98225

360-778-5208

""My wish for you is that you continue. Continue to be who and how you are, to astonish a mean world with your acts of kindness…" ~Maya Angelou

Disclaimer: Public records and documents are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
201409013

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner),** agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group, Inc.

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 3rd day of September, 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. SOADY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES MAY 7, 2018

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA. My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October, 2014, before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12-31-2014

_____
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham My commission expires 12-31-14.

DESIGNER INFORMATION:

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- **.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- **.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- **.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- **.4** A legal description of the Site;
- **.5** As-built and record drawings of any existing structures at the Site;
- **.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- **.7** Owner's Project Criteria;
- **.8** Test and inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (IS0 Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract , which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 **Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 Patent and Copyright Infringement

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

DLR Group

Whatcom County

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 **Termination for Default:**
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calcula5tions
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

ID	Task Name	Duration	Start	Finish	Predec
1	**Whatcom County Jail**	**1182 days**	**Mon 9/22/14**	**Tue 4/2/19**	
2	**PHASE 1 - CUP for EPF Siting & Funding**	**226 days**	**Mon 9/22/14**	**Tue 8/4/15**	
3	NTP	0 days	Mon 9/22/14	Mon 9/22/14	
4	Information Gathering	9 days	Mon 9/22/14	Thu 10/2/14	3
5	EPF Kick Off Meeting	0 days	Thu 10/2/14	Thu 10/2/14	4
6	EPF Development	20 days	Fri 10/3/14	Thu 10/30/14	5
7	EPF Design Meeting #1	0 days	Thu 10/30/14	Thu 10/30/14	6
8	EPF Document Development	25 days	Fri 10/31/14	Thu 12/4/14	7
9	EPF Design Meeting #2	0 days	Thu 12/4/14	Thu 12/4/14	8
10	EPF Document Preparation	10 days	Fri 12/5/14	Thu 12/18/14	9
11	EPF Process Pre-Application Intake Meeting	0 days	Thu 12/18/14	Thu 12/18/14	10
12	EPF Final Document Preparation	20 days	Fri 12/19/14	Thu 1/15/15	11
13	**EPF Public Process**	**55 days**	**Thu 1/15/15**	**Thu 4/2/15**	
14	EPF Application Intake Meeting	0 days	Thu 1/15/15	Thu 1/15/15	12
15	EPF Application Initial Review & Distribution	15 days	Fri 1/16/15	Thu 2/5/15	14
16	EPF Public Meeting	0 days	Thu 2/5/15	Thu 2/5/15	15
17	EPF Departmental Review	30 days	Fri 2/6/15	Thu 3/19/15	16
18	EPF Planning Department Meeting	0 days	Thu 3/19/15	Thu 3/19/15	17
19	EPF Staff Recommendation Preparation	10 days	Fri 3/20/15	Thu 4/2/15	18
20	EPF Final Decision - City Council	0 days	Thu 4/2/15	Thu 4/2/15	19
21	**Public Funding Authorization**	**120 days**	**Tue 2/17/15**	**Tue 8/4/15**	
22	Ballot Measure Prep	80 days	Tue 2/17/15	Tue 6/9/15	23SF
23	Ballot Measure Mailers/Presentation	40 days	Tue 6/9/15	Tue 8/4/15	24FF
24	August 4, 2015 Primary	0 days	Tue 8/4/15	Tue 8/4/15	
25	**PHASE 2 - Schematic Design**	**85 days**	**Wed 8/5/15**	**Tue 12/1/15**	
26	NTP	0 days	Wed 8/5/15	Wed 8/5/15	24
27	Information Gathering	10 days	Wed 8/5/15	Tue 8/18/15	26
28	Schematic Kick Off Meeting	0 days	Tue 8/18/15	Tue 8/18/15	27
29	Schematic Development	20 days	Wed 8/19/15	Tue 9/15/15	28
30	Schematic Meeting #3	0 days	Tue 9/15/15	Tue 9/15/15	29
31	Schematic Design Development	20 days	Wed 9/16/15	Tue 10/13/15	30
32	Schematic Design Submittal Meeting #4	0 days	Tue 10/13/15	Tue 10/13/15	31
33	Complete SD Cost Estimate & Owner Review and Comment	15 days	Wed 10/14/15	Tue 11/3/15	32
34	Schematic Design Review Meeting #5 with Executive Committee	0 days	Tue 11/3/15	Tue 11/3/15	33
35	Revision & Finalization	10 days	Wed 11/4/15	Tue 11/17/15	34
36	PRESENTATION: Whatcom County Council	0 days	Tue 11/17/15	Tue 11/17/15	35
37	Schematic Design Final Submittal	10 days	Wed 11/18/15	Tue 12/1/15	36
38	**PHASE 3 - Design Development**	**100 days**	**Tue 12/1/15**	**Tue 4/19/16**	
52	**PHASE 4 - Construction Documents**	**130 days**	**Tue 4/19/16**	**Tue 10/18/16**	
64	**Permit Application Process**	**145 days**	**Tue 4/26/16**	**Tue 11/15/16**	
72	**PHASE 5 - Bidding Phase**	**60 days**	**Wed 11/16/16**	**Tue 2/7/17**	71
76	**PHASE 6 - Construction Phase**	**520 days**	**Tue 2/7/17**	**Tue 2/5/19**	
82	Occupancy	40 days	Wed 2/6/19	Tue 4/2/19	81

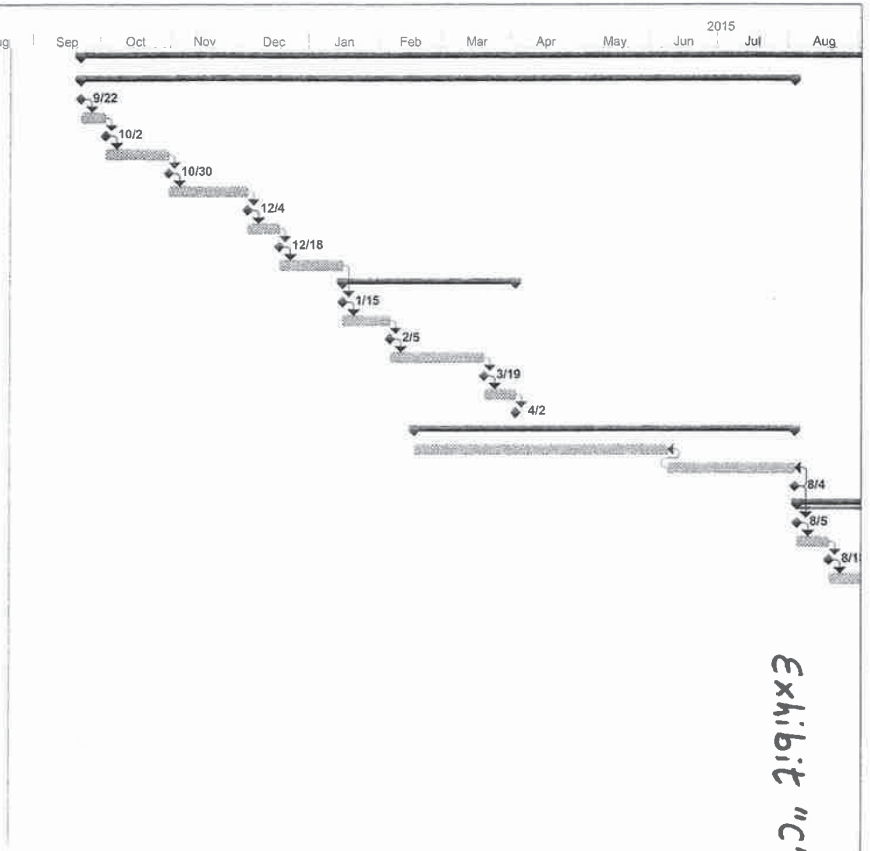


Exhibit "C"

Project: Whatcom County Jail
Date: Fri 8/22/14

Task	Project Summary	Inactive Milestone	Manual Summary Rollup	Progress
Split	External Tasks	Inactive Summary	Manual Summary	Split
Milestone	External MileTask	Manual Task	Start-only	
Summary	Inactive Task	Duration-only	Finish-only	

Printed: Fri 8/22/14

DLR Group

WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Ave. Suite #108
Bellingham, WA 98225

Jack Louws
County Executive

MEMO TO: County Council Chair
County Council Members

FROM: Jack Louws, County Executive

DATE: October 16, 2015

SUBJECT: Jail Proposition Mailer

In the DLR services contract unanimously passed by the Whatcom Council on September 30th, 2014 there was a budget allocation authorizing public outreach on the project. This activity included providing assistance in developing clear public information and developing graphics, including images of the existing facilities and renderings of the new facility. The planned public information for the project also included developing materials for presentations and mailers. The schedule in the contract included the community report concerning the ballot measure. This report is being distributed to every registered voter household in Whatcom County.

According to the PDC guidelines, "**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate;**"

> *"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

The Administration worked with the Prosecuting Attorney's office to ensure consistency with state law in regards to local government and election activities. We also worked with the Public Disclosure Commission (PDC) that has prepared guidance on this subject (http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf).

The community report is consistent with public information efforts executed in other communities, such as the recent Skagit jail/sales tax measure. The report is a fair and factual presentation of the new jail project including the background leading to its development, the laws and circumstances related to the project and relevant information from key county officials. It neither asks for support or rejection of the ballot measure.

If you have additional questions please do not hesitate to call me for additional information.

Office 360 778 5200 Fax 360 778 5201 TDD 711

LOCAL OCTOBER 15, 2015

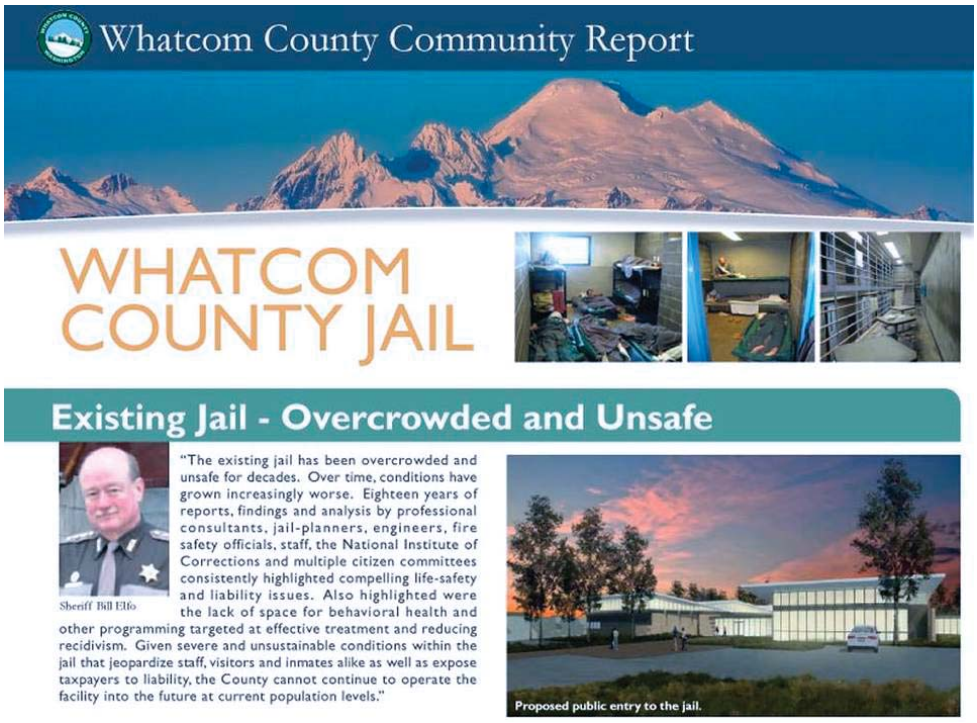
Whatcom County uses tax revenue to send mailer about jail tax measure

HIGHLIGHTS

Mailers cost $28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission



BY SAMANTHA WOHLFEIL
The Bellingham Herald

BELLINGHAM — Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

> **"I SAID THAT HAS TO BE A PHONY MAILER, IT'S A FRAUD, THERE'S NO WAY THE COUNTY WOULD SEND SOMETHING YOU ARE DESCRIBING.**
> Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per $100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, co.whatcom.wa.us, by searching for "community report mailer."

The mailers cost $28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money [AdChoices] es or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exce aims it is allowed to send out one such mailer under state guidelines.

First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an $825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

> **"IT GIVES PEOPLE INFORMATION TO DECIDE WHETHER OR NOT THEY SUPPORT IT. I FEEL IT FOLLOWS THE INTENT OF THE LAW.**
> Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, “It gives people information to decide whether or not they support it. I feel it follows the intent of the law.”

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

“Whenever an informational flier is presented, you talk about what is the current situation,” Gibson said. “People are providing factual information, and doing so obviously within a context. In this case, it’s people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed.”

Mann said the legality of the flier wasn’t important, but that it’s a matter of principle.

“Whether you’re a Republican or a Democrat or an independent, it’s just so far over the line,” Mann said. “Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical.”

Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

“In this mailed piece it says this is Proposition 1,” May said. “The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting.”

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don’t have a lot of time to do background research.

“If they get that piece of mail and say, ‘Yes, I want to vote yes for the jail,’ and it says in giant letters ‘Proposition 1,’ a single-issue voter may say ‘I’ve got to make sure to vote yes for Proposition 1,’” May said. “That could boost the district-only vote by hundreds or even thousands of votes, so that’s a huge issue.”

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn’t think it was an issue.

“I’m assuming that every voter reads the language of the proposition upon which they are voting,” he said. “I think that’s a fair assumption. The reason we put the language in there is so that people will read it.”

> **“**
>
> **WHAT WE WANT MOST IS FOR PEOPLE TO BE INFORMED ON THE ELECTION AND NOT CONFUSED ON ANYTHING, INCLUDING ALL OF THESE (CHARTER) AMENDMENTS.**
>
> Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year’s Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

“I had to work with the PDC to make sure we were in compliance with their guidelines for our forums,” Baumgart said. “The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines.”

Though the flier isn’t explicitly in favor of the ballot measure, Baumgart said, “it definitely gives the one side of the ballot measure but doesn’t give the other side. There were both sides presented at our forums.”

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

“So that’s not just an educational piece for the community, it’s a targeted mailing to voters,” she said. “That gives me pause.”

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

“At the same time, I think that’s a heck of a lot of money,” he said.

Crabtree said he believed the piece was meant to inform the public about what’s on the ballot, and he would stand by the Republicans’ endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

“I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don’t know,” Crabtree said. “But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments.”

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.

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Comments

15 Comments Sort by Newest

Add a comment...

Janell Wilson · Mt. Baker Jr. Sr. High School
This flyer made my decision, Vote. NO
Wasn't sure which way to go,
Jack was trying to bully The City of Bellingham too. Thanks Kelly and City Council for holding your own.
Now this misuse of Public funds.
Like · Reply · 2 · 2 hrs

Barbara Perry · Western Washington University
Read the latest Tip Johnson (past City Counsel man) and David Camp (previous business accountant) articles on line.
Like · Reply · 1 · 3 hrs

Sj Robson

People can read those articles on www.nwcitizen.com

Like · Reply · 2 hrs

Barbara Perry · Western Washington University

Please Elpho, Louws, and McEachran, answer the following questions:
1.Why was jail property originally assessed at $30,212 an acre, then $44,329 an acre and finally, 6 acres bought for $149,488 an acre? Why are records lost from this transaction?
2. In 2000, Louws buys 6 acres of land “catty corner” to jail, assessed at $110,000 for $660,000
an acre? Why isn’t original land owner found?
3. In 2010, land adjacent to jail property is assessed at $240,413 an acre. Why is it assessed so high? Isn’t there a conflict of interest in Louw’s purchase of land and then selling land to Homeland Secur... See More

Unlike · Reply · 4 · 3 hrs · Edited

Sj Robson

First, Sam Crawford, Matthew Goggins, and David Mccluskey are all simply deflecting from the subject of the article by trying to voice their opinions on the jail proposal. The Herald article above is about our county jurisdiction sending out a mailer that is a promo piece for the jail disguised as a "community report," paid for with taxpayer funds. Also, this mailer just happened to land in voters' mailboxes at the same timing ballots arrived.

The new jail mailer does not appear to represent "an objective and fair presentation of the facts." That is the language used in the PDC Interpretatio... See More

Like · Reply · 3 · 23 hrs

Matthew Goggins · Regis High School

Sj Robson, thank you for reading my comment and taking the time to write a thoughtful response. I'd like to respond to some of the points you've raised.

Ken Mann is the person who raised the topic of the jail. He complained to the county paper of record about the mailer that the county sent out about the jail proposal.

It is true that I focused on the underlying issue, the jail, the need to replace the jail, and the sales tax ballot measure. But I also made a point of addressing Ken Mann's complaint first.

I agree with you and Councilmember Mann that ethical norms are the highest priori... See More

Like · Reply · 9 hrs · Edited

Sj Robson

Matthew Goggins: The underlying issue is not whether we need a new jail or not. It's whether our County Executive has acted improperly, by basically issuing a taxpayer-funded promo piece mailer for his desired proposal for a sales tax-funded new jail. A jail plan that many people think is not a good plan, and there was no "other perspective" presented in that mailer.

Also, you wrote: "The reason you seem to be disappointed in my remarks is because I don't think the mailer necessarily violated any ethical norms."

To clarify, you did not remark about the mailer having "violated" or not having "violated any ethical norms" in your original comment. My issue with your remarks was that you ignored the subject matter of the article, to then use the opportunity to advocate for the new jail plan instead, and I believe you did that to distract/deflect from the reality of what is very likely an improperly-issued and improperly-funded County jail mailer.

Like · Reply · 8 hrs

Matthew Goggins · Regis High School

Sj Robson Actually, I just explained to you exactly why I said what I said. If I don't think there was a violation, either in law or in ethics, then I don't think the mailer is an issue. When you made your reply, that wasn't clear to you, so I expanded my comments to make that clear.

So if I am correct, and the mailer is not an issue, then the only issue remaining is the jail. I ask you again to please consider voting for the sales tax ballot measure, and to give your support for the new jail Thank you for sharing your jugdement on the mailer, we will just have to agree to disagree on that question.

Like · Reply · 2 · 5 hrs

Show 1 more reply in this thread

Delaine Clizbe

I can not believe the Bellingham Herald chose to highlight this publication. We are still waiting for them to let the citizens of Bellingham and Whatcom County know that Resource for Sustainable Communities did not in fact file the required information with the Public Disclosure Commission about their campaign spending on Proposition 9 in a timely manner. Why is Ken Mann not outraged about that? Well because, he was in the back room with Resources when they plotted their campaign.

Like · Reply · 5 · Oct 17, 2015 6:53pm

Sam Crawford · Works at Westside Building Supply

Matthew Goggins I concur with your eloquent observations.

The more-than-a-decade road to this "Jail Facilities Sales and Use Tax" measure on my ballot in front of me has been paved with extremely careful and thoughtful analysis. Probably to a costly fault because of how long it has taken, but on this decision it's time to "move on" with clarity regarding what this facility construction and operation will mean to our collective future.

Across many years, every consideration has been vetted and measured regarding finance, location, operation, meeting social service needs with broader programmi... See More

Like · Reply · 5 · Oct 17, 2015 6:32pm

Fahri Ugurlu · Istanbul iktisadi ticari ilimler akademisi

Sir, Your coast per inmate will increase from 60 dollars per day to 130 dollars per day(south King couty jail coast) This jail will take the county to bankrupt.. Where is the increase on operating coast will come from?

Unlike · Reply · 1 · 11 hrs

Sam Crawford · Works at Westside Building Supply

Fahri Ugurlu The per diem will go from $80/day in 2015 to $100/day in 2019. (http://co.whatcom.wa.us/DocumentCenter/Home/View/8767) These budgeted amounts are anticipated by the proposed sales tax measure before us. The cities of Whatcom County (except for the politically-charged Bellingham City Council) have all signed off on the proposed budget, for which they will be responsible for these per-diem costs for their anticipated respective non-felon arrests. This tax measure creates the funding to make all of this happen. Saying it will bankrupt the county is ludicrous. This specific proposed facility will not be funded or built if this measure does not pass.

Like · Reply · 1 · 10 hrs · Edited

Fahri Ugurlu · Istanbul iktisadi ticari ilimler akademisi

Sam Crawford The jail modeled after the south king couny jail. And their coast is 130-135 dollars, what makes you think you can run the jail much less than the others?

Like · Reply · 10 hrs

Show 3 more replies in this thread

David Mccluskey · Embry-Riddle FL/AZ

Vote to reject prop 9. Prop 9 is the same as this mailer. you really dont know what your going to end up getting.

Like · Reply · 1 · Oct 17, 2015 2:22pm

Matthew Goggins · Regis High School

Ken Mann is in favor of limited government, and government officials acting with self-restraint and humility. He is setting a high, but needed, standard for our county. We should all agree to help our government officials live up to that standard in the decisions they make and the actions they take. Thank you for highlighting this important principle, Councilmember Mann.

David McEachran has been our prosecuting attorney -- not an attorney in the office, but the actual lead elected prosecutor -- for about forty years now.

Bill Elfo is remarkably effective, well-educated, and highly popul... See More

Like · Reply · 3 · Oct 17, 2015 2:18pm · Edited

Francie Smart · Independent Wellness Consultant at Exectutive Coordinator Market America

WHO pays $149,000 an acre for property that's about 1/2 wetlands and has been assessed at $48,000 and acre? and WHY? That's where the new HUGE, $137MILLION dollar jail is to be built. Why not build on one ot the many other, very suitable peiced of property the County already owns? WHO is the true beneficiary? It doesn't feel like those you mentioned are ethical at all, with the exeption of Mann, who does appear to be highly ethical.

Unlike · Reply · 2 · 12 hrs

David Camp

These are the people we pay to uphold the law in Whatcom Cty. and they cheat to make sure their tax-and-spend boondoggle gets passed? This stinks to high heaven!

Unlike · Reply · 8 · Oct 17, 2015 11:15am

Lori Wilkinson Laigaie · Bellingham, Washington

Please state how they "cheated".

Like · Reply · 3 · Oct 17, 2015 8:26pm

Robert Cunningham · Bellingham, Washington

As long as the flyer is factual, it is the duty of government to inform the public. One needs facts to arrive at decisions. Do those who are offended by the flyer wish the facts to NOT be presented to the voters? Do they feel threatened by the public being informed? I wonder why?

Like · Reply · 6 · Oct 17, 2015 10:39am

Fahri Ugurlu · Istanbul iktisadi ticari ilimler akademisi

Flayers mailed only the register voters not the public. You miss that.

Like · Reply · 3 · Oct 17, 2015 1:13pm

Robert Cunningham · Bellingham, Washington

Fahri Ugurlu No I did not, if you don't vote, you deserve whatever you get!

Like · Reply · 4 · Oct 17, 2015 2:11pm

Fahri Ugurlu · Istanbul iktisadi ticari ilimler akademisi

Robert Cunningham

Like · Reply · 11 hrs

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by **Doug Starcher** on **Wed, 21 Oct 2015 at 1:32 PM** via **Portal**
File a Formal Complaint - Douglas A Starcher

On October 16, 2015 I received a mailing from Whatcom County, the *'Whatcom County Community Report'*. I've been a registered voter in Whatcom County since 1976 and have never received a Community Report from Whatcom County. I believe this mailer crossed the line from informational to promotional in several egregious ways.

The PDC's 1/12/15 memo to local government regarding ballot measure communication from local government states:
RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from…making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.

You also advised that "an "objective and fair presentation of the facts" must **avoid** the following:
• Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)"

RESPONDENT:
Whatcom County
311 Grand Avenue
Bellingham, WA 98225

ALLEGED VIOLATIONS:

First, I write to express an urgent concern:
The mailer misstates the ballot number throughout. The Jail Sales Tax is Proposition No. 2015-1 yet they call it 'Proposition 1' throughout this mail piece.**At no place in this mailer is the title of Proposition No. 2015-1 accurately stated.**

Unfortunately, there is a Proposition 1 on our ballot. This is a proposed Charter Review Amendment for District-Only voting strongly supported by the Whatcom Republican Party. I

believe it's likely that this mailer will result in confusion and in more votes for the District-Only voting measure. The three elected officials shown on this mailer are all members of the Republican Party. It's also notable that the District Attorney who advised county administration on the legality of this jail mail piece is the same District Attorney who advised the Charter Review Commission and wrote the ballot language for Proposition 1. Surely he was aware that these are different propositions? When asked by the Bellingham Herald he responded that "I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

Bottom line: he knew that Proposition 1 was District-Only voting and allowed the wording on the mailer.

Whatcom County's mailer fails to meet the standards for "an objective and fair presentation of the facts for each ballot measure." As stated by the PDC, "such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

The mailer fails to state the cost of the jail. PDC advises that "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition…" yet the total cost and the amount expected to be raised via this new sales tax aren't stated in the mailer. *If that's not the purpose of the mailer, then why did they send it to every registered voter at great cost?*

The mailer fails to disclose that if this sales tax passes, our community's capacity to tax ourselves for public safety purposes will be capped for the next 30 years. With other competing public safety priorities, that information is critical to enable the public to make an informed decision. *This is a significant trade-off that is ignored in the rush to promote the jail.*

The majority of information in this mailer is unrelated to the actual jail tax before voters and so appears to be there for promotional purposes only:

a. The claim from Jack Louws that Whatcom County spends $11.5-million on behavioral health might not be accurate as most of that money is believed to be pass-through grant money or for unrelated programs (such as emergency planning) and regardless, none of the 0.2% jail sales tax will go towards that $11.5 million.

b. The section from Dave McEachron implies that mental health and chemical dependency will be treated in the jail yet no previous jail plans or communication have stated that. There will be medical beds but this jail is for incarceration, not treatment. McEachron connects what many in the community have described as a vital need for mental health and substance abuse treatment with funding for the jail when *there is no connection between this proposed tax and mental health or substance abuse treatment.*

c. The paragraph on the top of the back page titled 'Citizens and Experts Develop Plan for the new Whatcom County Jail' cherry picks favorable information and leaves out the recommendations Whatcom County ignored. For example, the Citizen Committee

referenced also recommended that a mental health triage facility be part of this proposal yet the County administration has failed to include that as part of this plan.

d. While the mailer speaks of the jail sales tax going towards inmate mental health programs, today mental health programs - even those within the jail - are paid for out of a mental health sales tax and that's likely to continue. This information seems inaccurate. As if to underscore that false statement, the site plan shows no area for mental health treatment.

e. The comparison chart of current sales tax rates from Puget Sound region fails to show sales tax rates that are lower (there are many) and only includes those that are the same or higher. That omission makes this section promotional in nature.

The mailer contains photographs that are either intended to trigger an emotional response or that are clearly self-promotional.

a. Photographs of prisoners are used and appear intended to trigger an emotional response from the reader. These photos seem gratuitous in nature.

b. Three photographs of County Administrators are used and appear to be self-promotional in nature. The photographs add no information about the jail tax and two of the three are on the ballot this year, one in a contested race.

http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf

http://www.bellinghamherald.com/news/local/article39560088.html

by **Marissa McGrath** on **Wed, 21 Oct 2015 at 2:45 PM** via **Portal**
File a Formal Complaint - Marissa McGrath

It appears that Whatcom County broke the law by sending out the jail mailer to advertise for the new jail. The fact that Jack Louws and Bill Elfo got free publicity on the county's dime during the home stretch of their reelection campaigns certainly isn't ethical either and may also be illegal. This is disheartening to say the least.

Please see PDC's January 12, 2015 memo to local government regarding ballot measure communication from local government states below:

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from…making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."
In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.
You also advised that "an "objective and fair presentation of the facts" must avoid the following:
• Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)"
RESPONDENT:
Whatcom County
311 Grand Avenue
Bellingham, WA 98225

Whatcom County Community Report

WHATCOM COUNTY JAIL

Existing Jail - Overcrowded and Unsafe

Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."

Proposed public entry to the jail.

by **Sara Holodnick** on **Wed, 21 Oct 2015 at 2:50 PM** via **Portal**
File a Formal Complaint - Sara Holodnick

I would like to issue a formal complaint against the election mailer regarding the proposed jail sent out by Jack Louws and Bill Elfo on the taxpayer's dime. As a small business owner in Whatcom County, I am deeply troubled by this unethical tactic. I expect my elected officials to play by the rules.

From a January 12, 2015 memo:
"RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from…making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."
In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.
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NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED

Via Email and Regular Mail, [redacted]

TO: Washington Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

TO: Whatcom County Prosecutor, David S. McEachran (Hand
311 Grand Avenue, Suite 201
Bellingham, WA 98225

TO: Public Disclosure Commission
711 Capital Way #206
PO Box 40908
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B.** Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

> No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.[1] In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

[1] http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."[2] In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;[3]
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

[2] October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders (lawenforcementleaders.org).

[3] http://www.whatcomcounty.us/DocumentCenter/Home/View/827; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; and http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration[4];
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

[4] In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);

20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly $120,000,000 that will be raised by the proposed county tax);
24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly $120,000,000) will be unavailable for alternatives to incarceration.
29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);[5]

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the us of which is restricted in the January 12, 2015, letter.

[5] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

B. The Flyer contains false statements, conflations, and gives the voters false impressions.

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.[6] The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...," "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

[6] https://aclu-wa.org/cases/montes-v-city-yakima
https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act
http://www.yakimaherald.com/special_projects/aclu/

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

C. The Flyer is not normal, customary, and regular conduct.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a $27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.[7]

WAC 390-05-273 (Definition of normal and regular conduct) provides,

> Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

[7] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal

> i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.

Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

> A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Rosalinda Guillen

Whatcom County Resident and Voter,
filed October 30, 2015, only on her own behalf

Contact Information for Legal Representative:

Junga Subedar
P.O. Box 2444,
Bellingham, WA 98227

360-746-2745

CC: ACLU,

WSBA,

Washington State Commission on Hispanic Affairs,

Washington State Commission on African-American Affairs,

Washington State Commission on Native American Affairs;

Lummi Nation;

Brothers and Sisters of Whatcom County;

Bellingham Unitarian Fellowship;

Senator Rick Larson;

Senator Maria Cantwell;

State Representatives;

Whatcom Human Rights Task Force;

Ralph Munro Institute, WWU Professor Vernon Johnson

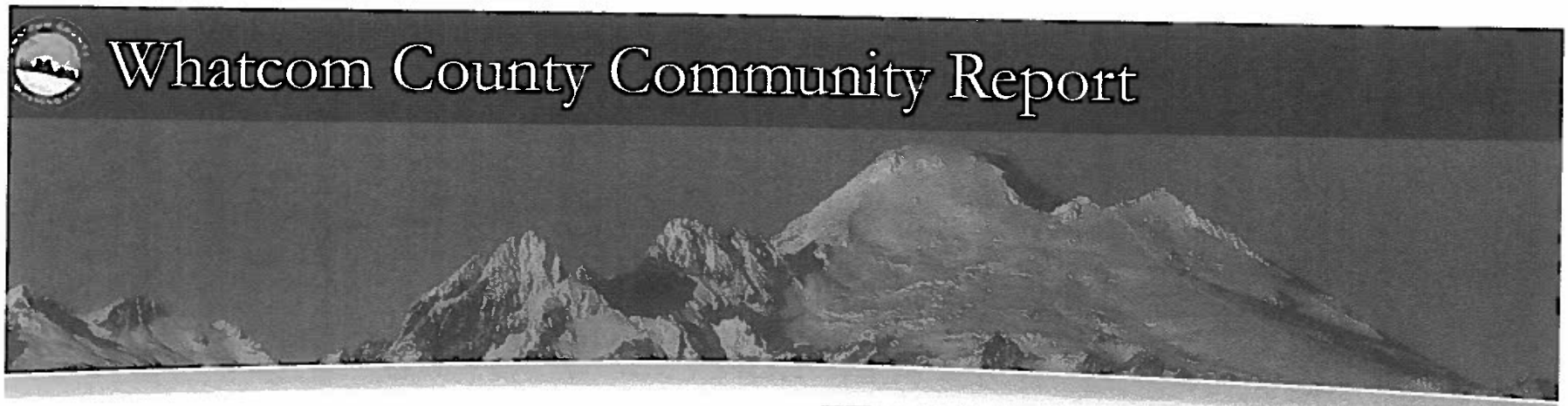
Western Washington University, Fairhaven College

Fairhaven College, Woodring College of Education

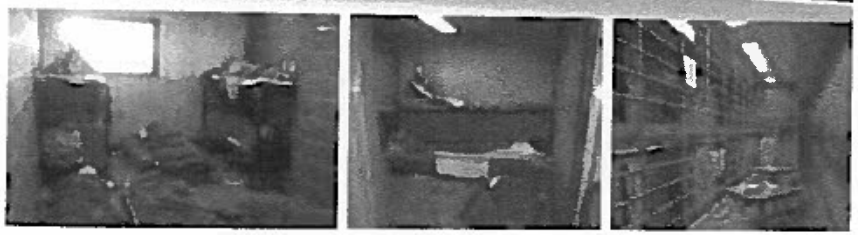
EXHIBIT A

WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225

Whatcom County Community Report



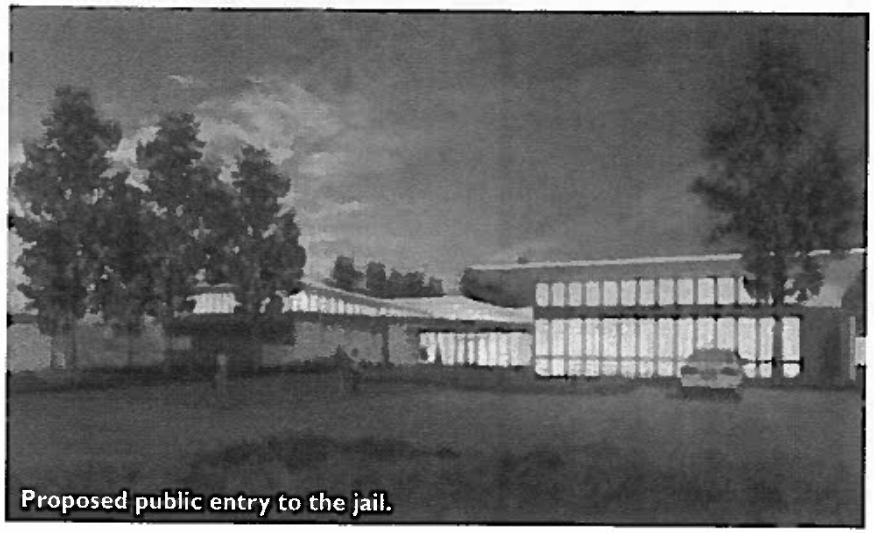
WHATCOM COUNTY JAIL



Existing Jail - Overcrowded and Unsafe

Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

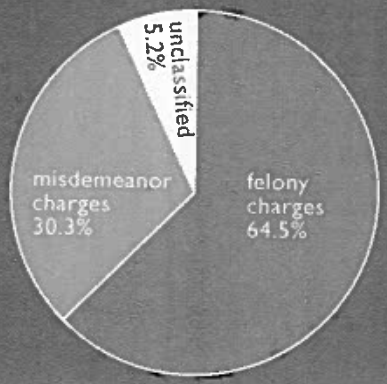
The County cannot continue to operate the facility into the future at current population levels.

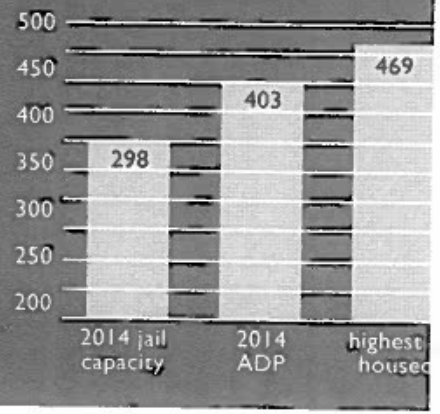
Existing Whatcom County Jail has limited renovation and no expansion options.

The current jailwas built in 1984 to house 148 inmates, remodel to house 212. Total jail capacity, including interim jail on Divisi Street, is 298. The average daily jail population (ADP) in 2014 w 403. According to statewide comparison,

Our jail population is at 137% percen of capacity, 4th highest in the state.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





Occupy Jail

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

e Ballot Measure

COM COUNTY,
NGTON PROPOSITION NUMBER 1
CILITIES SALES AND USE TAX

hatcom County Council passed Resolution 2015-024 ning a proposition authorizing a sales and use tax facilities. This proposition would impose a sales : tax of two tenths of one percent (20 cents for ;100) for constructing and operating jail facilities for s charged or convicted of misdemeanor and felony d for other public safety purposes, as authorized V 82.14.450. Half of this tax (10 cents for every would expire upon repayment of bonds issued to the facilities, no later than 30 years after issuance.

l this proposition be:

ved _____

ed _____

ent Sales Tax Rates Puget Sound Region

rp. Whatcom County	.085
ham	.087
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The proposition before County vo would add sales and use tax at the of 0.2% for construction and oper jail facilities, adult corrections pro including inmate mental health pro and for other public safety purpos as authorized by RCW 82.14.450.

❑ ❑ ❑

State law requires the County to provide for a jail. The County Cou has determined the current jail do not meet existing and future need

❑ ❑ ❑

If Proposition #1 passes, the Coun and participating cities will build a replacement jail on Labounty Roac in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction a new jail facility will house felons misdemeanants plus space for beh health, medical and administration

[redacted] or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

ılized training for public safety personal;
ıl and community programs focused on prevention,
ıent, intervention and family support programs;
le court/detention behavioral health services;
ıunity mental health and substance
eatment and opiate outreach;
family treatment and mental health courts;
ıless housing services;
ct court probation specialized behavioral health unit;
ive case management, supportive housing,
ıe Rainbow Recovery Center;
ıns' relief services;
triage center;
havioral health services;
ernative programs, including electronic home
tion, work release, and jail work crews.

geted-for Alternatives

, Alternative and Diversion Programs
00

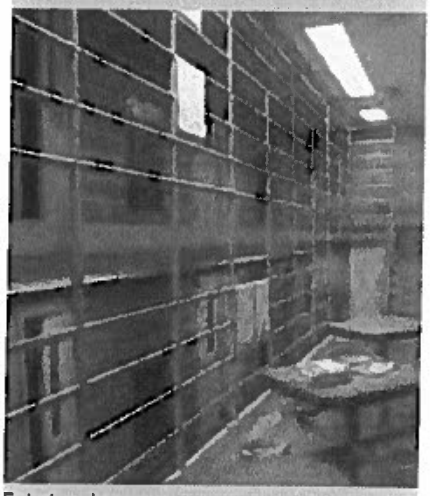
ions net programs
00

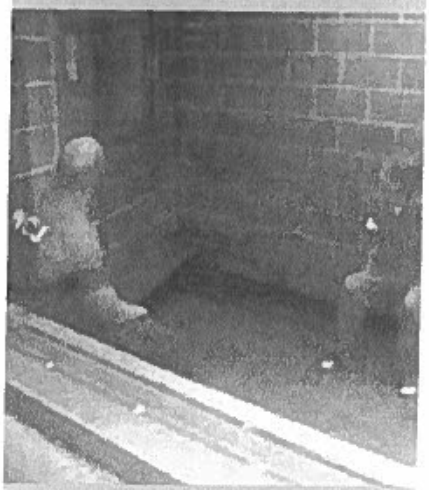
"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space

Existing cell.

Existing shower room converted to cell.

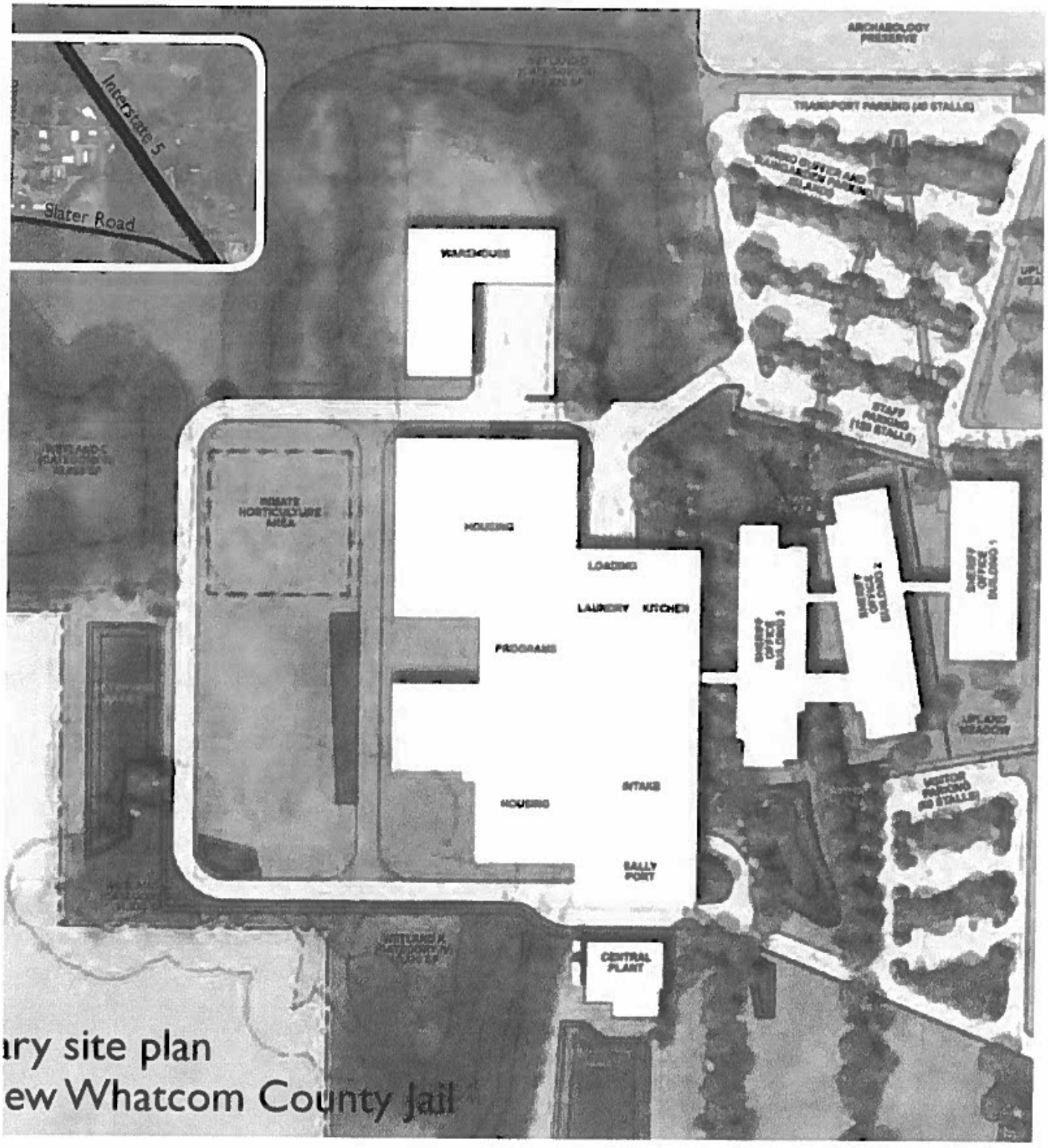

Existing dayroom.


Existing inmate programs space.

ideo visiting

Central control room.

- Building site design to accommoc future growth.



ıry site plan
ew Whatcom County Jail

EXHIBIT B

Mailers cost $28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

Cover of the Whatcom County Community Report sent to residents. Whatcom County Courtesy to The Bellingham Herald
i

By Samantha Wohlfeil

The Bellingham Herald

- LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORYBELLINGHAM

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per $100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, co.whatcom.wa.us, by searching for "community report mailer."

The mailers cost $28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an $825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.

EXHIBIT C

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
201409013

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group, Inc.

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 23rd day of September, 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. SOADY
COMMISSION EXPIRES
NOTARY
PUBLIC
STATE OF WASHINGTON

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA. My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October 2014 before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12-31-2014

_____
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 12-31-14.

DESIGNER INFORMATION:

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- **.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- **.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- **.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- **.4** A legal description of the Site;
- **.5** As-built and record drawings of any existing structures at the Site;
- **.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- **.7** Owner's Project Criteria;
- **.8** Test and inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract , which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 Waiver of Subrogation: Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 Patent and Copyright Infringement

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

DLR Group Whatcom County

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 **Termination for Default:**
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 <u>Venue and Choice of Law:</u>
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calcula5tions
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

Exhibit "C"
Whatcom County Jail
PHASE 1 - CUP for EPF Siting & Funding
NTP
Information Gathering
EPF Kick Off Meeting
EPF Development
EPF Design Meeting #1
EPF Document Development
EPF Design Meeting #2
EPF Document Preparation
EPF Process Pre-Application Intake Meeting
EPF Final Document Preparation
EPF Public Process
EPF Application Intake Meeting
EPF Application Initial Review & Disprovion
EPF Public Meeting
EPF Departmental Review
EPF Planning Department Meeting
EPF Staff Recommendation Preparation
EPF Final Decision - City Council
Public Funding Authorization
Ballot Measure Prep
Ballot Measure Makers/Presentation
August 4, 2015 Primary
PHASE 2 - Schematic Design
NTP
Information Gathering
Schematic Kick Off Meeting
Schematic Development
Schematic Meeting #3
Schematic Design Development
Schematic Design Submittal Meeting #4
Complete SD Cost Estimate & Owner Review and Comment
Schematic Design Review Meeting #5 with Executive Committee
Revision & Finalization
PRESENTATION: Whatcom County Council
Schematic Design Final Submittal
PHASE 3 - Design Development
PHASE 4 - Construction Documents
Permit Application Process
PHASE 5 - Bidding Phase
PHASE 6 - Construction Phase
Occupancy
Project: Whatcom County Jail
Date: Fri 8/22/14
Task
Split
Milestone
Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
Progress
Split
Printed: Fri 8/22/14
Page 1 of 1
DLR Group

NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED

Via Email and Regular Mail, and Registered Mail, Return Receipt Requested

TO: Washington Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

TO: Whatcom County Prosecutor, David S. McEachran
311 Grand Avenue, Suite 201
Bellingham, WA 98225

TO: Public Disclosure Commission
711 Capital Way #206
PO Box 40908
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

> No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.[1] In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

[1] http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."[2] In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;[3]
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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[2] October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders (lawenforcementleaders.org).

[3] http://www.whatcomcounty.us/DocumentCenter/Home/View/827; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; and http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration[4];
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

[4] In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);

20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly $120,000,000 that will be raised by the proposed county tax);
24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly $120,000,000) will be unavailable for alternatives to incarceration.
29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);[5]

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the us of which is restricted in the January 12, 2015, letter.

[5] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

B. The Flyer contains false statements, conflations, and gives the voters false impressions.

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.[6] The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...," "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

[6] https://aclu-wa.org/cases/montes-v-city-yakima
https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act
http://www.yakimaherald.com/special_projects/aclu/

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

C. The Flyer is not normal, customary, and regular conduct.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a $27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.[7]

WAC 390-05-273 (Definition of normal and regular conduct) provides,

> Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

[7] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal

> i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.

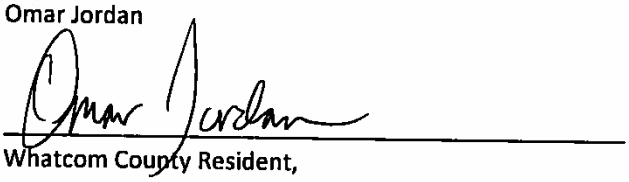
Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

> A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Omar Jordan



Whatcom County Resident,
filed October 30, 2015, only on his own behalf
(but also happens to be Steering Committee Member of the Bellingham Racial Justice Coalition)

Contact Information for Legal Representative:

Edward Alexander
Law Office of Edward S. Alexander
114 West Magnolia, Suite 400
Bellingham, WA 98225

360-392-2872

CC: NAACP,

ACLU,

WSBA,

Washington State Commission on Hispanic Affairs,

Washington State Commission on African-American Affairs,

Washington State Commission on Native American Affairs;

Lummi Nation;

Brothers and Sisters of Whatcom County;

Bellingham Unitarian Fellowship;

Senator Rick Larson;

Senator Maria Cantwell;

State Representatives;

Whatcom Human Rights Task Force;

Ralph Munro Institute, WWU Professor Vernon Johnson

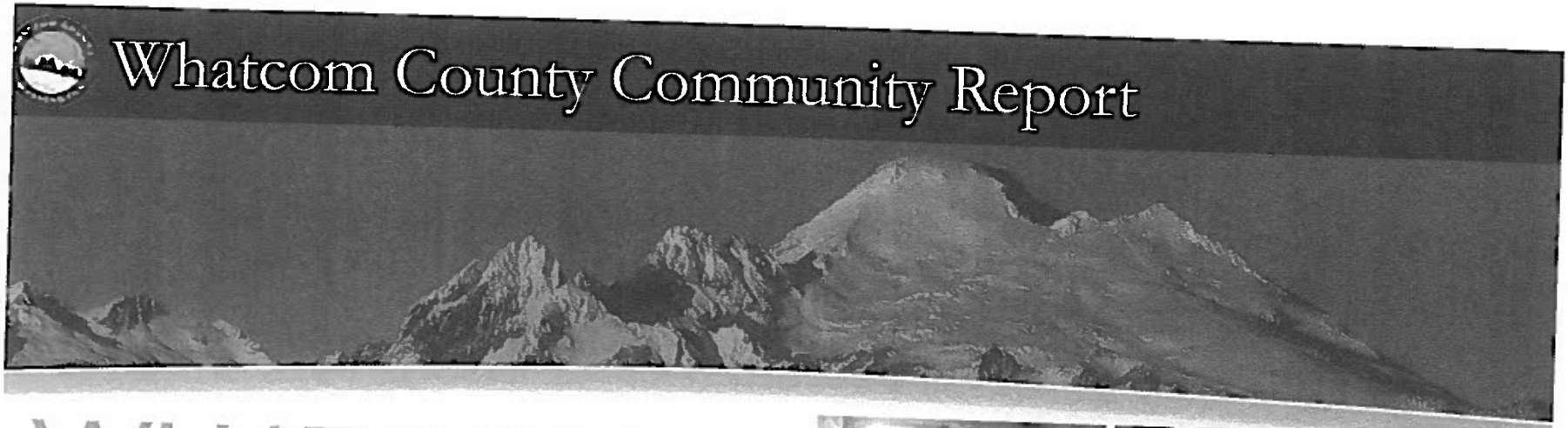
Western Washington University, Fairhaven College

Fairhaven College, Woodring College of Education

EXHIBIT A

WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225

Whatcom County Community Report



WHATCOM
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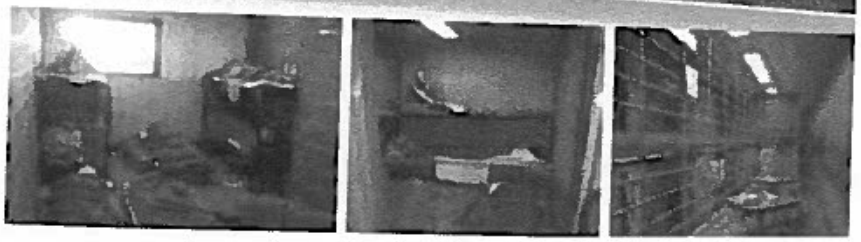
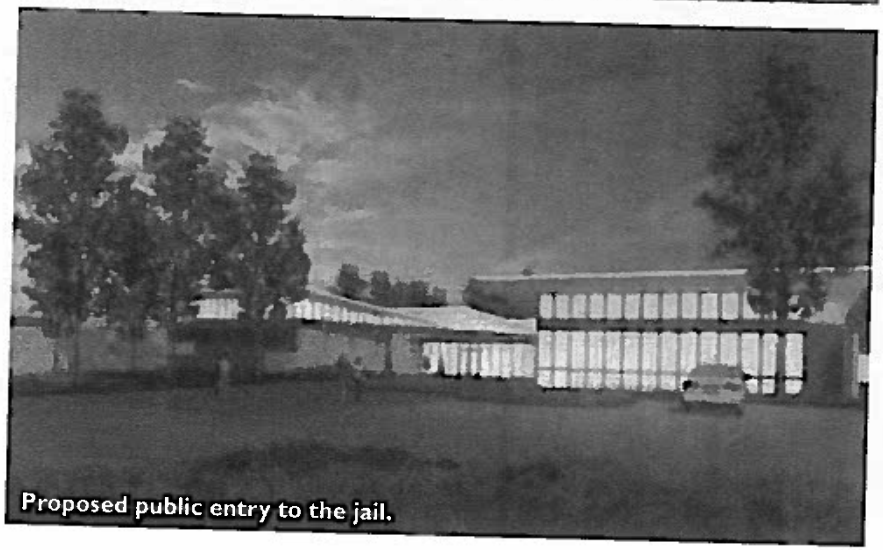


Existing Jail - Overcrowded and Unsafe

Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

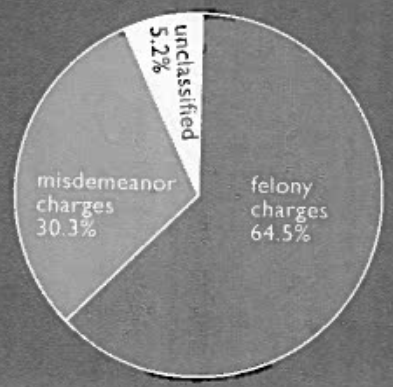
The County cannot continue to operate the facility into the future at current population levels.

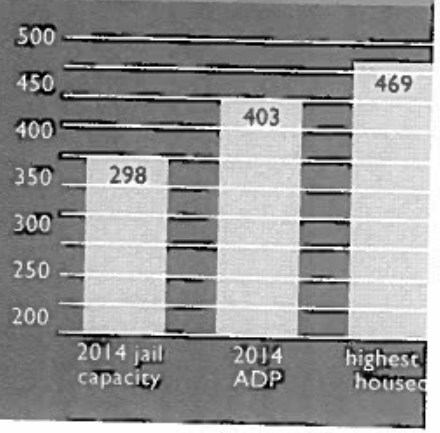
Existing Whatcom County Jail has limited renovation and no expansion options.

The current jailwas built in 1984 to house 148 inmates, remodele to house 212. Total jail capacity, including interim jail on Divisio Street, is 298. The average daily jail population (ADP) in 2014 w 403. According to statewide comparison,

Our jail population is at 137% percen of capacity, 4th highest in the state.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





Occupy Jail

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

e Ballot Measure

COM COUNTY,
NGTON PROPOSITION NUMBER 1
CILITIES SALES AND USE TAX

hatcom County Council passed Resolution 2015-024 ning a proposition authorizing a sales and use tax facilities. This proposition would impose a sales e tax of two tenths of one percent (20 cents for 100) for constructing and operating jail facilities for s charged or convicted of misdemeanor and felony d for other public safety purposes, as authorized V 82.14.450. Half of this tax (10 cents for every would expire upon repayment of bonds issued to the facilities, no later than 30 years after issuance.

l this proposition be:

ved _____

ed _____

The proposition before County vo would add sales and use tax at the of 0.2% for construction and oper jail facilities, adult corrections pro including inmate mental health pro and for other public safety purpos as authorized by RCW 82.14.450.

❑ ❑ ❑

State law requires the County to provide for a jail. The County Cou has determined the current jail do not meet existing and future need

❑ ❑ ❑

If Proposition #1 passes, the Coun and participating cities will build a replacement jail on Labounty Roac in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction a new jail facility will house felons misdemeanants plus space for beh health, medical and administration

ent Sales Tax Rates Puget Sound Region

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[redacted] or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

ılized training for public safety personal;
ıl and community programs focused on prevention,
ıent, intervention and family support programs;
le court/detention behavioral health services;
ıunity mental health and substance
eatment and opiate outreach;
family treatment and mental health courts;
:less housing services;
ct court probation specialized behavioral health unit;
.ive case management, supportive housing,
ıe Rainbow Recovery Center;
ıns' relief services;
triage center;
havioral health services;
.ernative programs, including electronic home
tion, work release, and jail work crews.

geted-for Alternatives

, Alternative and Diversion Programs
00

:ions net programs
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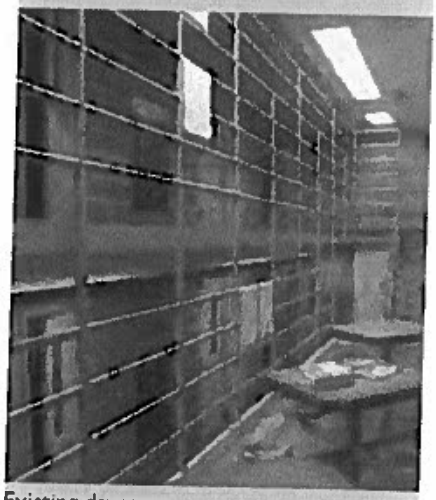
"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space

Existing cell.

Existing shower room converted to cell.



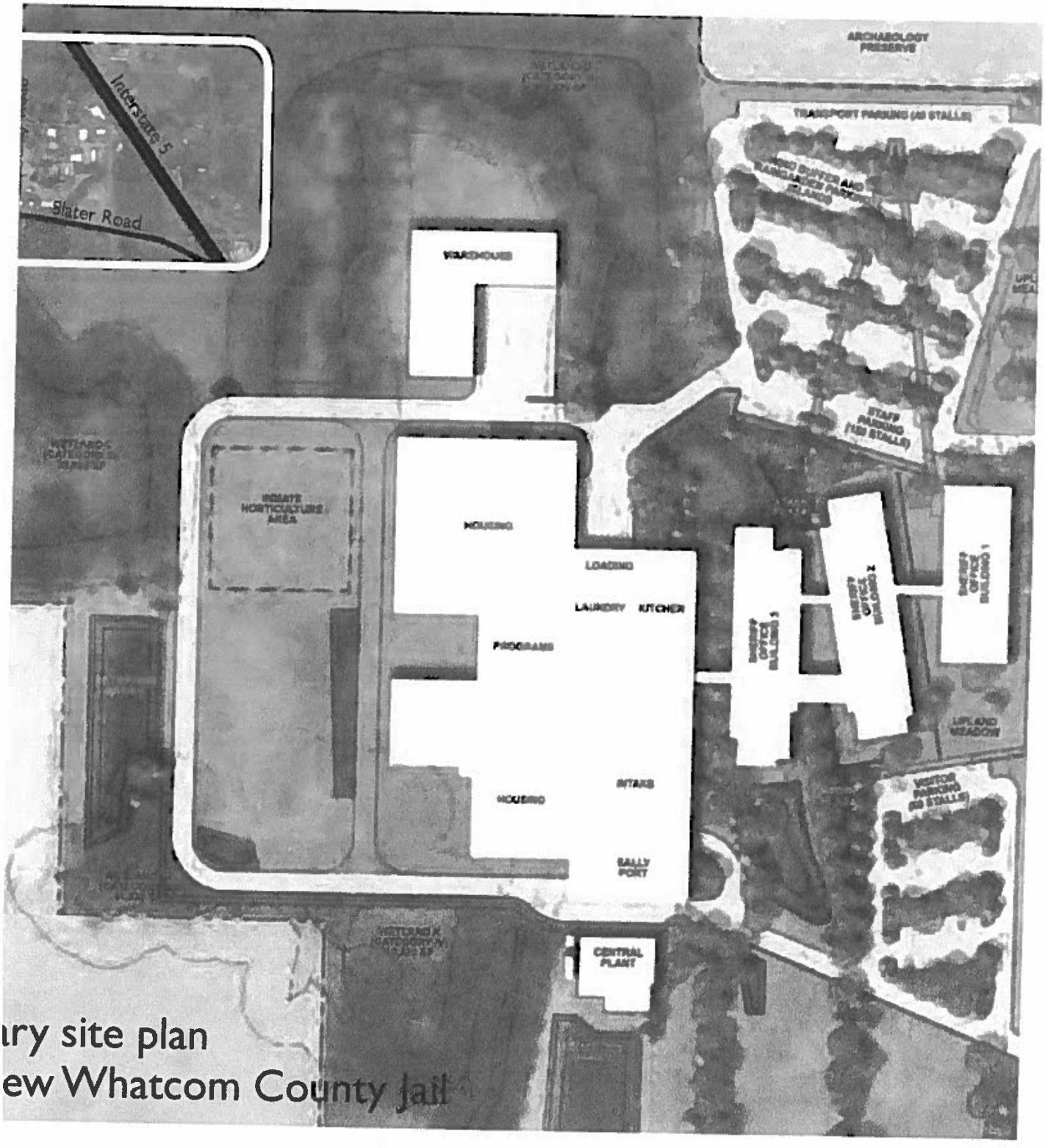
Existing dayroom.

Existing inmate programs space.

ideo visiting

Central control room.

- Building site design to accommoc future growth.



ıry site plan
ew Whatcom County Jail

EXHIBIT B

Mailers cost $28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

Cover of the Whatcom County Community Report sent to residents. Whatcom County Courtesy to The Bellingham Herald

i

By Samantha Wohlfeil

The Bellingham Herald

o LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORYBELLINGHAM

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per $100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, co.whatcom.wa.us, by searching for "community report mailer."

The mailers cost $28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an $825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.

EXHIBIT C

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
201409013

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group Inc

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 3rd day of September 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. SOADY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA. My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October 2014 before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC COMMISSION EXPIRES 12-31-2014 STATE OF WASHINGTON

_____
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham My commission expires 12-31-14.

DESIGNER INFORMATION:

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- **.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- **.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- **.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- **.4** A legal description of the Site;
- **.5** As-built and record drawings of any existing structures at the Site;
- **.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- **.7** Owner's Project Criteria;
- **.8** Test and inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract, which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 **Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 **Patent and Copyright Infringement**

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

DLR Group Whatcom County

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 **Termination for Default:**
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:
The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:
Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 <u>Venue and Choice of Law:</u>
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calcula5tions
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

Exhibit "C"
Whatcom County Jail
Project: Whatcom County Jail
Date: Fri 9/22/14
Task
Split
Milestone
Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
Progress
Split
Page 1 of 1
DLR Group

NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED

Via Email and Regular Mail [redacted]

TO: Washington Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

TO: Whatcom County Prosecutor, David S. McEachran (Hand
311 Grand Avenue, Suite 201
Bellingham, WA 98225

TO: Public Disclosure Commission
711 Capital Way #206
PO Box 40908
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

> No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.[1] In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

[1] http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."[2] In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C.** Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;[3]
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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[2] October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders (lawenforcementleaders.org).

[3] http://www.whatcomcounty.us/DocumentCenter/Home/View/827; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; and http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration[4];
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

[4] In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);

20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly $120,000,000 that will be raised by the proposed county tax);
24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly $120,000,000) will be unavailable for alternatives to incarceration.
29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);[5]

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the us of which is restricted in the January 12, 2015, letter.

[5] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

B. The Flyer contains false statements, conflations, and gives the voters false impressions.

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.[6] The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...," "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

[6] https://aclu-wa.org/cases/montes-v-city-yakima
https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act
http://www.yakimaherald.com/special_projects/aclu/

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

C. The Flyer is not normal, customary, and regular conduct.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a $27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.[7]

WAC 390-05-273 (Definition of normal and regular conduct) provides,

> Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

[7] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal

> i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.

Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

> A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Kim Harris

Whatcom County Resident and voter,
filed October 30, 2015, only on her own behalf
(but also happens to be Steering Committee Member of the Bellingham Racial Justice Coalition)

Contact Information for Legal Representative:

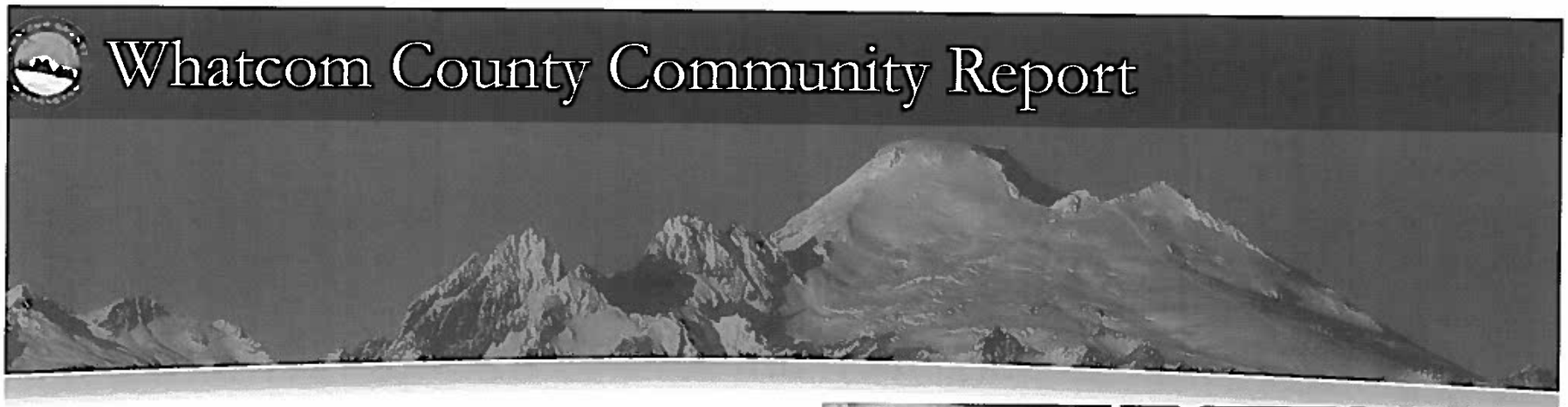
Edward Alexander
Law Office of Edward S. Alexander
114 West Magnolia, Suite 400
Bellingham, WA 98225

360-392-2872

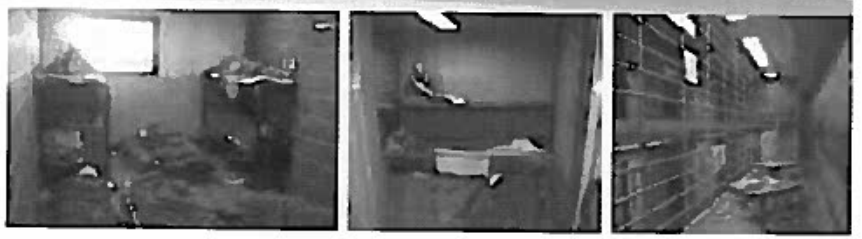
EXHIBIT A

WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225

Whatcom County Community Report



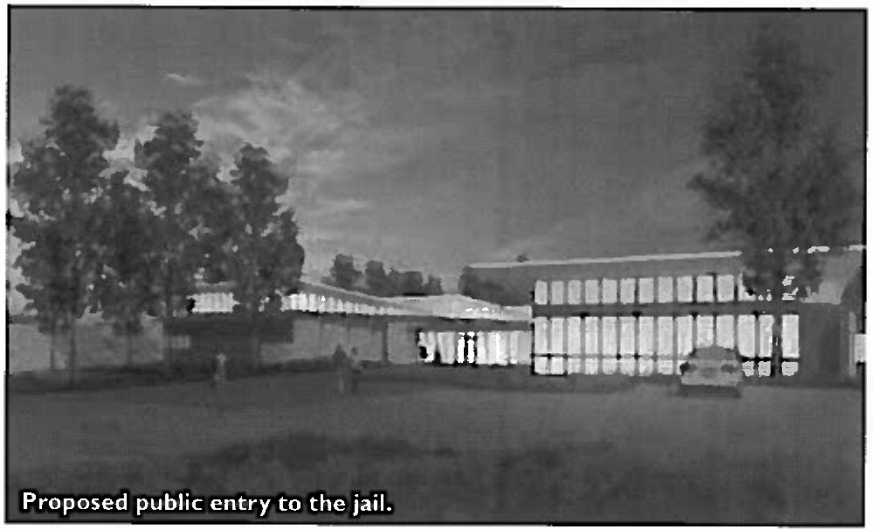
WHATCOM COUNTY JAIL



Existing Jail - Overcrowded and Unsafe

Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

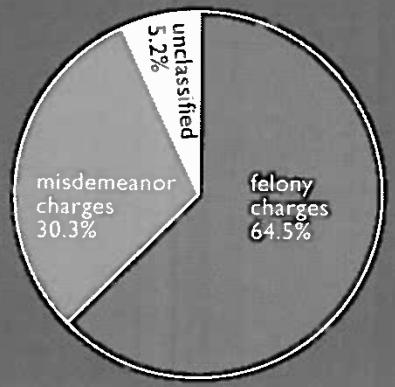
The County cannot continue to operate the facility into the future at current population levels.

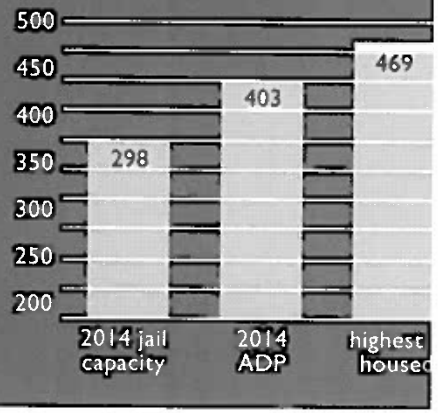
Existing Whatcom County Jail has limited renovation and no expansion options.

The current jailwas built in 1984 to house 148 inmates, remodele to house 212. Total jail capacity, including interim jail on Divisio Street, is 298. The average daily jail population (ADP) in 2014 w 403. According to statewide comparison,

Our jail population is at 137% percen of capacity, 4th highest in the state.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





Occupy Jail

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

e Ballot Measure

COM COUNTY,
NGTON PROPOSITION NUMBER 1
CILITIES SALES AND USE TAX

hatcom County Council passed Resolution 2015-024 ning a proposition authorizing a sales and use tax facilities. This proposition would impose a sales : tax of two tenths of one percent (20 cents for ;100) for constructing and operating jail facilities for ; charged or convicted of misdemeanor and felony d for other public safety purposes, as authorized V 82.14.450. Half of this tax (10 cents for every would expire upon repayment of bonds issued to the facilities, no later than 30 years after issuance.

l this proposition be:

ved _____

ed _____

ent Sales Tax Rates Puget Sound Region

orp. Whatcom County	.085
ham	.087
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	.087
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Vernon	.085
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The proposition before County vo would add sales and use tax at the of 0.2% for construction and oper jail facilities, adult corrections pro including inmate mental health pro and for other public safety purpos as authorized by RCW 82.14.450.

❑ ❑ ❑

State law requires the County to provide for a jail. The County Cou has determined the current jail do not meet existing and future need

❑ ❑ ❑

If Proposition #1 passes, the Coun and participating cities will build a replacement jail on Labounty Roac in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction a new jail facility will house felons misdemeanants plus space for beh health, medical and administration

[redacted] or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- ılized training for public safety personal;
- ıl and community programs focused on prevention, ıent, intervention and family support programs;
- le court/detention behavioral health services;
- ıunity mental health and substance eatment and opiate outreach;
- family treatment and mental health courts;
- :less housing services;
- ct court probation specialized behavioral health unit;
- ive case management, supportive housing, ıe Rainbow Recovery Center;
- ıns' relief services;
- triage center;
- havioral health services;
- ernative programs, including electronic home tion, work release, and jail work crews.

geted-for Alternatives

, Alternative and Diversion Programs
00

:ions net programs
00

"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space

Existing cell.

Existing shower room converted to cell.

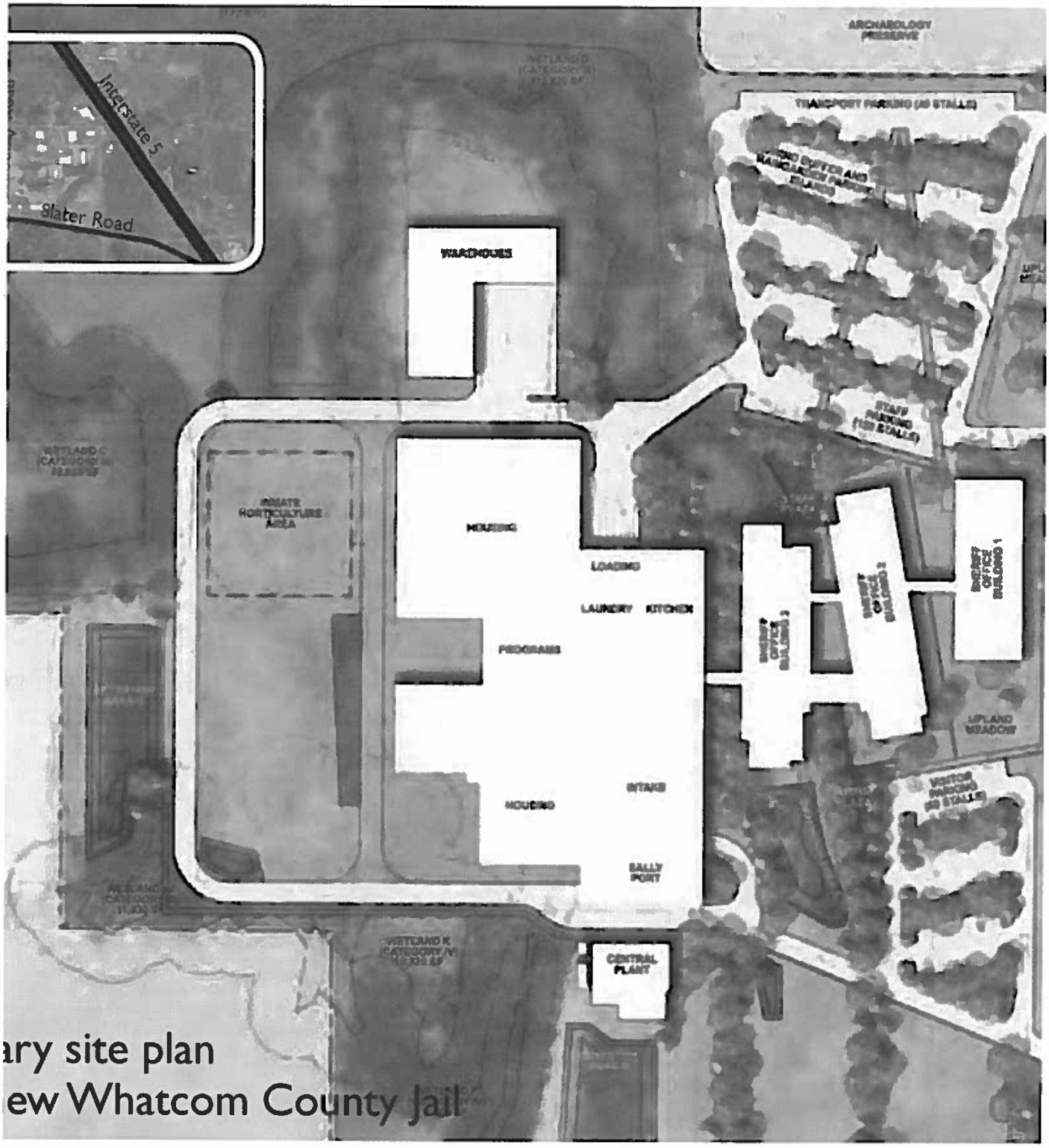
Existing dayroom.

Existing inmate programs space.

ideo visiting

Central control room.

- Building site design to accommoc future growth.



ary site plan
ew Whatcom County Jail

EXHIBIT B

Mailers cost $28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

Cover of the Whatcom County Community Report sent to residents. Whatcom County Courtesy to The Bellingham Herald
i

By Samantha Wohlfeil

The Bellingham Herald

- LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORYBELLINGHAM

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per $100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, co.whatcom.wa.us, by searching for "community report mailer."

The mailers cost $28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an $825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.

EXHIBIT C

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
201409013

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group, Inc.

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 23rd day of September 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. SOADY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA. My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October 2014 before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12-31-2014

_____
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham My commission expires 12-31-14.

DESIGNER INFORMATION:

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- **.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- **.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- **.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- **.4** A legal description of the Site;
- **.5** As-built and record drawings of any existing structures at the Site;
- **.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- **.7** Owner's Project Criteria;
- **.8** Test and inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract , which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 Waiver of Subrogation: Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 Patent and Copyright Infringement

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . l above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

DLR Group Whatcom County

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 <u>Termination for Default:</u>
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 <u>Venue and Choice of Law:</u>
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calcula5tions
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

Exhibit "C"
Whatcom County Jail
PHASE 1 - CUP for EPF Siting & Funding
NTP
Information Gathering
EPF Kick Off Meeting
EPF Development
EPF Design Meeting #1
EPF Document Development
EPF Design Meeting #2
EPF Document Preparation
EPF Process Pre-Application Intake Meeting
EPF Final Document Preparation
EPF Public Process
EPF Application Intake Meeting
EPF Application Initial Review & Disbmrsction
EPF Public Meeting
EPF Departmental Review
EPF Planning Department Meeting
EPF Staff Recommendation Preparation
EPF Final Decision - City Council
Public Funding Authorization
Ballot Measure Prep
Ballot Measure Mailers/Presentation
August 4, 2015 Primary
PHASE 2 - Schematic Design
NTP
Information Gathering
Schematic Kick Off Meeting
Schematic Development
Schematic Meeting #3
Schematic Design Development
Schematic Design Submittal Meeting #4
Complete SD Cost Estimate & Owner Review and Comment
Schematic Design Review Meeting #5 with Executive Committee
Revision & Finalization
PRESENTATION: Whatcom County Council
Schematic Design Final Submittal
PHASE 3 - Design Development
PHASE 4 - Construction Documents
Permit Application Process
PHASE 5 - Bidding Phase
PHASE 6 - Construction Phase
Occupancy
Project: Whatcom County Jail
Date: Fri 8/22/14
Task
Split
Milestone
Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
Progress
Split
Printed: Fri 8/22/14
Page 1 of 1
DLR Group

NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED

Via Email and Regular Mail, [redacted]

TO: Washington Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

TO: Whatcom County Prosecutor, David S. McEachran (Hand
311 Grand Avenue, Suite 201
Bellingham, WA 98225

TO: Public Disclosure Commission
711 Capital Way #206
PO Box 40908
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

> No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

> any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.[1] In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

[1] http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."[2] In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;[3]
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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[2] October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders (lawenforcementleaders.org).

[3] http://www.whatcomcounty.us/DocumentCenter/Home/View/827; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; and http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration[4];
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

[4] In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);

20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly $120,000,000 that will be raised by the proposed county tax);
24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly $120,000,000) will be unavailable for alternatives to incarceration.
29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);[5]

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the us of which is restricted in the January 12, 2015, letter.

[5] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

B. The Flyer contains false statements, conflations, and gives the voters false impressions.

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.[6] The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...," "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

[6] https://aclu-wa.org/cases/montes-v-city-yakima
https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act
http://www.yakimaherald.com/special_projects/aclu/

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

C. The Flyer is not normal, customary, and regular conduct.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a $27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.[7]

WAC 390-05-273 (Definition of normal and regular conduct) provides,

> Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

[7] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal

> i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.

Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

> A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Maria E (Maru) Mora Villalpando

Undocumented Whatcom County Resident,
filed October 30, 2015, only on her own behalf
(but also happens to be Director of Latino Advocacy, LLC)

Contact Information for Legal Representative:

Junga Subedar
P.O. Box 2444,
Bellingham, WA 98227

360-746-2745

CC: ACLU,

WSBA,

Washington State Commission on Hispanic Affairs,

Washington State Commission on African-American Affairs,

Washington State Commission on Native American Affairs;

Lummi Nation;

Brothers and Sisters of Whatcom County;

Bellingham Unitarian Fellowship;

Senator Rick Larson;

Senator Maria Cantwell;

State Representatives;

Whatcom Human Rights Task Force;

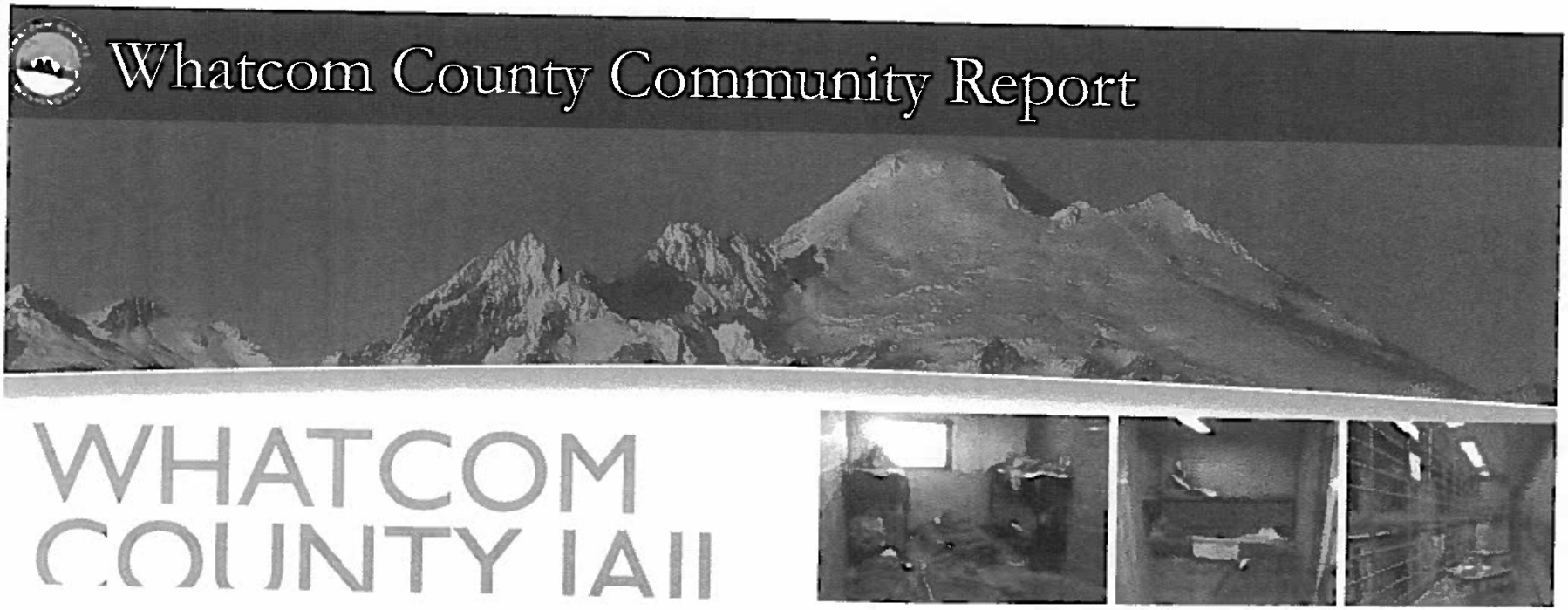
Ralph Munro Institute, WWU Professor Vernon Johnson

Western Washington University, Fairhaven College

Fairhaven College, Woodring College of Education

EXHIBIT A

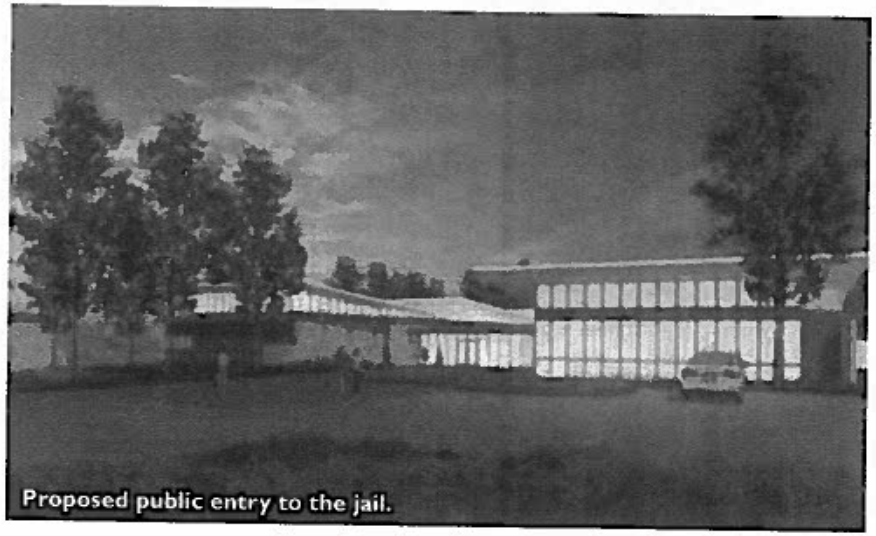
WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225



Existing Jail - Overcrowded and Unsafe

Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

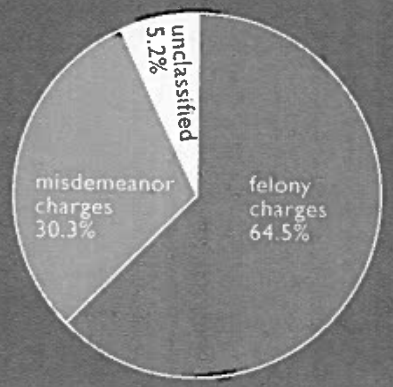
The County cannot continue to operate the facility into the future at current population levels.

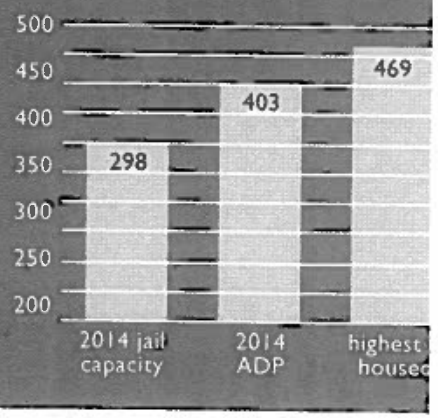
Existing Whatcom County Jail has limited renovation and no expansion options.

The current jailwas built in 1984 to house 148 inmates, remodele to house 212. Total jail capacity, including interim jail on Divisio Street, is 298. The average daily jail population (ADP) in 2014 w 403. According to statewide comparison,

Our jail population is at 137% percen of capacity, 4th highest in the state.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





Occupy Jail

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

e Ballot Measure

COM COUNTY,
NGTON PROPOSITION NUMBER 1
CILITIES SALES AND USE TAX

hatcom County Council passed Resolution 2015-024 ning a proposition authorizing a sales and use tax facilities. This proposition would impose a sales tax of two tenths of one percent (20 cents for 100) for constructing and operating jail facilities for s charged or convicted of misdemeanor and felony d for other public safety purposes, as authorized W 82.14.450. Half of this tax (10 cents for every would expire upon repayment of bonds issued to the facilities, no later than 30 years after issuance.

l this proposition be:

ved _____

ed _____

ent Sales Tax Rates Puget Sound Region

rp. Whatcom County	.085
ham	.087
	.085
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	.087
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gton	.085
Vernon	.085
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The proposition before County vo would add sales and use tax at the of 0.2% for construction and oper jail facilities, adult corrections pro including inmate mental health pro and for other public safety purpos as authorized by RCW 82.14.450.

❑ ❑ ❑

State law requires the County to provide for a jail. The County Cou has determined the current jail do not meet existing and future need

❑ ❑ ❑

If Proposition #1 passes, the Coun and participating cities will build a replacement jail on Labounty Roac in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction a new jail facility will house felons misdemeanants plus space for beh health, medical and administration

[redacted] or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

.ouws

ılized training for public safety personal;
ıl and community programs focused on prevention,
ıent, intervention and family support programs;
le court/detention behavioral health services;
ıunity mental health and substance
eatment and opiate outreach;
family treatment and mental health courts;
:less housing services;
ct court probation specialized behavioral health unit;
ive case management, supportive housing,
ıe Rainbow Recovery Center;
ıns' relief services;
triage center;
havioral health services;
ernative programs, including electronic home
tion, work release, and jail work crews.

Existing cell.

Existing shower room converted to cell.

Existing dayroom.

Existing inmate programs space.

geted-for Alternatives

, Alternative and Diversion Programs
00

ions net programs
00

"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space

ry site plan
ew Whatcom County Jail

ideo visiting

Central control room.

- Building site design to accommoc
  future growth.

EXHIBIT B

Mailers cost $28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

Cover of the Whatcom County Community Report sent to residents. Whatcom County Courtesy to The Bellingham Herald
i

By Samantha Wohlfeil

The Bellingham Herald

- LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORYBELLINGHAM

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per $100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, co.whatcom.wa.us, by searching for "community report mailer."

The mailers cost $28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an $825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.

EXHIBIT C

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
201409013

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group, Inc.

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 23rd day of September 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. SOADY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA. My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October 2014 before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12-31-2014

_____
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham My commission expires 12-31-14.

DESIGNER INFORMATION

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project. **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- **.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- **.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- **.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- **.4** A legal description of the Site;
- **.5** As-built and record drawings of any existing structures at the Site;
- **.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- **.7** Owner's Project Criteria;
- **.8** Test and Inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract , which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 **Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 **Patent and Copyright Infringement**

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

DLR Group

Whatcom County

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 **Termination for Default:**
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 <u>Venue and Choice of Law:</u>
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calcula5tions
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

Exhibit "C"
Whatcom County Jail
Project: Whatcom County Jail
Date: Fri 9/22/14
Printed: Fri 9/22/14
Page 1 of 1
DLR Group

NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED

Via Email and Regular Mail, and Registered Mail, Return Receipt Requested

TO: Washington Attorney General Bob Ferguson
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

TO: Whatcom County Prosecutor, David S. McEachran (Hand
311 Grand Avenue, Suite 201
Bellingham, WA 98225

TO: Public Disclosure Commission
711 Capital Way #206
PO Box 40908
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

> No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.[1] In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

[1] http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."[2] In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C.** Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;[3]
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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[2] October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders (lawenforcementleaders.org).

[3] http://www.whatcomcounty.us/DocumentCenter/Home/View/827; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning; and http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration[4];
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

[4] In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);

20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly $120,000,000 that will be raised by the proposed county tax);
24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly $120,000,000) will be unavailable for alternatives to incarceration.
29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);[5]

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the us of which is restricted in the January 12, 2015, letter.

[5] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

B. The Flyer contains false statements, conflations, and gives the voters false impressions.

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.[6] The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...," "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

[6] https://aclu-wa.org/cases/montes-v-city-yakima
https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act
http://www.yakimaherald.com/special_projects/aclu/

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally ($12.3 and $11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

C. The Flyer is not normal, customary, and regular conduct.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a $27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.[7]

WAC 390-05-273 (Definition of normal and regular conduct) provides,

> Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

[7] NW Citizen article by Tip Johnson, http://www.nwcitizen.com/entry/louwsy-jail-deal

> i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.

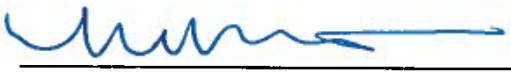
Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

> A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Neah Monteiro



Whatcom County Resident,
filed October 30, 2015, only on her own behalf
(but also happens to be Steering Committee Member of the Bellingham Racial Justice Coalition)

Contact Information for Legal Representative:

Edward Alexander
Law Office of Edward S. Alexander
114 West Magnolia, Suite 400
Bellingham, WA 98225

360-392-2872

CC: NAACP,

ACLU,

WSBA,

Washington State Commission on Hispanic Affairs,

Washington State Commission on African-American Affairs,

Washington State Commission on Native American Affairs;

Lummi Nation;

Brothers and Sisters of Whatcom County;

Bellingham Unitarian Fellowship;

Senator Rick Larson;

Senator Maria Cantwell;

State Representatives;

Whatcom Human Rights Task Force;

Ralph Munro Institute, WWU Professor Vernon Johnson

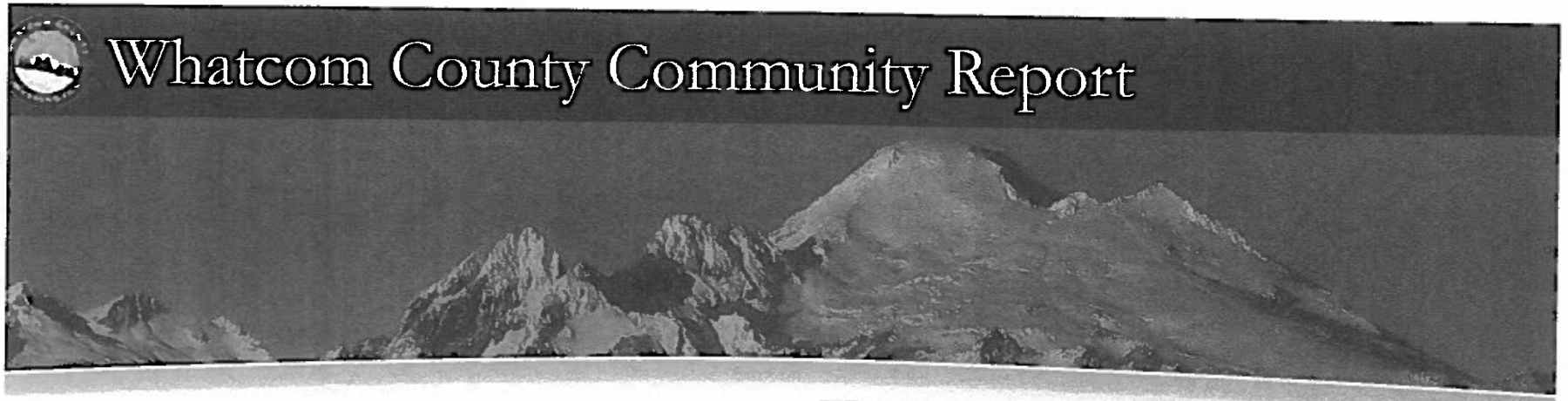
Western Washington University, Fairhaven College

Fairhaven College, Woodring College of Education

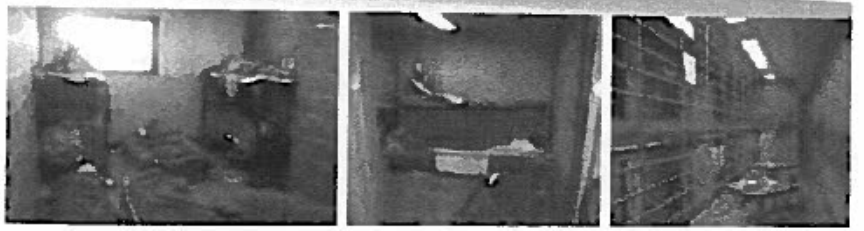
EXHIBIT A

WHATCOM COUNTY
311 GRAND STREET
BELLINGHAM, WA 98225

Whatcom County Community Report



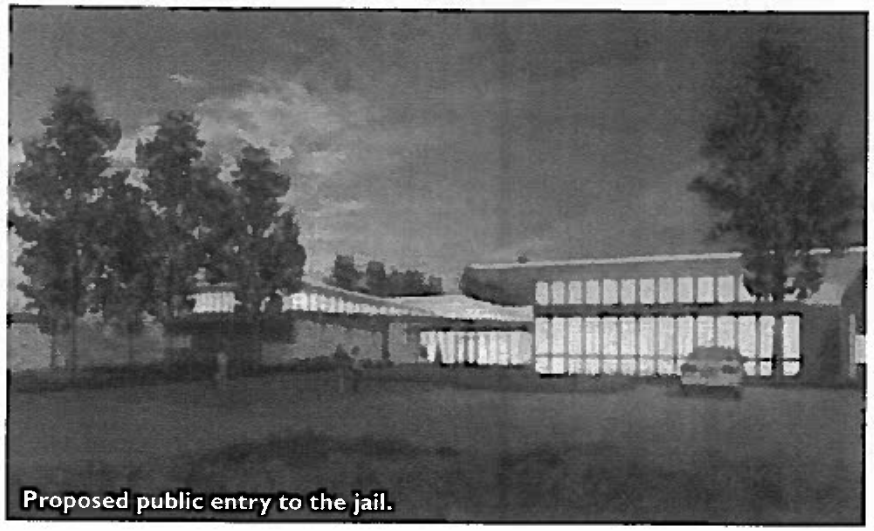
WHATCOM
COUNTY IAII



Existing Jail - Overcrowded and Unsafe

Sheriff Bill Ilfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

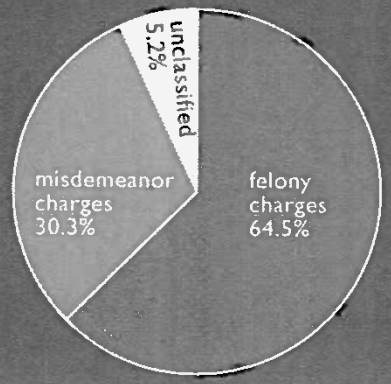
The County cannot continue to operate the facility into the future at current population levels.

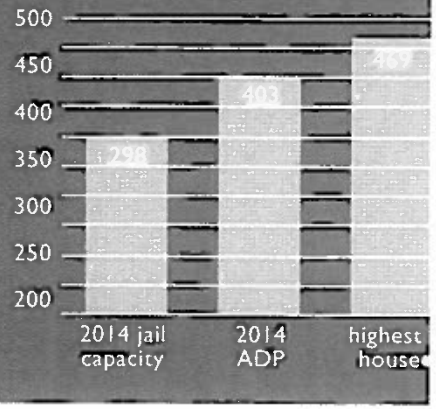
Existing Whatcom County Jail has limited renovation and no expansion options.

The current jailwas built in 1984 to house 148 inmates, remodele to house 212. Total jail capacity, including interim jail on Divisio Street, is 298. The average daily jail population (ADP) in 2014 w 403. According to statewide comparison,

Our jail population is at 137% percen of capacity, 4th highest in the state.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.





Occupy Jail

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

e Ballot Measure

COM COUNTY,
NGTON PROPOSITION NUMBER 1
CILITIES SALES AND USE TAX

hatcom County Council passed Resolution 2015-024 ning a proposition authorizing a sales and use tax facilities. This proposition would impose a sales e tax of two tenths of one percent (20 cents for 100) for constructing and operating jail facilities for s charged or convicted of misdemeanor and felony d for other public safety purposes, as authorized V 82.14.450. Half of this tax (10 cents for every would expire upon repayment of bonds issued to the facilities, no later than 30 years after issuance.

l this proposition be:

ved _____

ed _____

The proposition before County vo would add sales and use tax at the of 0.2% for construction and oper jail facilities, adult corrections pro including inmate mental health pro and for other public safety purpos as authorized by RCW 82.14.450.

❑ ❑ ❑

State law requires the County to provide for a jail. The County Cou has determined the current jail do not meet existing and future need

❑ ❑ ❑

If Proposition #1 passes, the Coun and participating cities will build a replacement jail on Labounty Roac in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction a new jail facility will house felons misdemeanants plus space for beh health, medical and administration

ent Sales Tax Rates Puget Sound Region

rp. Whatcom County	.085
ham	.087
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Vernon	.085
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ie	.095
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a	.095

[redacted] or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

ılized training for public safety personal;
ıl and community programs focused on prevention,
ıent, intervention and family support programs;
le court/detention behavioral health services;
ıunity mental health and substance
eatment and opiate outreach;
family treatment and mental health courts;
ıless housing services;
ct court probation specialized behavioral health unit;
ive case management, supportive housing,
ıe Rainbow Recovery Center;
ıns' relief services;
triage center;
havioral health services;
ernative programs, including electronic home
tion, work release, and jail work crews.

geted-for Alternatives

, Alternative and Diversion Programs
00

ions net programs
00

"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space

Existing cell.

Existing shower room converted to cell.

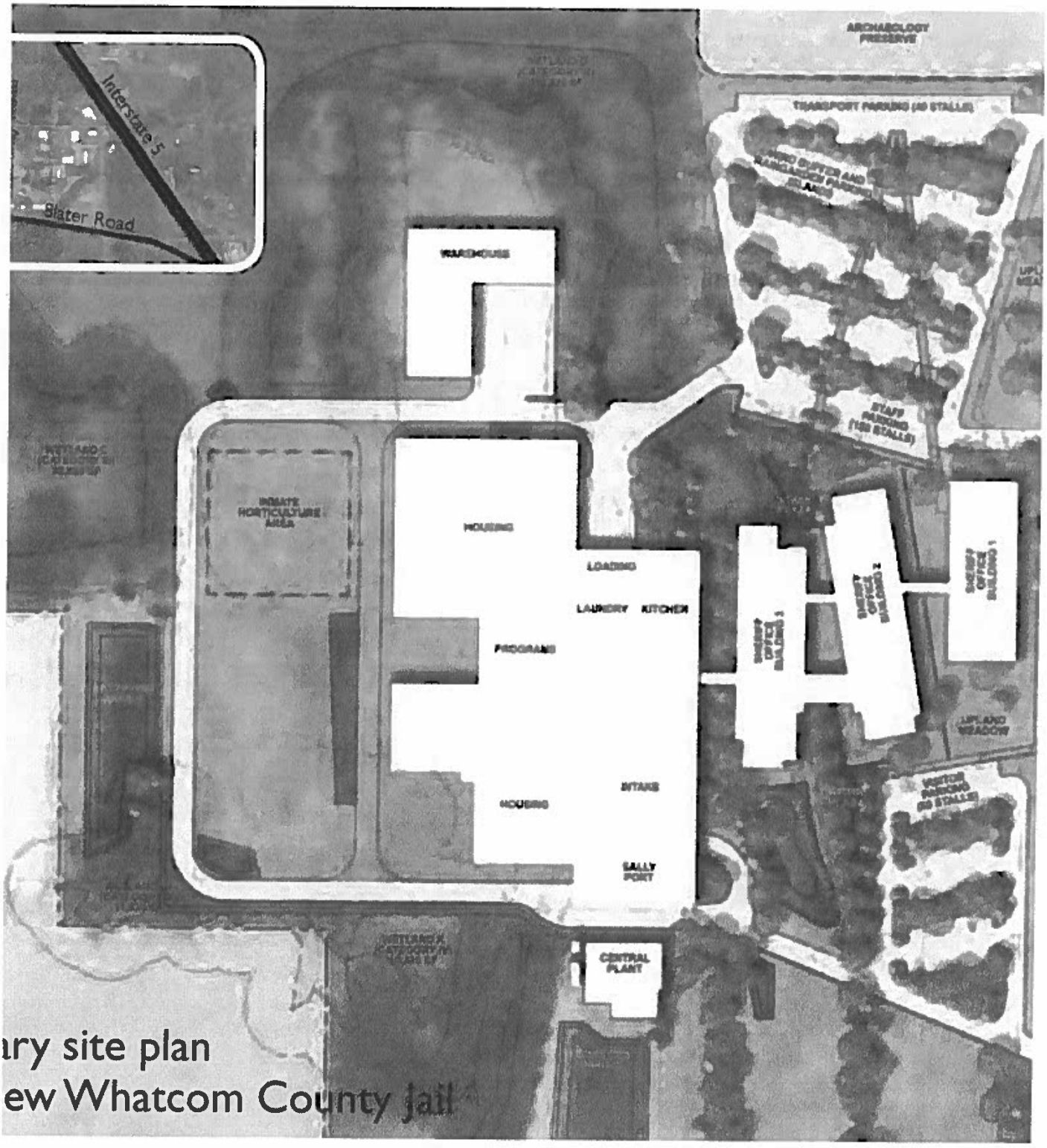
Existing dayroom.

Existing inmate programs space.

ideo visiting

Central control room.

- Building site design to accommoc future growth.



ıry site plan
ew Whatcom County Jail

EXHIBIT B

Mailers cost $28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

Cover of the Whatcom County Community Report sent to residents. Whatcom County Courtesy to The Bellingham Herald

i

By Samantha Wohlfeil

The Bellingham Herald

- LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORYBELLINGHAM

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per $100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, co.whatcom.wa.us, by searching for "community report mailer."

The mailers cost $28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an $825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.

EXHIBIT C

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
20140913

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner),** agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group Inc

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
} ss.
COUNTY OF WHATCOM)

On this 23rd day of September 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. BOADY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October 2014 before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12-31-2014

_____
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 12-31-14.

DESIGNER INFORMATION:

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- **.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- **.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- **.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- **.4** A legal description of the Site;
- **.5** As-built and record drawings of any existing structures at the Site;
- **.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- **.7** Owner's Project Criteria;
- **.8** Test and inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract , which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 **Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 **Patent and Copyright Infringement**

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

DLR Group Whatcom County

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambigulties or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 **Termination for Default:**
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 <u>Venue and Choice of Law:</u>
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calcula5tions
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

Exhibit "C"
Whatcom County Jail
Project: Whatcom County Jail
Date: Fri 9/22/14
Task
Split
Milestone
Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
Progress
Split
Page 1 of 1
DLR Group

Whatcom County Officials – Complaint by Marinel Kniseley – October 31, 2015

Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273. It is clearly in favor of building a new jail and, on top of this, states misleading information (especially with regards to using the wrong Proposition number... which also seems intentional because the resulting confusion would have readers vote in a way that ALSO benefits the writer of this material). Using tax payers' money to pay for this is a crime, and many people are very, very angry about this, including this voter.

REQUEST FOR INVESTIGATION

To: **Whatcom County Incarceration Reduction and Prevention Task Force**
& Whatcom County Ethics Commission

~ NOTICE OF IMPROPER CONDUCT ~

Section A: Election interference

Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273.

1. Please view the original mailer file or a copy as it was designed to be read.

2. Consultant DLR Group, advising the County on jail design and construction, produced the mailer. Whatcom County Contract No. 20140913 stipulates (Exhibit A - Scope of Services/ Public Outreach) that the consultant will develop a *"coordinated message and…graphics to support the message"*. The message appears to be supportive of the sales tax measure. It is not clear how a coordinated message and supporting graphics is intended to constitute a fair and objective fact sheet as required by law.

3. The DLR group has received millions of dollars in fees for this jail project, from research, planning, permitting, designing and now promoting the tax to fund the jail. We assert that promoting the jail tax is a conflict of interest.

4. Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent to select voters instead of property addresses. It is not clear how select voting recipients constitutes a jurisdiction-wide distribution.

5. The mailer includes photos, some with quotes, from three elected officials, two of whom are running for re-election in this campaign.

6. The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting) - a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members.

7. The mailer includes 'feel bad' pictures of real inmates in overcrowded conditions and 'feel good' pictures of imaginary future inmates in pristine new-jail conditions, in violation of PDC guidance.

8. Stake holders have identified a number of inaccuracies in the mailer:

    a. The Sheriff's statement avoids responsibility by implying overcrowding and conditions are decades old. That is misleading. The taxpayers already approved two taxes in 2004 (Jail Tax) and in 2008 (Mental Health tax) to provide funding for these same problems. That information is missing in the report.

b. The Sheriff implies that failure of the jail and inhumane conditions are the result of lack of funding. This is not true. The Sheriff's department has received millions from previously approved taxes and not used them to solve the problems taxpayers expected. The jail has been poorly maintained and allowed to run down. Hundreds of people are currently being mistreated and housed inhumanely inside the current jail.

c. The mailer fails to disclose that the tax ascribes 100% of public safety sales tax funding for the jail, meaning future taxes will be needed for emergency services.

d. The mailer infers that the County has obtained the agreement of all parties through a comprehensive and complete planning process. This is lacking substantial facts.

1. The assumptions of the so-called Needs Assessment used to justify the jail expansion raised considerable public concern but were never questioned. An earlier unbiased review found many planning deficiencies but they were never addressed.

2. The City of Bellingham, representing almost half the county population, has not signed off on the agreement as alleged.

3. The Jail Task Force was an appointed group that excluded critical voices and limited public comment.

4. There is no evidence of a pre-approved public participation plan for the jail project intended to be funded by the sales tax measure on the ballot. Most citizen comments were dismissed as being "outside the scope" of the FEIS.

5. The Executive fast tracked this sales tax through the Council to the ballot without collaboration with critical community partners as the mailer suggests.

e. Executive Jack Louws takes credit for $11.5 Million dollars in Behavioral Health Services spending. This is misleading. Most has been spent on planning and bureaucratic expansion. There is little evidence this money made it to the streets for pre-booking diversions as recommended by the County's own staff.

f. The Prosecutor suggests the tax will improve jail alternatives. In fact, the Prosecutor's case management and unwillingness to review cases or release people from the jail is in large part responsible for the overcrowding. The Restorative Community Coalition outlined fifteen ways the Executive Branch over-criminalizes citizens with bureaucratic revenue generating tactics. Their recommendations have been steadfastly ignored. This is especially disturbing in light of the USA Today review of FBI statistics ,reported by local jurisdictions, wherein Whatcom County has a racial arrest disparity rate greater than that of Ferguson, MO.

Section B: Fiscal Mismanagement
Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds:

1. There is evidence that the construction, interest and operating costs of the jail proposal could potentially bankrupt the County and necessitate a sale/lease-back to a Real Estate Investment Trust - a financial strategy that has not been publicly discussed. The size, design and odd location of the jail strongly support this concern.

2. Disturbing peculiarities regarding the jail property's price, acquisition and site selection have been noted.

3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition.

4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was never considered despite being indicated as preferred in both USDOJ site selection and NIC jail design guidance.

5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be "squandered on other things". The Police Guild and Firefighters have adopted this position. The Sheriff's guild posted a link to this notice on their website newsfeed. It has since been removed.

6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on pre-booking diversions internally identified by the County's own staff as the most necessary, important and cost effective.

Section C: Fiduciary Irresponsibility
The County's fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law.

1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are false and misleading. The County received constant information about jail alternatives for over five years. These were systematically ignored.

2. Substantial funds were produced from a confusing $18.75 million property/fund swap including large contributions from the supposedly dedicated Road Fund and the Economic

Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available budget report.

3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. Whatcom County Code 1.28.100 instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has substantially increased bookings while statewide bookings are down, and focused efforts on lobbying and selling the sales tax.

4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense.

Section D: Ancillary Concerns

Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen:

1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council.
2. Four police-caused deaths apparently excused by the prosecutor.
3. Multiple suicides inside the Whatcom County Jail.
4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police.
5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition.
6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are 31 Whatcom gangs with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force.

Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be investigated. Pre-booking jail alternatives should be prioritized and a jail adjacent to the courthouse should be carefully considered.

Submitted by: **The Restorative Community Coalition** - 10/26/2015
A digital edition of this document is available at **www.RestorativeCommunity.com**

Whatcom County Officials – Complaint by Tina McKim, November 1, 2015

I write today in complaint of a misleading mailer sent out to Whatcom County residents at over $28,000 expense of taxpayer money. The jail tax mailer sent out is heavily biased and potentially a misuse of public funds, office, facility and staff resources. I have included a formal statement from the Restorative Justice Coalition with further details. Thank you for your time.

REQUEST FOR INVESTIGATION

To: **Whatcom County Incarceration Reduction and Prevention Task Force**
& Whatcom County Ethics Commission

~ NOTICE OF IMPROPER CONDUCT ~

Section A: Election interference

Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273.

1. Please view the original mailer file or a copy as it was designed to be read.

2. Consultant DLR Group, advising the County on jail design and construction, produced the mailer. Whatcom County Contract No. 20140913 stipulates (Exhibit A - Scope of Services/ Public Outreach) that the consultant will develop a *"coordinated message and…graphics to support the message"*. The message appears to be supportive of the sales tax measure. It is not clear how a coordinated message and supporting graphics is intended to constitute a fair and objective fact sheet as required by law.

3. The DLR group has received millions of dollars in fees for this jail project, from research, planning, permitting, designing and now promoting the tax to fund the jail. We assert that promoting the jail tax is a conflict of interest.

4. Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent to select voters instead of property addresses. It is not clear how select voting recipients constitutes a jurisdiction-wide distribution.

5. The mailer includes photos, some with quotes, from three elected officials, two of whom are running for re-election in this campaign.

6. The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting) - a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members.

7. The mailer includes 'feel bad' pictures of real inmates in overcrowded conditions and 'feel good' pictures of imaginary future inmates in pristine new-jail conditions, in violation of PDC guidance.

8. Stake holders have identified a number of inaccuracies in the mailer:

    a. The Sheriff's statement avoids responsibility by implying overcrowding and conditions are decades old. That is misleading. The taxpayers already approved two taxes in 2004 (Jail Tax) and in 2008 (Mental Health tax) to provide funding for these same problems. That information is missing in the report.

b. The Sheriff implies that failure of the jail and inhumane conditions are the result of lack of funding. This is not true. The Sheriff's department has received millions from previously approved taxes and not used them to solve the problems taxpayers expected. The jail has been poorly maintained and allowed to run down. Hundreds of people are currently being mistreated and housed inhumanely inside the current jail.

c. The mailer fails to disclose that the tax ascribes 100% of public safety sales tax funding for the jail, meaning future taxes will be needed for emergency services.

d. The mailer infers that the County has obtained the agreement of all parties through a comprehensive and complete planning process. This is lacking substantial facts.

1. The assumptions of the so-called Needs Assessment used to justify the jail expansion raised considerable public concern but were never questioned. An earlier unbiased review found many planning deficiencies but they were never addressed.

2. The City of Bellingham, representing almost half the county population, has not signed off on the agreement as alleged.

3. The Jail Task Force was an appointed group that excluded critical voices and limited public comment.

4. There is no evidence of a pre-approved public participation plan for the jail project intended to be funded by the sales tax measure on the ballot. Most citizen comments were dismissed as being "outside the scope" of the FEIS.

5. The Executive fast tracked this sales tax through the Council to the ballot without collaboration with critical community partners as the mailer suggests.

e. Executive Jack Louws takes credit for $11.5 Million dollars in Behavioral Health Services spending. This is misleading. Most has been spent on planning and bureaucratic expansion. There is little evidence this money made it to the streets for pre-booking diversions as recommended by the County's own staff.

f. The Prosecutor suggests the tax will improve jail alternatives. In fact, the Prosecutor's case management and unwillingness to review cases or release people from the jail is in large part responsible for the overcrowding. The Restorative Community Coalition outlined fifteen ways the Executive Branch over-criminalizes citizens with bureaucratic revenue generating tactics. Their recommendations have been steadfastly ignored. This is especially disturbing in light of the USA Today review of FBI statistics ,reported by local jurisdictions, wherein Whatcom County has a racial arrest disparity rate greater than that of Ferguson, MO.

Section B: Fiscal Mismanagement
Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds:

1. There is evidence that the construction, interest and operating costs of the jail proposal could potentially bankrupt the County and necessitate a sale/lease-back to a Real Estate Investment Trust - a financial strategy that has not been publicly discussed. The size, design and odd location of the jail strongly support this concern.

2. Disturbing peculiarities regarding the jail property's price, acquisition and site selection have been noted.

3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition.

4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was never considered despite being indicated as preferred in both USDOJ site selection and NIC jail design guidance.

5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be "squandered on other things". The Police Guild and Firefighters have adopted this position. The Sheriff's guild posted a link to this notice on their website newsfeed. It has since been removed.

6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on pre-booking diversions internally identified by the County's own staff as the most necessary, important and cost effective.

Section C: Fiduciary Irresponsibility
The County's fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law.

1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are false and misleading. The County received constant information about jail alternatives for over five years. These were systematically ignored.

2. Substantial funds were produced from a confusing $18.75 million property/fund swap including large contributions from the supposedly dedicated Road Fund and the Economic

Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available budget report.

3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. Whatcom County Code 1.28.100 instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has substantially increased bookings while statewide bookings are down, and focused efforts on lobbying and selling the sales tax.

4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense.

Section D: Ancillary Concerns

Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen:

1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council.
2. Four police-caused deaths apparently excused by the prosecutor.
3. Multiple suicides inside the Whatcom County Jail.
4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police.
5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition.
6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are 31 Whatcom gangs with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force.

Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be investigated. Pre-booking jail alternatives should be prioritized and a jail adjacent to the courthouse should be carefully considered.

Submitted by: **The Restorative Community Coalition** - 10/26/2015
A digital edition of this document is available at **www.RestorativeCommunity.com**

Whatcom County Officials – Complaint by Liisa Wale, November 2, 2015

Hello -

I am writing to file a complaint with the Public Disclosure Commision about a recent election mailer (http://www.whatcomcounty.us/documentcenter/view/13253) that I received about the upcoming election and the Whatcom County Jail Tax. I was applaud that $28,000 of tax payers money was allowed to be spent on that. It was very obviously trying to sway the vote and influence the election. Not to mention that a number of people who are listed are currently running for reelection.

I stand behind the statements of the Restorative Community Coalitions request for an investigation. Link here:(http://www.restorativecommunity.com/wp-content/uploads/2015/10/REQUEST-FOR-INVESTIGATION_10272015.pdf). I also agree with complaint that was filed by community members of color in Bellingham stating "NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED" (link: https://noisywatersnw.files.wordpress.com/2015/10/10-29-15-notice-of-civil-rights-violations-and-notice-of-reason-to-believe-rcw-42-final.pdf).

Thank you for taking time out to read this and for taking these complaints seriously.

Warm Regards,

Liisa Wale
3201 Elwood Ave #302
Bellingham, WA 98225

Whatcom County Officials – Complaint by League of Women Voters of Bellingham/Whatcom County, 11/2/15

Dear Sirs,

I have just attempted to submit a formal complaint electronically. However, it is not clear whether that process was successful. Therefore I am also attaching our complaint to this email.

On behalf of the League of Women Voters of Bellingham/Whatcom County, the three League co-presidents are submitting a formal complaint concerning an election mailing sent by Whatcom County, 310 Grand Ave, Bellingham WA on or about October 16th, 2015. We believe this mailing concerning a proposed ballot measure is in violation of RCW 42.17A and other statutes.

The full complaint is attached.

Judy Hopkinson, Co-President
League of Women Voters® of Bellingham/Whatcom County
CoPres3@LWVbellinghamwhatcom.org
360 920 1728 www.LWVbellinghamwhatcom.org
Join the League

where hands on work to safeguard democracy leads to civic improvement!
Please consider the environment before printing this email

*Office Use Only: No.*_____

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION

COMPLAINT FORM

Description of Complaint

RESPONDENT:
Identify who you are filing a complaint against and provide all contact information you have for them. Give names and titles, if any, for individuals, and the full name of any organization. Please note that the PDC does not enforce federal campaign finance laws or local ordinances.

Whatcom County
311 Grand Avenue
Bellingham, WA 98225

ALLEGED VIOLATIONS:
Explain how and when you believe the people/entities you are filing a complaint against violated RCW 42.17/RCW 42.17A or Title 390 WAC. Be as detailed as possible about dates, times, places and acts. If you can, cite which specific laws or rules you believe were violated. Attach additional

pages if needed. (Note that the RCW 42.17 citation applies to conduct before 2012 and the RCW 42.17A citation applies to conduct on or after January 1, 2012.)

_____

The League of Women voters of Bellingham/Whatcom County alleges that a brochure mailed by Whatcom County administration simultaneously with the 2015 ballots was political campaign material intended to influence the outcome of a ballot measure and therefore is in violation of the law. We ask that the PDC investigate fully the following details:

1. **Was this brochure sent only to registered voters?** We believe this mailing was sent to all registered voters rather than to all households in Whatcom County.

If mailed only to voters, this brochure cannot be justified as a public service announcement under WAC 390-05-525 which states:

(1) "Public service announcement" means a communication meets all the following criteria. The communication is:

(a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
(b) Not selling a product or service;
(c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
(d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;
(e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
(f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and
(g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

1) Was this brochure intended to influence the vote on the proposed jail tax ballot measure? We believe this brochure is campaign literature produced at public expense and intended to influence the outcome of the proposed jail tax ballot measure. As such it is in violation of RCW 42.17A.555

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from… making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

(1) RCW 42.17A.555 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.
(2) RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or **(b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.**

Guidelines for Local Government Agencies in Election Campaigns were clarified by PDC interpretation 04-02 in which the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." and further clarified that "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

The League of Women Voters of Bellingham/Whatcom County alleges that this brochure is not an objective and fair presentation of facts and does not accurately portray the costs and other anticipated impacts of the ballot proposition for the following reasons:

1. It did not state the cost of the proposed jail or administrative offices
2. It did not state the amount of taxes to be raised.
3. It did not provide a breakdown of the proposed expenditures.
4. It implied that amounts currently spent for prevention, alternative and diversion programs were related to the proposed tax when they were not.
5. It did not clarify that passage of the ballot measure would mean that all available sales taxing authority for criminal justice programs for the next 30 years would be tied up by the proposed jail, and therefore municipalities in Whatcom County would be unable to raise tax revenue to fund any other programs to increase public safety for the next 30 years.
6. The comparison chart of current sales tax rates lists only those areas with tax rates higher than Whatcom County and none of those with lower rates such as Anacortes, Burlington, Skagit, and San Juan, to name a few.

The failure to include critical and unbiased information about costs and potential negative long term impacts of the ballot measure constitutes a one-sided presentation of the issue to the public, and therefore a use of public funds to campaign in favor of passage of a ballot measure. This brochure appears to meet the PDC criteria for political advertising

WAC 390-05-290 Political advertising definitions.

(1) "Mass communication" means a communication intended to reach a large audience through any of the following methods:
(a) Advertising displays, newspaper advertising, billboards, signs;
(b) Brochures, articles, tabloids, fliers, periodicals;
(c) Radio or television presentations;
(d) Sample ballots (see WAC 390-17-030);

(e) Online or other electronic transmission methods;
(f) One hundred or more letters, e-mails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and
(g) Other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or commission rule.
(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet web sites, web-based social media (such as Facebook, Twitter, and other electronic publishing platforms), e-mails, and text messages.
(3) "Political advertising" is defined under RCW 42.17A.005 to include a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.
(4) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the space or time is not normally required.
[Stat

3) Why was the number of the ballot measure stated incorrectly? It is unclear why County Administration incorrectly identified the number of the jail tax ballot measure as "1" rather than the correctly as "2015-01". Measure number 1 on the ballot was a hotly contested measure supported by one political party (to which all the individuals pictured in the mailing belong) that would have established district only voting in Whatcom County. Since it is simply not possible that the County administration was unaware of the numbering system for ballot measures, **the public deserves to know whether this erroneous numbering was a deliberate attempt to influence the vote on ballot measure number 1 as well as ballot measure 2015-01.**

4) **What was the actual cost of the mailing and what was/were the funding source(s)?** Although the cost reported in the Bellingham Herald article was $28,000, there are approximately 150,000 registered voters in Whatcom County. Printing and mailing a large, glossy, color brochure to that many individuals would be expected to cost far more than $28,000. Were in-kind services or materials provided by others? If so, who?

In Summary: The timing of the brochure, distribution to registered voters, and the exclusion of information critical for informed decision making, qualify this mailing as campaign literature. The use of public resources to prepare and send the mailing therefore constitute a violation of the law and a subversion of the democratic process. It is our belief that public officials should hold dear the process of democracy and be held accountable when their actions undermine our system of government. Moreover, the League of Women Voters of Bellingham/Whatcom County is concerned about the precedent this will set for future use of public funds in election campaigns. We ask that the PDC protect the public interest by mounting a full investigation of this incident and by holding accountable any public official found to have acted in violation of the law.

Evidence and Witnesses

3. EVIDENCE:

List the documents or other evidence you have that support your complaint, if any, and attach copies to this form. If you do not have copies, provide any information you have about where you believe the documents or evidence can be found and how to obtain it. Attach additional pages if needed.

The brochure in question is described in an article by the Bellingham Herald which can be found at this web site:

http://www.bellinghamherald.com/news/politics-government/election/local-election/article39560088.html

~~**ComparitiveComparative sales tax rates or areas of Washington State** can be found at the following web site: **http://www.tax-rates.org/washington/sales-tax-by-county**~~

WITNESSES:

List the names and contact information, if known, of any witnesses or other persons who have knowledge of facts that support your complaint. Attach additional pages if needed.

Evidence for targeted mailing to registered voters: This is based on reports from households who received a number of brochures equal to the number of ballots sent to their homes. For example, one of our co-presidents, Rebecca Johnson, received 4 ballots for 4 household voters and 4 jail brochures from the county. Ms Johnson can be reached at **rm_johnson@outlook.com**, 360 734 7922.

Certification

In signing this complaint:

- We have provided all information, documents and other evidence of which I am aware;

- If we become aware of additional information, documents or evidence related to my complaint, I will promptly provide it to the PDC; and,
- We are providing the PDC current information on how to contact me, and will promptly update that information if it changes.

Judy Hopkinson, Co-President, League of Women Voters of Bellingham/Whatcom County

Rebecca Johnson, Co-President, League of Women Voters of Bellingham/Whatcom County

Jayne Freudenberger, Co-President, League of Women Voters of Bellingham/Whatcom County

Address:

League of Women Voters of Bellingham/ Whatcom County
c/o Judy Hopkinson
1446 Franklin St., Apt B
Bellingham, WA 98225

360 920 1728

co-president3@lwvbellinghamwhatcom.org

Oath

Required for complaints against elected officials or candidates for elective office:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this complaint is complete, true and correct to the best of my knowledge and belief.*

Your signature

_____

_____

_____

Date signed

_____

Place signed (city and county)

_____

City County

**RCW 9A.72.040 says that "(1) A person is guilty of false swearing if he makes a false statement which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."*

Whatcom County Officials – Complaint filed by James Ace, November 17, 2015

I received a mailer before the election that I believe was biased and improper and should not have been paid for with taxpayer dollars. See below for further details. As a taxpayer of Whatcom County, I believe it is inappropriate and potentially illegal for Jack Louws to have engaged in this behavior. At the very least it creates the appearance of impropriety. I respectfully request a full, fair, and objective investigation of this incident and complete transparency and disclosure. If Mr. Louws violated the, I urge you to prosecute him.

Section A: Election interference Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273.

1. Please view the original mailer file or a copy as it was designed to be read.

2. Consultant DLR Group, advising the County on jail design and construction, produced the mailer. Whatcom County Contract No. 20140913 stipulates (Exhibit A - Scope of Services/ Public Outreach) that the consultant will develop a "coordinated message and…graphics to support the message". The message appears to be supportive of the sales tax measure. It is not clear how a coordinated message and supporting graphics is intended to constitute a fair and objective fact sheet as required by law.

3. The DLR group has received millions of dollars in fees for this jail project, from research, planning, permitting, designing and now promoting the tax to fund the jail. We assert that promoting the jail tax is a conflict of interest.

4. Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent to select voters instead of property addresses. It is not clear how select voting recipients constitutes a jurisdiction-wide distribution.

5. The mailer includes photos, some with quotes, from three elected officials, two of whom are running for re-election in this campaign.

6. The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting) - a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members.

7. The mailer includes 'feel bad' pictures of real inmates in overcrowded conditions and 'feel good' pictures of imaginary future inmates in pristine new-jail conditions, in violation of PDC guidance.

8. Stake holders have identified a number of inaccuracies in the mailer: a. The Sheriff's statement avoids responsibility by implying overcrowding and conditions are decades old. That is misleading. The taxpayers already approved two taxes in 2004 (Jail Tax) and in 2008 (Mental Health tax) to provide funding for these same problems. That information is missing in the report. b. The Sheriff implies that failure of the jail and inhumane conditions are the result of lack of funding. This is not true. The Sheriff's department has received millions from previously approved taxes and not used them to solve the problems taxpayers expected. The jail has been poorly maintained and allowed to run down. Hundreds of people are currently being mistreated

and housed inhumanely inside the current jail. c. The mailer fails to disclose that the tax ascribes 100% of public safety sales tax funding for the jail, meaning future taxes will be needed for emergency services. d. The mailer infers that the County has obtained the agreement of all parties through a comprehensive and complete planning process.

This is lacking substantial facts.

1. The assumptions of the so-called Needs Assessment used to justify the jail expansion raised considerable public concern but were never questioned. An earlier unbiased review found many planning deficiencies but they were never addressed.

2. The City of Bellingham, representing almost half the county population, has not signed off on the agreement as alleged.

3. The Jail Task Force was an appointed group that excluded critical voices and limited public comment.

4. There is no evidence of a pre-approved public participation plan for the jail project intended to be funded by the sales tax measure on the ballot. Most citizen comments were dismissed as being "outside the scope" of the FEIS.

5. The Executive fast tracked this sales tax through the Council to the ballot without collaboration with critical community partners as the mailer suggests. e. Executive Jack Louws takes credit for $11.5 Million dollars in Behavioral Health Services spending. This is misleading. Most has been spent on planning and bureaucratic expansion. There is little evidence this money made it to the streets for pre-booking diversions as recommended by the County's own staff. f. The Prosecutor suggests the tax will improve jail alternatives. In fact, the Prosecutor's case management and unwillingness to review cases or release people from the jail is in large part responsible for the overcrowding. The Restorative Community Coalition outlined fifteen ways the Executive Branch over-criminalizes citizens with bureaucratic revenue generating tactics. Their recommendations have been steadfastly ignored. This is especially disturbing in light of the USA Today review of FBI statistics ,reported by local jurisdictions, wherein Whatcom County has a racial arrest disparity rate greater than that of Ferguson, MO. Section B: Fiscal Mismanagement Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds: 1. There is evidence that the construction, interest and operating costs of the jail proposal could potentially bankrupt the County and necessitate a sale/lease-back to a Real Estate Investment Trust - a financial strategy that has not been publicly discussed. The size, design and odd location of the jail strongly support this concern. 2. Disturbing peculiarities regarding the jail property's price, acquisition and site selection have been noted. 3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition. 4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was never considered despite being indicated as preferred in both USDOJ site selection and NIC

jail design guidance. 5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be "squandered on other things". The Police Guild and Firefighters have adopted this position. The Sheriff's guild posted a link to this notice on their website newsfeed. It has since been removed.

6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on prebooking diversions internally identified by the County's own staff as the most necessary, important and cost effective. Section C: Fiduciary Irresponsibility The County's fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law. 1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are false and misleading. The County received constant information about jail alternatives for over five years. These were systematically ignored. 2. Substantial funds were produced from a confusing $18.75 million property/fund swap including large contributions from the supposedly dedicated Road Fund and the Economic Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available budget report. 3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. Whatcom County Code 1.28.100 instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has substantially increased bookings while statewide bookings are down, and focused efforts on lobbying and selling the sales tax. 4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense. Section D: Ancillary Concerns Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen: 1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council. 2. Four police-caused deaths apparently excused by the prosecutor. 3. Multiple suicides inside the Whatcom County Jail. 4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police. 5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition. 6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are 31 Whatcom gangs with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force. Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be

investigated. Pre-booking jail alternatives should be prioritized and a jail adjacent to the courthouse should be carefully considered.

WHATCOM COUNTY'S RESPONSE TO PDC INQUIRY

RE: OCTOBER 2015 FACT SHEET MAILING

SUMMARY OF FACTS

Whatcom County's jail is thirty-two (32) years old and, as would be expected, it has a number of well-documented operational and maintenance problems due to its age, including overcrowding. The County began preparing to build a new jail more than seventeen (17) years ago.

Since that time, the County has spent at least eight (8) hundred thousand dollars researching and informing the public about the issue, assembled numerous panels, done multiple studies, and commissioned several plans to address the issue. The following is a simplified timeline demonstrating the volume and types of resources devoted to the issue: [1]

- 2000 plan,
- 2003 group,
- 2003 study,
- 2004 review,
- 2008 report,
- 2011 report,
- 2011 resolution,
- 2012 task force,
- 2012 plan.

The County then approved the purchase of a six (6) million dollar site for the proposed new jail.

[1] The County highly recommends that, before the PDC considers whether the information in its mailing has a sufficient basis in fact, it read the attached April 9 and 23, 2015 letters from Bill Elfo summarizing panels, reports, and studies over the last seventeen (17) years. Exhibit B.

During this seventeen-plus (17+) year-long process, the public was notified of the findings of the panels and the progress of the jail research regularly and in the normal course of business via website postings, open public meetings, interviews with media, etc.. The panels, studies, and research have been consistent in their findings since the beginning of the process; they indicate that the aging jail facility must be replaced. There are innumerable details, and the County has consistently delivered this same basic information to the public over the course of the entire process.

As part of its responsibility to keep the public informed, in September of 2014 (more than a year prior to the election) the County Council approved a contract with DLR Group, a company which regularly develops informational mailings for government entities. DLR was hired, in part, to "inform the general public of operational and maintenance issues facing" Whatcom County, as allowed per PDC Interpretation 04-02. As part of the contract approved by the County Council, DLR was to create two mailings to be distributed jurisdiction-wide. The mailings were meant to inform the public of the maintenance and operational issues, the proposed solution, and the cost of the tax that would pay for it, if passed.

Finally, after many years of preparation, in 2015 the Council passed a resolution to send the specific issue of a tax to pay for a new jail facility to the voters.

In preparing the informational mailings approved in 2014, DLR and Whatcom County studied the law related to election-season mailings and confirmed that a single jurisdiction-wide factual mailing was the legal and customary method for government entities to inform the public about issues that appear on a ballot. Tony Perkins' January 12, 2015 letter to Local Government Agency Officials provided the rule on this issue.[2] Per the PDC's advisory, Whatcom County decided to do only one mailing, per PDC guidelines.

DLR and Whatcom County researched examples of fact sheet mailings from other jurisdictions, including school districts, fire districts, and the recent similar Skagit County jail proposal.[3] These fact sheets took various forms, including flyers, pamphlets, and newsletters. DLR and Whatcom

[2] PDC letter attached. Exhibit A, page 4-5.

[3] Exhibit H. Though Whatcom County considered the *format* of the Skagit mailing, Whatcom County made the content of its own mailing both less lengthy and *much* more sterile/neutral. Skagit County's mailing did not prompt a PDC investigation.

County chose a four page fold-out newsletter, consistent with other mailers Whatcom County has issued in the past.

Once this fact sheet was developed, DLR and Whatcom County sought official review by the state Public Disclosure Commission (PDC). The PDC had traditionally provided review of proposed mailings. The PDC declined to provide official review of Whatcom County's mailing, because budget cuts had eliminated this service.

Whatcom County then contacted the PDC (via DLR) to obtain the best advice available. The PDC then provided specific advice, and Whatcom County was told precisely what it was allowed to do in response to specific questions. Whatcom County's October 16, 2015 letter from DLR details this exchange exactly.[4] In pertinent part, it says:

> Justin Stranzl with DLR Group talked with the PDC on Wednesday, September 2, 2015 regarding the following criteria that should be implemented with the mailers. Justin initially tried to connect with PDC filer assistance specialist Jennifer Hansen, who didn't return his initial phone calls. Later, on Wednesday, September 2, 2015, Justin connected with the other filer assistance specialist, Chip Beatty. Mr. Beatty confirmed the following.
>
> 1. If regular informational mailers are not sent to the public by the County, then only one informational per measure mailer may be sent to the public.
>
> 2. We asked the question, "Can we send to registered voters if not by party?" PDC indicated that the list of Registered Voters may be used as a mailing list. The list may be filtered as required as long as the filters are not restricted by political party or voting platforms. All filters shall be bi-partisan.
>
> 3. The mailer should not directly advocate, and should only present the facts of the project and information to allow the voters to make an informed decision on the funding question.

[4] October 16, 2015 letter from DLR Group. Exhibit A.

4. There was one statement on the timeline for sending a mailer. This is not a requirement that impacts or prohibits the timeline of the mailer being sent at the time of ballots.

a. Note on Timing of Activities: A particular activity may be subject to the scrutiny of the Public Disclosure Commission depending in part on whether it is a part of the "normal and ordinary" conduct of a local government agency. Generally, activities that occur after the elected legislative body has passed a resolution authorizing a measure to be placed on the ballot will be subject to greater scrutiny by the Public Disclosure Commission than those occurring before such a resolution has been passed.

Whatcom County then reviewed and revised the mailing using the PDC's above advice in response to Whatcom County's specific questions. Whatcom County also used the statutory references PDC provided for review, along with several examples of written advice the PDC previously gave to other counties.

The fact sheet was distributed jurisdiction-wide to voters on a non-partisan basis, per the PDC's advice above.

As the election approached, a County Council member who opposed the jail tax appeared in the local newspaper proclaiming "shock, dismay and outrage" about the mailing, apparently not realizing that he had approved its creation and that jurisdictions (such as schools, fire districts *and* counties) are allowed by law to send such mailings and regularly do.[5]

Opponents of the jail then followed suit and, on the eve of the election, filed fourteen complaints with the PDC, alleging RCW 42.17A violations along with "systemic racism," illegal "mass incarceration policies," "deliberate overcrowding," and other philosophical objections with a sharp anti-incarceration tone. The controversy that was created garnered attention in the local press.[6]

[5] See complaint of Rosalinda Guillen at Guillen's Exhibit B. The Council member later conceded that it was legal to send this type of mailing, though he referred to it as a "loophole."
[6] *Id.*

The Proposition then failed.[7]

Meanwhile, on October 27, 2015, the PDC indicated that it was conducting a "preliminary investigation" of the RCW 42.17A issues, and gave Whatcom County the opportunity to respond so the PDC could "determine whether a formal investigation is warranted." Below is the language of the email from the PDC:

> **From: PDC Support [mailto:pdc@pdc.wa.gov]**
>
> **Sent: Tuesday, October 27, 2015 3:16 PM**
>
> **To: Jack Louws**
>
> **Subject: Re: PDC - Community Report Mailer on Whatcom County Jail Sales Tax Ballot Measure (Proposition 2015-1)**
>
> **Jack Louws, County Executive,**
>
> **The Public Disclosure Commission (PDC) has received five complaints recently concerning the Whatcom County mailing entitled, "Whatcom County Community Report." I am conducting a preliminary investigation of the complaints to determine whether a formal investigation is warranted.**
>
> **The complaints are similar in nature, and allege that County officials have violated RCW 42.17A.555 by using County facilities to support Proposition 2015-1, the ballot measure that if passed will increase the sales tax by 0.2 percent to pay for a new Whatcom County jail. The complaints allege that the mailer is not a fair and objective presentation of facts, that some of the pictures are inflammatory, that two officials whose pictures were included in the mailer are up for election in 2015, and that the mailing was targeted to households with at least one registered voter, rather than being sent to all households.**
>
> **The complaints are from:**
>
> **Richard Jenn, Debra David, Douglas Starcher, Marissa McGrath, Sara Holodnick**
>
> **I am attaching each of the five complaints along with the attachments submitted with each complaint. Ms. McGrath's complaint included an attachment that appears to be one page of the mailer, with Sheriff Elfo's picture, but I was not able to save a PDF to attach to this email.**
>
> **Please provide a response to the allegations in each of the complaints no later than November 10, 2015. You may address the issues raised in the five complaints in a single response. However, ensure that you address each issue alleged. The PDC will inform you of the results of our preliminary investigation and let you know whether a formal investigation is warranted.**
>
> **Phil Stutzman**
>
> **Sr. Compliance Officer**
>
> **(360) 664-8853**

[7] As of now (November 9, 2015) it is mathematically impossible for the jail tax to pass, given the current count and outstanding ballots. The election will be certified on November 24.

To respond, please reply to this email.

Washington Public Disclosure Commission

http://www.pdc.wa.gov

1.360.753.1111

A November 5, 2015 email from the PDC notified Whatcom County of five additional identical complaints from individuals and from members of the Bellingham Racial Justice Coalition. Separate new complaints were also received from the League of Women Voters and the Restorative Community Coalition. The PDC added to, and revised the issues. The PDC also revised the process, asking Whatcom County (via phone on November 4, 2015) to prepare its response in anticipation of a "formal" investigation.

The complaints now allege that Whatcom County's mailing:

(1) is not a fair and objective presentation of facts because (a) it does not accurately present the costs and other anticipated impacts of the ballot measure and (b) because some of the pictures are inflammatory;

(2) included the pictures of two officials up for election;

(3) was targeted to registered voters;

(4) failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years;

(5) coordinated the distribution of information about the ballot measure with campaign efforts;

(6) referred to Proposition 1 rather than Proposition 2015-1, creating confusion about which measure concerned the jail issue;

(7) distribution of the mailer was not a Normal and Regular activity for the county as contemplated under RCW 42.17A.555; and

(8) that the mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

RESPONSE

Allegation 1(a) - The mailer is not a fair and objective presentation of facts because, (a) it does not accurately present the costs and other anticipated impacts of the ballot measure.

The mailing's presentation of facts.

The mailing is factual. It presents a very condensed summary of a vast quantity of information the County has gathered over more than seventeen (17+) years regarding its failing jail. The facts that appear in the mailing are the product of many studies, plans, and panels of experts who have researched the issue. The mailing includes the following elements:

- Quote from Executive Jack Louws, who is responsible for budget and behavioral health programming. He provides the cost of such programs - $11.5 million dollars and lists a number of current treatment programs.
- Prosecutor David McEachran states that lack of programming space in the existing jail is a problem. He indicates in neutral language that a new facility would provide this space.
- Sheriff Bill Elfo lists law enforcement concerns about the existing jail. These include overcrowding, safety, liability, and programming space, all drawn from the findings of the studies, panels, and reports he lists in his attached letters.[8]
- The layout and design of the proposed new facility is provided in a site map without comment.
- "Proposed design" comments explain six modern features a new facility would provide that would remedy maintenance and operations issues in the existing jail. These are provided in a neutral/sterile tone.
- There are photos of the existing jail and proposed jail (photos addressed below at allegation 1b).
- Jail capacity statistics.
- Factual statement that the current jail cannot operate at current population levels or expand at its current site.
- Statement that Whatcom County must, by law, house felons.

[8] Exhibit B.

- Sterile factual statements indicating that the County Council has determined the existing jail does not meet the County's needs and that the County would build a new facility in Ferndale if the proposition passes.
- Current sales tax rates in the region.
- The language of the ballot measure, including the exact rate.
- Statement of the percentage increase the tax would add.
- The procedural history of the process for planning for a new jail. "Citizens and Experts Develop Plan…"
- A timeline for a new facility if the proposition passed.

All of the above elements of the mailing are factual. They are important, but not particularly sensational. In fact, the most notable feature of them is how mundane they are.[9]

Whatcom County (via DLR) developed these elements in accordance with the PDC's January 12, 2015 advice to "Local Government Agency Officials" via its "Election-Related Communications by Local Government Agencies" letter from Tony Perkins, Acting Assistant Director. Whatcom County used this advisory to review its mailer. Per this advisory, the above list of elements in the Whatcom County mailer:

- are not overtly promotional or oppositional.
- do not speculate about secondary or tertiary impacts.
- do not minimize the cost through comparisons to small ticket items.
- do not purport to describe/promise responsible fiscal management.
- do not offer detailed tax exemption information.
- do not offer information about the conduct of the election.

Whatcom County also reviewed samples of past advice provided by the PDC. [10] For example, per PDC memorandum dated May 31, 2012 from Tony Perkins to the City Attorney of Sequim, the Whatcom County mailing:

- does not refer readers to outside sources,

[9] This is especially true when they are viewed outside the context of the politicized debate amongst interested advocates and opponents.
[10] Exhibit A, page 6 onward.

- does not encourage voter participation,
- does not use emotionally laden language,
- does not convey a tenor of support through words telling the voters they "should, need, must" support this tax to fix the existing jail problem,[11]
- does not indicate that this is a good time for financing or job creation,
- does not describe the tax as "small,"
- does not ask voters to ask themselves whether the tax is right for them and to make a decision,
- does not "sell" the tax via minimizing the financial impact,
- does not discuss the "fairness" of the proposed tax.

The list goes on. What is important for the PDC to know, and hopefully recognize, is that Whatcom County (and DLR Group) researched this issue extensively in cooperation with the PDC, and worked hard to condense the considerable mass of information it had gathered about the failing jail over eighteen (18) years into a workable mailing that would inform the public and conform to PDC guidelines.

Cost.

To be clear, this is a sales tax, not a property tax. There is no fixed cost. The cost is variable for citizens depending upon, for lack of a better word, "sales." Thus, the most accurate declaration of the tax impact on individual voters is the rate. That rate is expressed in exactly the ballot measure language—the most accurate representation of the cost. The same rate is repeated as a percentage in a parenthetical to the right. Below the ballot measure language, the "Sales Tax Rates from Puget Sound Region" are provided without comment. Per the PDC's advice in the Winlock review of January 10, 2012, Whatcom County provided tax rates "in a range of comparable local (regional in our case) districts, and let the numbers speak for themselves."

[11] Note: the issue for the voters to decide is whether the proposed *tax* is "needed." Whatcom County's mailing does not advise that voters need, must, or should pass this tax. The issue of whether an improved facility is needed is not a voter issue—the need for a better facility is an administrative decision that has been factually determined and already decided via panels and studies. The County may legally and factually state that it "needs" a new facility. The County may not (according to PDC advice) tell voters that they "need" to pass this tax to fund that facility. This is a subtle but important distinction.

The County has not hidden the cost, confused the cost, or minimized the cost. Note that sales tax is an easily understood tax, with which citizens of Washington are very familiar.

Note also that complex financing details for a jail facility and its secondary cost impacts could fill book-length reports. If the complaints allege that those secondary impacts should have been included, they are mistaken. That is not the purpose of an informational mailing and, in fact, is prohibited. The County refrained from discussing such prohibited secondary/tertiary cost concerns, such as rising construction costs if a new jail is delayed, job creation, and numerous other related financing details that could have been used to either support or oppose the proposition.

In sum, an easily understood expression of the cost was provided to citizens in a neutral format that did not go too far.

Allegation 1(b) - Some of the pictures are inflammatory.

Complainants object to photos depicting inmates in the existing jail. Complainants claim the conditions of the existing jail are "deplorable," and, thus, the photos are inflammatory (or "intended to trigger an emotional response"). [12]

There are three photos depicting inmates. These photos are factual. The photos depict the actual condition of the jail. One photo depicts three inmates sitting on a bench. Another shows three inmates in a room with two bunks and a cot. The final photo depicts eight inmates in a room with four bunks and four cots. The room in this final photo appears crowded.

The captions for the photos are:

1. "Existing inmate programs space."
2. "Existing cell."
3. "Existing shower room converted to cell."

There is no allegation that the captions are inflammatory. There is no allegation that the three photos are doctored, staged, or dramatized. There is no allegation that the final image of the crowded room is factually inaccurate. Thus, complainants appear to contend that providing the

[12] Per Merriam Webster's dictionary, inflammatory = to excite anger.

public with an accurate depiction of overcrowding is inflammatory or emotional. Indeed, one complainant describes the actual condition of the existing jail as "deplorable."[13] No one disputes this. The fact that the existing jail is overcrowded is the very reason the proposition is on the ballot. However, a photo of a crowded cell does not depict this fact in an inflammatory manner (a manner intended to trigger an emotional response).

The PDC provides examples of inflammatory photos—they include dead bodies on stretchers and houses bursting into flames.[14] Such photos threaten the public by implying, "look at what could happen if you don't pass this proposition!" Whatcom County's photos don't threaten future injury or disaster—the mundane business of overcrowding does not approach death and destruction. A crowded cell is not likely to excite anger or trigger an emotional response. Instead, the photos provide a fair and objective look at the actual maintenance and operations problems facing the County in the same way a photo of potholes in a road might, or people waiting in overly long lines at the Auditor's office might.

Happily, most citizens do not see the inside of Whatcom County's aging jail. They might or might not find the current housing of multiple inmates per room "deplorable." Importantly, Whatcom County did not caption the photos with charged language, such as "deplorable." The factual photographs allow each reader of the mailer to make her/his own decision regarding the condition of the jail.

Allegation 2 - Two officials whose pictures were included in the mailer are up for election in 2015.

The complaints are not under oath.

It appears that none of the complaints against the officials are under oath. Thus, they do not comply with PDC rules for filing complaints against officials. The only complaint filed under oath seems to be the complaint from the League of Women Voters, but that complaint is against the mailing only, not against the officials. Although the PDC certainly knows this rule, it is reprinted below for convenience:

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[13] Complaint of Debra David.

[14] PDC advisory to Local Government Agency Officials from Tony Perkins, dated January 12, 2015. Exhibit A, pages 4-5.

> Filing a Complaint
>
> Anyone who believes a violation of the laws or rules enforced by the Commission has occurred may file a written complaint with the PDC, by email or mail. All complaints filed with the PDC are public records.
>
> In order to be processed, the complaint must include:
>
> •A description of the alleged violation(s), including the date, time, and place of each alleged violation, and the name of the person or entity responsible.
>
> •All available documents and other evidence demonstrating a reason for believing that the violation(s) occurred;
>
> •Contact information for the person submitting the complaint (Complainant);
>
> •For complaints relating to elected officials or candidates for elective office, the Complainant's signature certifying under oath that the complaint is complete, true, and correct under penalty of perjury.

(emphases added).

Unless the PDC has received executed oaths that Whatcom County has not seen, there has not been a valid complaint filed against the officials under the PDC rules. Thus, issues raised regarding the officials in the complaints cannot "be processed" and must be dismissed.

Whatcom County respectfully asks that any issues regarding the officials contained in the complaints be dismissed.

> *Even if the PDC finds that the complaints are somehow under oath, the appearance of the officials in the mailing is not for campaign purposes.*

The PDC asks initially who requested and authorized/approved the use of pictures of officials running for election this year, namely Bill Elfo (unopposed) and Jack Louws.

> "Please address who authorized including pictures of Sheriff Elfo and Executive Louws in the mailing. Did Sheriff Elfo or Executive Louws

request, authorize, or approve of their pictures being included in the mailing?"[15]

In short, neither official requested that a photo be included. DLR developed the mailing and requested the photos. Upon that request, each official authorized DLR to use a photo, with the understanding that the mailing would be reviewed by the PDC and the Whatcom County Prosecuting Attorney's Office for legality before dissemination.[16]

Bill Elfo was contacted on November 6, 2015, and he responded to the PDC's request for information in a straightforward manner as follows:

> When I was first shown a mock up of the flyer, my photo had already been inserted by DLR (similar to the flyer that was disseminated by Skagit County that contained a photograph of the Sheriff in uniform). I had not provided DLR a photo and assumed they pulled it from the public domain (internet). I had no direct communication with DLR on this issue. On September 29th, I was requested by Tawni [Assistant in County Executive's Office] to provide a higher resolution of the photo. I sent her three photographs. It appears that they did not use the photograph I sent them and used the lower resolution one they had pulled from the public domain.
>
> The photo they had found on the internet had been the subject of a PDC complaint in 2011 (during Sheriff's election) – the PDC ultimately ruled that since I owned the uniform and associated items (badge/collar brass) and that the Sheriff's insignia was blurred, it did not violate any PDC rules regarding the use of the uniform (as a public facility).
>
> I was under the impression that the entire flyer would be reviewed and approved by the PDC and our local counsel prior to final printing and dissemination. While I did not specifically authorize the dissemination, I certainly expressed a positive view that it would go a long way in assisting voters in making a decision and in providing the higher resolution photo (which was not used), implied that my photo could be used if ultimately deemed legal and appropriate by the PDC and the Prosecuting Attorney's Office.

Jack Louws responded (via Tyler Schroeder), indicating that DLR Group designed the mailing and chose to use a photo of him. He then approved the use of his photo with the

[15] PDC email to Whatcom County of November 5, 2015.
[16] As mentioned above, the PDC ultimately declined to review the mailer due to lack of funding.

understanding that the legality of the entire mailing would be reviewed with the PDC and the Whatcom County Prosecuting Attorney's Office.

The complaints are a bit unclear in their citation to statute, but presumably they allege that, by appearing via photo in the County fact sheet mailing, two of the officials ran afoul of either (1) the prohibition against appearing in a "public service announcement" (PSA) near election time, or (2) the general prohibition against using public funds to campaign.

1. The PSA prohibition.

> RCW 42.17A.575
>
> Public service announcements.
>
> No state-elected official or municipal officer may speak or appear in a public service announcement that is broadcast, shown, or distributed in any form whatsoever during the period beginning January 1st and continuing through the general election if that official or officer is a candidate. If the official or officer does not control the broadcast, showing, or distribution of a public service announcement in which he or she speaks or appears, then the official or officer shall contractually limit the use of the public service announcement to be consistent with this section prior to participating in the public service announcement. This section does not apply to public service announcements that are part of the regular duties of the office that only mention or visually display the office or office seal or logo and do not mention or visually display the name of the official or officer in the announcement.

Public service announcements are defined by WAC as follows:

> WAC 390-05-525
>
> Public service announcement.
>
> (1) "Public service announcement" means a communication meets all the following criteria. The communication is:
>
> (a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
>
> (b) Not selling a product or service;
>
> (c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;

(d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;

(e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;

(f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and

(g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

The Whatcom County mailing arguably does not meet several of the above criteria and would not be a PSA. Additionally, the publication at issue here is a newsletter, which is specifically exempted from the above rule under PDC Interpretation 10-01, page 5. The fact that mailing is not a PSA is a fair interpretation, and it makes good sense, because the Whatcom County mailer is markedly unlike the examples of PSAs in subsection (2).

The three officials who appear in Whatcom County's mailing—the County Executive, Sheriff, and Prosecutor—are responsible for (and experts regarding) jail operations and/or budgeting for the facility. Indeed, jail safety and operations are core job duties for Bill Elfo. Similarly, Jack Louws' core duties include jail financing and jail maintenance (through his supervision of the County Facilities Department). For these officials, appearing in the mailer is more akin to lending expert testimony to a fact-based report than a gratuitous appearance on behalf of a traditionally popular cause, nonprofit organization, or event.[17]

The prohibition against appearing in PSAs was not meant for this situation.

2. The general prohibition against using public funds to campaign.

[17] In fact, jails and taxes are traditionally *not* popular.

RCW 42.17A.555

Use of public office or agency facilities in campaigns — Prohibition — Exceptions.

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

(emphasis added).

The basic standards in the above prohibition for each official here are (1) use of public facilities (2) for the purpose of assisting his campaign.

The Sheriff and Executive are responsible for providing jail facilities and programs. This is part of their core job duties. The Sheriff, as chief law enforcement officer, is responsible for the operation of the jail. Whatcom County Code Chapter 1.28. Per the home rule charter, Article 3, the Executive is responsible for capital improvements (such as a new jail facility), the budgeting therefore, the administration of the capital construction bidding and purchasing system (WCC 3.08.020), and behavioral health/treatment programs (jail programs) through the Health Department.

Throughout the multi-year process of researching the jail maintenance and operations issues, these three officials have regularly appeared and spoken to inform the public and local legislature about the process and its progress. This activity has been part of the normal and regular conduct of their respective offices. In fact, it is their duty, and it is permitted under exception (3) "Activities which are part of the normal and regular conduct of the office or agency."

Additionally, there is no indication that the purpose of lending their expertise to the informational process was to assist the officials' own campaigns. The quotes in the mailing pertain only to jail facts. The quotes do not tout accomplishments or qualities of the officials, nor do they ask for public support of any official's personal campaign. Indeed, the fact that any of these officials are candidates for election goes completely unmentioned in the mailing. In fact, one of the three officials is not running for office this year, and another is running unopposed. Note also that building a new jail is not popular and is primarily associated with raising a tax. This fact makes it highly unlikely that the purpose of the officials' appearance in the mailing was to assist their own campaigns.

In sum, the exception for normal and regular conduct applies to officials whose core duty it is to provide information and expertise to the public on maintenance and operation issues throughout the years-long process of vetting a new jail. Also, these officials did not appear for the purpose of assisting their campaigns. The photos do not meet the specific "purpose" standard of the broader prohibition under RCW42.17A.555.

Remember that Bill Elfo is running unopposed—it is *extremely* unlikely that he leant his expertise on the facility he runs to this mailing for the "purpose of assisting" his unopposed "campaign." That makes no sense.

Allegation 3 - The mailing was targeted to households with at least one registered voter, rather than being sent to all households.

Whatcom County contacted the PDC (via DLR Group) regarding this question and was told exactly what it was allowed to do. Whatcom County's October 16, 2015 letter from DLR Group details this exchange exactly. Below is the content of DLR's letter, in pertinent part:

> Justin Stranzl with DLR Group talked with the PDC on Wednesday, September 2, 2015 regarding the following criteria that should be implemented with the mailers. Justin initially tried to connect with PDC filer assistance specialist Jennifer Hansen, who didn't return his initial phone calls. Later, on Wednesday, September 2, 2015, Justin connected with the other filer assistance specialist, Chip Beatty. Mr. Beatty confirmed the following.
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> 1. If regular informational mailers are not sent to the public by the County, then only one informational per measure mailer may be sent to the public.
>
> 2. We asked the question, "Can we send to registered voters if not by party?" PDC indicated that the list of Registered Voters may be used as a mailing list. The list may be filtered as required as long as the filters are not restricted by political party or voting platforms. All filters shall be bi-partisan.

There is no language in an RCW or WAC requiring such mailings to go to all households. The rule is a product of PDC interpretation. Whatcom County, through DLR Group, sought the interpretation of the PDC and received it. Whatcom County then followed the PDC's interpretation.

There is no violation.

Allegation 4 – the effect of the tax would be to tie up law enforcement tax dollars for thirty (30) years.

As a reminder, this is a sales tax, not a property tax. There is no fixed cost. The cost is variable depending upon *sales*. Thus, the most accurate description of the tax impact is the rate, which is stated clearly in the mailing.

Complainants demand that the County's mailing include a discussion of the alleged secondary/tertiary effect[18] of the proposition on the County's statutory taxing structure as it pertains to future potential funding of separate public safety issues that do not yet exist. This would be beyond the scope of the proposition.[19]

As above, at allegation 1(a), the complex financing details for a jail facility and its secondary cost impacts could fill book-length reports. If the complaints allege that those secondary impacts must be included, they are mistaken. That is not the purpose of an informational mailing and, in fact, is prohibited. The County refrained from discussing prohibited secondary/tertiary cost concerns *or* benefits (such as rising construction costs if a new jail is delayed, job creation, etc.) either to support or oppose the proposition. In like manner, services the public could theoretically spend its money on instead of a new jail facility were not included in the mailing.[20]

Whatcom County is not required to include a description of the services the public theoretically might not receive in the future via one form of taxation if the public votes for the current tax proposition.

Allegation 5 – coordinated the distribution of information about the ballot measure with campaign efforts;

The mailing was not coordinated with campaign efforts. No examples of coordinated campaign efforts were cited in the complaints. Public outreach was ongoing from September of 2014 through the election per the DLR contract.[21]

The PDC advised Whatcom County on the timing of fact sheet mailers as follows:

> Note on Timing of Activities: A particular activity may be subject to the scrutiny of the Public Disclosure Commission depending in

[18] As the PDC is aware, inclusion of secondary/tertiary effects of propositions in mailings is prohibited.
[19] It is also simplistic and inaccurate to imply that this tax would preclude funding for all other law enforcement services for decades. There are other methods for obtaining tax dollars for public safety. For example, an Emergency Medical Services levy is available. Property taxes can also be levied, as the PDC is well aware.
[20] The general concept that passing a large tax could limit future tax monies available for other services is also *not* unique.
[21] Exhibit G, pages 1 (date) and 25 (public outreach clause).

> part on whether it is a part of the "normal and ordinary" conduct of a local government agency. Generally, activities that occur after the elected legislative body has passed a resolution authorizing a measure to be placed on the ballot will be subject to greater scrutiny by the Public Disclosure Commission than those occurring before such a resolution has been passed.

Whatcom County's fact sheet mailer was issued after the legislative body authorized the measure to be placed on the ballot (of course, a fact sheet about a measure cannot practically be sent until after the measure is placed on the ballot). Thus, Whatcom County's fact sheet mailing is now receiving "greater scrutiny" than the activities surrounding the jail for the seventeen years preceding the resolution. Whatcom County was aware of this, which is exactly why Whatcom County was careful in creating the mailing and consulted with the PDC before issuing it.

The timing/coordination (whichever way it is characterized) of the mailing was not nefarious.

Allegation 6 – Whatcom County misstated the proposition number.

Complainants allege that Whatcom County purposefully misstated the proposition number in the mailing.

Whatcom County's mailing referred to the proposition as "Proposition Number 1," while the eventual ballot referred to the proposition as "Proposition 2015-1" (adding the current year to the title). A separate Proposition 1 appeared on the ballot regarding a different measure, creating some confusion.

The motive complainants allege for this subtle discrepancy is unclear, but it appears they are accusing the County of intending to somehow trick/fool/confuse voters. This accusation is not supported by facts, and does not effectively explain why the County would desire confusion or how confusion would benefit the alleged promotion of the jail proposition. However, Whatcom County has tracked down the moment in time when the title of proposition was communicated to DLR Group for the mailing, so that the PDC can see that there was no intent to trick/fool/confuse the voters.

On August 19, 2015, the Whatcom County Auditor's office sent the County Executive's Office (via Tyler Schroeder) an email with the final version of the ballot title. Auditor employee Amy Grasher said: "I believe this is the final version (see attached)." The attachment was titled: "Explanatory Statement & ballot text.docx." When opened, the attachment listed the proposition title as "Proposition Number 1."[22] This language was forwarded by Tyler Schroeder to DLR, and the mailing was created from this version.

It's that simple.

It has since been discovered that the official Voters Pamphlet itself refers to both Proposition No. 2015-1 (top of page) and Proposition #1 (body of text).[23] Even the email from the auditor with the attachment that declared "Proposition Number 1" the official title of the proposition had a conflicting header that said "Prop 2015-1."

It's clear that some confusion is inherent when a "Proposition 1" measure with the year added to its title appears on the ballot alongside a separate "Proposition 1" measure with no year in its title. This confusion was not the invention of the Whatcom County Executive's Office. This was a universal problem that even the Auditor fell victim to.

There was no intent by the County Executive's Office to trick/fool/confuse the voters.

Allegation 7 – Whatcom County's issuance of a mailing is not "normal and regular conduct," but instead an "extraordinary means or manner" of notifying the public of its jail facility's maintenance and operations issues.

In September of 2014, Whatcom County contracted with DLR for numerous jail development services, including permitting, design, engineering, and ongoing "public outreach" throughout the jail development process.[24] This outreach included a number of services—the contract explicitly included development of images, community polling, attendance at public Council meetings, public steering committee meetings, presentations, mailers, and technical support for County presentations. Thus, mailings were one aspect of a large and ongoing public information process. This was all done in the regular course of business. In fact, the plan for

[22] Both the email and the attachment are attached at Exhibit F.
[23] Exhibit F, page 4.
[24] Exhibit G, page 25.

mailings was contained within a standard business contract memorialized in writing. Thus, mailings were planned more than a year before the election as part of a normal and ongoing public information process. They were not "effected or authorized in or by some extraordinary means or manner…"

If the alleged conduct of the agency is "normal and regular conduct," that conduct is allowed under RCW 42.17A.555(3).

> WAC 390-05-273
>
> Definition of normal and regular conduct.
>
> Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner…

An election-related communication to the public from a county could run afoul of the above RCW and WAC if it is done (1) unlawfully,[25] or (2) "by some extraordinary means or manner." Thus, an "extraordinary" communication could be a violation of the RCW/WAC. For example, a barrage of repeated mailings by a county that never does mailings might be extraordinary, or a prime-time television ad run by a county that does not run television ads might be extraordinary.

However, a single mailing is generally a normal and regular means of communicating with the public in and not seen as extraordinary. Indeed, the PDC recognizes that one mailing is typically allowed and considered normal in any jurisdiction.[26] Whatcom County also regularly uses mailings to inform the public of maintenance and operations issues, as well as to provide facts about research and studies the County has done. Whatcom County issues several types of these mailings, and they address various issues. Some mailings pertain to legislative issues, such

[25] Mailings are not unlawful, of course.
[26] Exhibit A, page 4-5.

as the comprehensive plan or this jail facility. Others inform the public about county research and studies. Still others report on successful programs or warn about County problems that need to be fixed. Whatcom County mailers typically include statistics to back the research and schematics/examples to make the issues clear. They also typically include photographs of people involved in the issues. Attached are the following examples:[27]

- "Ag News" – a multi-page glossy mailing from 2015 regarding comprehensive plan legislative updates, statistics regarding soils, a study of rural lands, an interview with a farmer, a description of farm plans, information about a watershed project, photographs of people involved, and photographs and schematics to illustrate the information.
- "Our Watershed" – a multi-page glossy mailing from 2015 regarding a recreational water quality/supply related event, stormwater projects information, subwatershed master plans (legislative), beach clean-up efforts, water quality updates, waste advisory, rain/flood advisory, photographs of people involved, and photographs and schematics to illustrate the information.
- "State of the Watershed Report" – a 2014/2015 twelve-page newsprint style newsletter regarding watershed statistics and scientific research, information on indigenous animals, historical context, watershed health information and research, maps of the area with labeled sites, salmon recovery group information, water quality statistics and research, healthy watershed advisories, statistics regarding actions taken to improve water quality, a list of community resources, photographs of people involved, and photographs and schematics to illustrate the information.
- "Flooding in Whatcom County" – a multi-page foldout mailing regarding flood hazards, floodplain dynamics, the flood warning system, advice to prepare for flooding, a flood location map, advice during and after a flood, contact information for county and local resources, photographs of people involved, and photographs and schematics to illustrate the information.

It is not "extraordinary" for Whatcom County to issue a mailing to notify the public of *any* issue. Maintenance and operations issues, in particular, are common components of

[27] Exhibit C.

Whatcom County mailings. Frankly, it would be extraordinary if Whatcom County did years of research on a public issue and did not notify the public.

Whatcom County's jail mailing is a normal "means" of notifying the public of maintenance and operations issues, and the "manner" of its delivery (format) is comparable to the above examples. Given the years of study that went into the jail facility research, the mailing is not of extraordinary length—note that the jail mailing is not even the most lengthy of the examples above. It is certainly not "extraordinary" when compared with other mailings from Whatcom County.

And, again, the mailing was contracted for in the normal course of business as part of a larger public outreach campaign.

In sum, the jail mailing complies with the WAC definition of normal and regular conduct—it was lawful and "usual, i.e., not effected or authorized in or by some extraordinary means or manner…" under WAC 390-05-273. Thus, it is allowed under RCW 42.17A.555(3).

Allegation 8 - the mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

This issue is really just a variation/extension of allegations 2 and 7 above. Electioneering Communication is defined under RCW 42.17A.005(19). The definition has exceptions/exemptions as follows:

> RCW 42.17.005(19)
>
> (a)…
>
> (b) "Electioneering communication" does not include:
>
> …
>
> (vi) Public service announcements;
>
> …

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

If the Commission finds under allegation 2 above that the communication is a PSA, then it is not an electioneering communication per section (vi).

If the Commission finds under allegation 7 above that a single informational mailing is normal and regular (i.e. not extraordinary), then the communication is "Any other communication exempted by the commission through rule consistent with the intent of this chapter" per section (ix). As discussed extensively above, the PDC has a rule that exempts a single informational fact sheet mailing as normal and regular conduct. Thus, a fact sheet is exempted from RCW 42.17.005(19). The fact sheet exemption rule is consistent with the intent of the chapter (spirit of the law), because such an informational fact sheet is, by its nature, informational, and not election advocacy.

Summary & Conclusion

In 2014, Whatcom County authorized public outreach to inform the public of a major County issue, as is its duty. This outreach included mailings. Because the issue was large and had been researched for over seventeen years (17+), the mailings would contain a lot of information detailing the problem. This was no different from what other jurisdictions do, and Whatcom County has issued similar mailings regarding other local issues over the years, including four (4) examples from this year alone.

Because the election on this issue was within the year, the County made substantial efforts to research election statutes, gain advice from the PDC, find examples of election-related mailings, and craft its mailings to inform the public appropriately under the law. The PDC indicated that one mailing was normal and regular. Whatcom County created one mailing, which was a condensed version of many facts collected over decades concerning the undisputed need to remedy a failing facility. The mailing was similar in form and content to other mailers Whatcom County distributes. The Whatcom County Prosecuting Attorney's Office was consulted to ensure the language was factual and did not appeal to emotion. The mailing informed the public of the documented problems with the jail and stated in neutral language that a tax was being sought to remedy them.

Nowhere did the mailer ask the public to vote in favor of the tax.

Opponents filed complaints about the mailing on the eve of the election, garnering significant public attention.[28]

The proposition then failed.

Despite the fact that the mailing was obviously politicized after its release and that the proposition was voted down, Whatcom County takes these complaints very seriously. In response to the PDC investigation, Whatcom County has now offered as much information as possible[29] and explained in detail the history and process of the fact sheet mailing's creation.

Whatcom County is aware that, whether or not its legal and technical positions are accepted, the PDC may wish to take a global view of Whatcom County's efforts to conform to election law. In this regard, Whatcom County asks that its significant efforts to ensure compliance be recognized. There was no nefarious purpose or intended violation of election law in the mailing's preparation or distribution.

The County is prepared to answer any further questions the PDC might have to help resolve this inquiry

Respectfully,

Royce Buckingham Bar #22503

Deputy Prosecuting Attorney for Whatcom County

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[28] *See*, for example, the October 15, 2015 Bellingham Herald article contained in the complaint of Rosalinda Guillen at Guillen's Exhibit B, and the October 30, 2015 press release by complainant's attorney Junga Subedar at http://noisywatersnw.com/2015/10/30/complaint-filed-for-whatcom-county-community-report-jail-mailer-press-release-junga-subedar/ .

[29] Please excuse the length of the response—the complaints were numerous and lengthy.

EXHIBIT A

DLR Group
Architecture Engineering Planning Interiors

51 University Street
Suite 600
Seattle, WA 98101

o: 206/461-6000
f: 206/461-6049

October 26, 2015

Tyler Schroeder
Whatcom County Executive's Office
County Courthouse
311 Grand Avenue, Suite 108
Bellingham, WA 98225-4082
tschroed@co.whatcom.wa.us

Project Name: Whatcom County Adult Corrections Facility and Sheriff Headquarters
DLR Group Project No.: 73-15102-00

Re: DLR Group Experience with PDC

Dear Tyler:

You had requested that I provide you with information regarding two items. First, what was our communication with the Washington Public Disclosure Commissions (PDC); and second what is DLR Group's previous experience with preparing formal mailers and or informational documentation for public agencies that required PDC compliance. The following is the information you have requested on both items.

COMMUNICATION WITH PDC:
In the past PDC would provide individualized review of draft public education and informational facts documents prepared by public agencies for the objective and fair presentation of facts for each ballot measure. However, as indicated on the January 2015 PDC Memorandum on PDC Staff Compliance Review – RCW42.17A.555, it states that:

> "In the past, PDC staff has reviewed draft agency publications on ballot propositions upon request and provided individualized written comments and recommendations to local governments in order to facilitate compliance with RCW 42.17A.555. Current staff resources do not allow for individualized guidance. Accordingly, staff makes this memo available to answer common questions about agency publications and RCW 42.17A.555. What follows are representative examples of draft agency publications, and the guidance that PDC staff provided to the sponsoring agencies".

Justin Stranzl with DLR Group, talked with the PDC on Wednesday September 2, 2015 regarding the following criteria that should be implemented with the mailers. Justin initially tried to connect with PDC filer assistance specialist Jennifer Hansen, who didn't return his initial phone calls. Later, on Wednesday September 2, 2015 Justin connected with the other filer assistance specialist, Chip Beatty. Mr. Beatty confirmed the following:

1. If regular informational mailers are not sent to the public by the County, then only one informational per measure mailer may be sent to the public.
2. We asked the question, "Can we send to registered voters if not by party?" PDC

indicated that the list of Registered Voters may be used as a mailing list. The list may be filtered as required as long as the filters are not restricted by political party or voting platforms. All filters shall be bi-partisan.

3. The mailer should not directly advocate, and should only present the facts of the project and information to allow the voters to make an informed decision on the funding question. This is point; it was discussed and outlined in the January 2015 PDC Memorandum on PDC Staff Compliance Review – RCW42.17A.555 regarding the legality and responsibility of Whatcom County in the publishing of information to inform the general public:
"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that *"it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."* Accordingly, the Interpretation states that *"[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure,"* typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

4. There was one statement discussed on the call on the timeline for sending a mailer. This is not a requirement that impacts or prohibits the timing of when an informational facts mailer should be sent or the legality of the timing of the informational mailer with the timing of the distribution of the ballots. It was discussed that on the timing of informational activities, that a particular activity may be subject to the scrutiny of the Public Disclosure Commission depending in part on whether it is a part of the "normal and ordinary" conduct of a local government agency. Generally, activities that occur after the elected legislative body has passed a resolution authorizing a measure to be placed on the ballot will be subject to greater scrutiny by the Public Disclosure Commission than those occurring before such a resolution has been passed.

DLR Group's EXPERIENCE WITH PREPARING INFORMATIONAL MAILERS REQUIRING PDC COMPLIANCE IN THE STATE OF WASHINGTON:

DLR Group's experience is in preparing project conceptual graphics and informational content to public clients and the ballot measures Political Action Committees (PACs). In some cases the informational documents are distributed by the public agency, in others they are distributed by the PAC and in others they are distributed by both. I share this statement simply to illustrate that every ballot measure is unique. The following are our recent experience with supporting the preparation of informational documents for public ballot measures that required compliance with the State of Washington PDC:

- 2015 Whatcom County Jail – Prepared graphics and information content. Co-developed and distributed the one-time informational mailer with Whatcom County staff.
- 2014 Mukilteo School District – Prepared graphics and information content, and provided to School District who distributed through their information outreach system (web).
- 2013 Tahoma School District - Prepared graphics and information content, and provided to School District who distributed through their information outreach system (web and mailer).
- 2013 Skagit County Jail – Prepared graphics and information content, and provided to Skagit County who developed and distributed the information as part of the periodic County report to the community.
- 2011 Tahoma School District - Prepared graphics and information content and provided to School District who distributed through their information outreach system (web and mailer).

DLR Group
Seattle, Washington
o: 206/461-6000
f: 206/461-6049

If you have any further questions or need any additional information regarding these items please do not hesitate to contact me. I look forward to continuing to work with Whatcom County on this exciting and beneficial project.

Sincerely,

DLR Group

William J. Valdez
Principal

Encl: Washington Public Disclosure Commissions (PDC) Election-Related Communications Memorandums and Examples.

cc:

DLR Group
Seattle, Washington
o: 206/461-6000
f: 206/461-6049

STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION
711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

DATE: January 12, 2015

TO: Local Government Agency Officials

FROM: Tony Perkins, Acting Assistant Director

SUBJECT: **Election-Related Communications by Local Government Agencies**

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition *"does not prevent a public office or agency from… making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."*

In PDC Interpretation 04-02, *Guidelines for Local Government Agencies in Election Campaigns*, the Commission held that *"it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."* Accordingly, the Interpretation states that *"[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure,"* typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.

In the past, PDC staff has reviewed draft agency publications on ballot propositions upon request and provided individualized written comments and recommendations to local governments in order to facilitate compliance with RCW 42.17A.555. Current staff resources do not allow for individualized guidance. Accordingly, staff makes this memo available to answer common questions about agency publications and RCW 42.17A.555. What follows are representative examples of draft agency publications, and the guidance that PDC staff provided to the sponsoring agencies.

As illustrated in the attached guidance, an "objective and fair presentation of the facts" concerning a property tax levy means stating the proposed tax increase in terms of the additional annual cost to the owner of a home of average value in the jurisdiction. Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters.

In addition, an "objective and fair presentation of the facts" must **avoid** the following:

- Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames);
- Statements that speculate about possible secondary or tertiary impacts of a ballot proposition;
- Statements seeking to minimize the cost of a ballot proposition, e.g., through comparisons to small-ticket items such as coffee, pizza, or a magazine subscription;
- Statements purporting to describe the sponsoring agency's responsible fiscal management;
- Detailed information about property tax exemptions; and
- Detailed information about the conduct of elections (e.g. ballot drop-off locations), unless it is the normal and regular conduct of the agency to provide such information in the manner of the proposed publication.

Finally, if an agency wishes to go beyond a single jurisdiction-wide mailed "fact sheet," for example, to make multiple election-related communications or communications in multiple formats, the agency must be able to demonstrate that these other communications are a part of the agency's normal and regular conduct. In other words, that the method, format, and frequency is typical of how the agency routinely communicates with its audience.

Resources

In addition to this memo and the attached examples of PDC staff's guidance, local government officials are encouraged to use the following resources to assist in compliance with the law:

RCW 42.17A.555
WAC 390-05-271 - General applications of RCW 42.17A.555
WAC 390-05-273 - Definition of normal and regular conduct
PDC Interpretation 01-03, Guidelines for School Districts in Election Campaigns
PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns

Although PDC staff cannot currently provide individualized review of proposed agency publications on ballot propositions, we are available to answer questions. Contact 360-753-1111 or 1-877-601-2828 for assistance, or email pdc@pdc.wa.gov.

Examples of PDC Staff Guidance Regarding Ballot Proposition "Fact Sheets" and RCW 42.17A.555

STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION
711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

MEMORANDUM

To: Shannon Criss, Superintendent, Winlock School District

From: Tony Perkins, Lead Political Finance Specialist

Date: January 10, 2012

Subject: Review of Information Regarding Levy Election in Winlock School District

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed fact sheet that you submitted by email on January 4, 2012, regarding the proposed maintenance and operations levy on the February 14, 2012 special election ballot in the Winlock School District.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the "normal and regular" conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #01-03, Guidelines for School Districts in Election Campaigns. That interpretation may be found on our Web site at www.pdc.wa.gov by hovering on "Home," then on "Laws and Rules," and finally clicking on "Commission Interpretations." (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules. Please also note that although the *Guidelines* refer to RCW 42.17.130, effective January 1, 2012 this statute was recodified as RCW 42.17A.555.)

We cannot certify that the proposed fact sheet would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the levy, may be construed by residents of the Winlock School District as "campaigning" in support of a ballot proposition.

Reviewing the proposed fact sheet, we found that in part, it represented an objective and fair presentation of the facts. However, there were several areas of concern, prompting the following recommendations:

- We recommend that statements such as *"Taxpayers of the Winlock School District can be assured that the funds of the district are being spent wisely"* be omitted from the proposed publication, since they communicate no particular fact about the levy, and in addition convey a tenor of support for the measure.

- We recommend that you provide more specific information about the cost of the levy, in terms of the dollars and cents levied against a home of average value in the school district.

- Rather than simply stating that Winlock maintains one of the smallest levies in the county, we recommend that you cite the levy amounts in a range of comparable local districts, and let the numbers speak for themselves.

- Rather than stating that *"The Winlock Board of Directors feel they can maintain district priorities with the levy being proposed,"* we recommend that you simply state that the levy, if renewed, would preserve current programs.

- We recommend that you explain the prospect of state levy matching funds without calling it *"A very important point to remember."*

- Rather than stating that the failure of the levy replacement *"would be devastating to current programs and student offerings,"* we recommend that you explain in concrete terms, the cuts that the school district plans to make in the event the levy is not approved.

- The statement "Winlock School District staff and School Board have made a strong commitment to use every penny appropriately to provide out students with a quality education that will prepare them for life beyond high school" does not communicate any particular fact about the levy, and in addition conveys a tenor of support for the measure. We recommend that this statement be omitted from the proposed publication.

Following this memo is a copy of the draft fact sheet reviewed by PDC staff. For your reference, the segments that our staff suggests be omitted or modified have been marked in yellow; click on the highlighted content to review staff's comments and recommendations.

While we cannot require you to follow PDC staff's recommendations, they do constitute

our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended or the information included in the proposed fact sheet. Those decisions are the responsibility of the Winlock School District, and the district's legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at tony.perkins@pdc.wa.gov.

MAINTENANCE AND OPERATIONS REPLACEMENT LEVY

Winlock School District is running a replacement levy in February, 2012 for the levy that will soon be expiring. This replacement levy is used to help supplement the programs currently existing in the district. Listed below are nine areas that your levy dollars are used for. This money goes into the general fund which allows your Board of Director's to apply the money to the areas that need the most financial assistance. Taxpayers of the Winlock School District can be assured that the funds of the district are being spent wisely. Current economic instability along with existing and potential reductions of both State and Federal funds to our district makes levy money all the more critical to maintaining quality programs that are focused on supporting the youth of our community.

The replacement levy will remain the same as what we asked for in the past levy. We are requesting $700,000 for 2013 and 2014. Winlock still maintains one of the smallest levies in the county. The Winlock Board of Directors feel they can maintain district priorities with the levy being proposed.

A very important point to remember is that we receive state matching funds in the form of Levy Equalization if we pass our levy. With an already dwindling district budget, the loss of levy equalization funds, compounded by loss of levy dollars would be devastating to current programs and student offerings.

Your LEVY dollars support:

- Full day kindergarten
- Textbook adoptions and curriculum materials
- Utilities
- Extra curricular programs
- Transportation costs not covered by the State
- Maintenance of our facilities
- Staff
- Technology
- College credits offered at the high school level

Winlock School District staff and School Board have made a strong commitment to use every penny appropriately to provide out students with a quality education that will prepare them for life beyond high school. This is a replacement levy, not a new tax.

STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION
711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
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MEMORANDUM

To: Craig Ritchie, City Attorney, City of Sequim

From: Tony Perkins, Lead Political Finance Specialist

Date: May 31, 2012

Subject: Review of Information Regarding Sales Tax Election in the City of Sequim

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed fact sheet that you submitted by email on May 30, 2012, regarding Proposition 1, a sales tax measure on the August 7, 2012 primary ballot in the City of Sequim.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the "normal and regular" conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #04-02, Guidelines for Local Government Agencies in Election Campaigns. That interpretation may be found on our Web site at www.pdc.wa.gov by hovering on "Home," then on "Laws and Rules," and finally clicking on "Commission Interpretations." (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules. Please also note that although the *Guidelines* refer to RCW 42.17.130, effective January 1, 2012 this statute was recodified as RCW 42.17A.555.)

We cannot certify that the proposed fact sheet would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the sales tax proposal, may be construed by residents of the City of Sequim as "campaigning" in support of a ballot proposition.

Reviewing the proposed fact sheet, we noted areas of some concern, prompting the following recommendations:

- We recommend that you omit the statement, *"Please follow this discussion in your local papers and in the community as well."* In the proposed fact sheet, the City of Sequim should communicate, according to its normal and regular conduct, an objective and fair set of facts concerning Proposition 1, including the planned use of the proposed funding, and the costs and other anticipated impacts of the measure. The city should not refer readers to outside sources of information, which could include editorial content and political campaign activity. City residents may find such information on their own, if they wish.

- The city should encourage voter participation in the Proposition 1 election only if the city routinely communicates such encouragement for every primary, general and special election, in the manner of the proposed fact sheet. Otherwise, we recommend that you omit the statement, *"Your vote on Proposition 1 is very important"* from the fact sheet.

- In this fact sheet, we recommend that you describe the facilities that would be included in a new police station and EOC, and the use that would be made of such facilities. We recommend that you avoid the use of emotionally-laden language such as *"Our Police Department provides us with excellent service under extremely difficult circumstances... It has really never had the benefit of a dedicated, up-to-date professional facility."*

- Although the city proposes to include a new police station and EOC in its development of the recently-acquired downtown property, we recommend that you avoid statements indicating that these facilities *"should be a part of that development."* Such language conveys a tenor of support for Proposition 1, and does not explain any particular fact about what is on the ballot.

- The statement, *"There has never been a better time to consider taking on capital civic improvements and the associated long-term debt"* conveys a clear tenor of support for Proposition 1. In place of this statement, we recommend that you explain, in a neutral tone, the plan to finance the proposed police station and EOC, including the specific interest rates that the plan anticipates.

- We recommend that you refrain from statements regarding the state of the local construction industry, and the need for job creation. Proposition 1 authorizes the collection of sales tax, not job creation, and the function of an objective and fair presentation of the facts should be to explain in a neutral, informative manner what is on the ballot.

- We recommend that you refrain from describing the proposed sales tax increase as "small." Statements which minimize the cost of Proposition 1 are likely to be viewed as an attempt to promote the proposition.

- We recommend that you omit the statements, *"IS THIS TAX RIGHT FOR SEQUIM? Only the voters of our city can make that decision."* Such statements do not communicate any particular fact about the sales tax proposal.

- Although it is appropriate to explain the structuring of Sequim's sales tax revenue, we recommend that you do so in a manner that does not "sell" Proposition 1, as in *"Less than one third will come out of your pocket."*

- If the retail and tourism sectors of Sequim's economy have impacted police services in any particular manner, it is appropriate to explain this impact with reference to specific figures, e.g. trends in the number of incident responses, and increases or decreases in associated costs. It is also appropriate to explain the city council's decision to pass these costs on to area visitors through a sales tax increase. However, we recommend that you refrain from commenting on the propriety of fairness of this decision, since such emotionally-laden language conveys a tenor of support for Proposition 1.

Following this memo is a copy of the draft fact sheet reviewed by PDC staff. For your reference, the segments that our staff suggests be omitted or modified have been marked in yellow; click on the highlighted content to review staff's comments and recommendations.

While we cannot require you to follow PDC staff's recommendations, they do constitute our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended or the information included in the proposed fact sheet. Those decisions are the responsibility of the City of Sequim, and the agency's legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at tony.perkins@pdc.wa.gov.

An Open Letter to Residents in the City of Sequim
From your City Council

Proposition 1
Public Safety Sales Tax

Last November the Sequim City Council decided to put a Public Safety Initiative on the August 7, 2012, ballot. This letter will help you understand the reasons for the Council's decision and give you some of the information you will need when you cast this critical vote. Please follow this discussion in your local papers and in the community as well. **Your vote on Proposition 1 is very important**

WHAT IS A PUBLIC SAFETY SALES TAX? It is a local option tax authorized by Washington law. If approved by a majority of city voters, it would raise local sales taxes by one tenth of one percent (0.1%). Specifically, the income from the tax "shall support **capital public safety facilities including a Police Station** (and) **Combined Emergency Operations Disaster Center"** as well as other public safety/crime prevention services.

WHY DO WE NEED IT? As we approach Sequim's centennial year, we find our Police Department without a permanent home. We lease a facility ($90,000 per year) in a local retail strip mall. **This space will never meet national accreditation facility standards**. Evidence processing and storage (including separate areas for drugs, firearms and ammunition) are inadequate. Prisoner holding cells do not meet State requirements. There are no adequate lockers or showers for our officers. Our Police Department provides us with excellent service under extremely difficult circumstances. It has really never had the benefit of a dedicated, up-to-date professional facility.

WHY NOW? The City has acquired land in the heart of our downtown and plans to build a civic center. A new Police Station and Emergency Operations Center (EOC) should be a part of that development. There has never been a better time to consider taking on capital civic improvements and the associated long-term debt. **Interest rates have never been lower and the local construction industry is suffering** – we need the jobs and the construction costs should be the most competitive we have seen in years.

HOW MUCH MONEY WOULD THE PUBLIC SAFETY TAX RAISE? This sales tax would raise approximately $240,000 annually for the City. Combining that revenue with the $90,000 in yearly rent that we pay for the current police facilities, the City could support issuing a 30-year, tax free municipal bond. That bond would generate the $6.4 million needed to build the Police Station and EOC. It should be noted that State requirements for this Public Safety Tax would also send about $40,000 per year to Clallam County to support its public safety services to the broader community.

WHAT WILL IT COST YOU? This small tax increase will be levied on non-food purchases at grocery stores, on restaurant meals and on retail items bought at our local stores. **It will not add to the costs of necessities** such as groceries, prescriptions, gasoline, insurance, or rent and mortgage payments. It would add one cent to the cost of a $10 fast food meal. If you spend as much as $100 per week on discretionary items, your weekly costs would increase by 10 cents.

IS THIS TAX RIGHT FOR SEQUIM? Only the voters of our city can make that decision. We need to remember that **over two thirds of Sequim's sales tax revenue comes from neighbors and tourists.** Less than one third will come out of your pocket. Big box stores and increased tourism put additional burdens on your police department. It's seems appropriate that friends from outside our community should pay their fair share of these costs.

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MEMORANDUM

To: Virginia Olsen, City Clerk, City of Mountlake Terrace

From: Tony Perkins, Lead Political Finance Specialist

Date: March 21, 2013

Subject: Review of "Fact Sheet" Regarding Civic Center Bond Proposal

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed fact sheet that you submitted by email on March 14, 2013, regarding the upcoming bond measure on the April 23, 2013 general election ballot in the City of Mountlake Terrace.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the "normal and regular" conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #04-02, Guidelines for Local Government Agencies in Election Campaigns. That interpretation may be found on our Web site at www.pdc.wa.gov by hovering on "Home," then on "Laws and Rules," and finally clicking on "Commission Interpretations." (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules. Please also note that although the *Guidelines* refer to RCW 42.17.130, effective January 1, 2012 this statute was recodified as RCW 42.17A.555.)

We cannot certify that the proposed fact sheet would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the bond proposal, may be construed by residents of the City of

Mountlake Terrace as "campaigning" in support of a ballot proposition.

Reviewing the proposed fact sheet, we found that much of the information included represented an objective and fair presentation of the facts. However, there were areas of some concern, prompting the following recommendations:

- We recommend that in this fact sheet, you refrain from describing the civic center proposal or any facet of it as "important," and refrain from underlining the importance of the information being communicated. Such language lends an urgent tone to the publication that may be perceived as an attempt to promote a ballot proposition.

- We recommend that you refrain from pointing out that the library is 25 years old. (It is sufficient to point out that the roof and cooling system require replacement).

- We recommend that you simply state that there is no funding to continue renting the interim city hall past 2013, and omit the statement that *"Voters may not know..."*

- The results of the August 2012 bond election and the city council's feelings about those results are not facts about the April 23, 2013 Proposition 1 election. We recommend that you omit such discussion from this fact sheet.

- In place of the statement that certain facility upgrades need to be performed *"soon before they become emergent,"* we recommend that you provide more specific information about the projected need for those repairs—e.g., the anticipated life span of the HVAC system in the current library structure.

- We recommend that you omit the word "good" from the statement, *"Additionally, the project makes good use of the vacant Civic Center property the city already owns [.]"*

- We recommend that you omit the paragraph beginning *"The Civic Center project will add community amenities and contribute to economic development..."* from this fact sheet. This statement does not communicate any particular fact about the civic center bond proposal, and conveys a strong tenor of support for the bond to the fact sheet.

- Rather than specifying the age and income thresholds for property tax exemptions, we recommend that you direct readers to the county assessor's office, whose normal and regular conduct it is to provide such detailed information.

- PDC staff advises agencies that when they have arrived at an objective and fair presentation of the facts concerning a ballot proposition, they may proceed to

communicate that information in accordance with their normal and regular conduct. For some agencies, a single jurisdiction-wide "fact sheet" mailing would be normal and regular. For others, normal and regular conduct may include holding community meetings. The City of Mountlake Terrace is free to conduct informational meetings concerning the civic center issue ("Civic Center 101"), however the city should be able to demonstrate that for other major policy issues facing the city, they have communicated information to the public in a similar manner.

Following this memo is a copy of the draft fact sheet reviewed by PDC staff. For your reference, the segments that our staff suggests be modified or omitted have been marked in yellow.

While we cannot require you to follow PDC staff's recommendations, they do constitute our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended, or the information included in the proposed fact sheet. Those decisions are the responsibility of the City of Mountlake Terrace, and the agency's legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at tony.perkins@pdc.wa.gov.

DRAFT

IMPORTANT INFORMATION ABOUT MOUNTLAKE TERRACE PROPOSITION 1

MOUNTLAKE TERRACE
PO BOX 72
Mountlake Terrace, WA
98043

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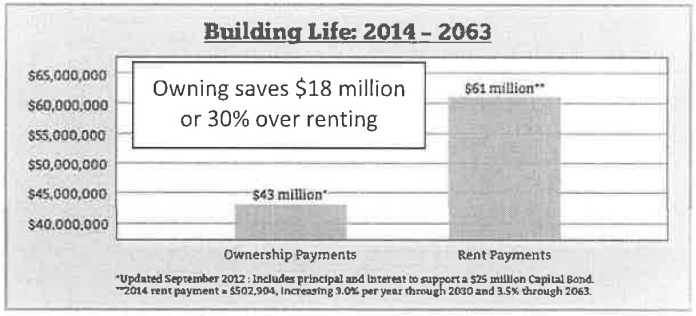
What is Proposition 1?
A 30-year capital bond measure for $25 million is on the April 23, 2013 ballot to fund construction of a new Civic Center including an expansion and remodel of the current Police Station to allow for important security and space needs, a new roof and heating/cooling system for the 25 year-old Library, community activity center with space for seniors and other community groups and individuals, natural amphitheater, and green open space for a downtown gathering place that connects the Civic Center together with Veterans Memorial Park.

Why is this measure back on the ballot?
Voters may not be aware that there is no funding available to continue renting the Interim City Hall beginning in 2014. The city has been renting an interim facility since the former 48 year-old City Hall had a collapsed ceiling; the building was then deemed unsafe and demolished in 2010.

Proposition 1 fell just 124 votes short of the required 60% supermajority in the August 2012 election. The City Council felt there was positive momentum from the nearly 57% approval and the city will save at least $18 million or 30% by building new than continuing to rent over the life of a 50-year facility. The project also addresses important facility needs at the aging Police Station and Library that will need to be done soon before they become emergent.



Additionally, the project makes good use of the vacant Civic Center property the city already owns at 232nd Street SW and 58th Avenue W. The Civic Center project will add community amenities and contribute to economic development and the growing vibrancy of downtown by providing leadership for redevelopment and revitalization.

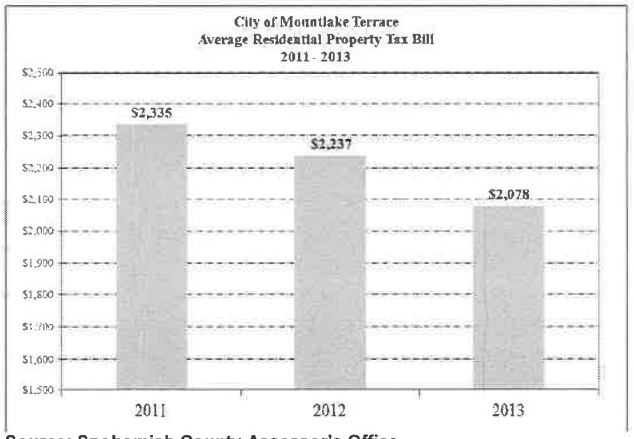
If approved, the city will move into design phase and select an architect. Once a firm is selected, the city will invite the public to participate in design workshops similar to those held during the Town Center Plan process. The project will be completed in spring/summer of 2016.

If not approved, a property tax measure (requiring 50% to pass) will likely be proposed to continue to pay rent indefinitely and/or essential services such as public safety and parks services will be cut.

DRAFT

What is your property tax impact?
If the measure passes, there is no impact in 2013. An increase of $3.77 per month for the owner of an average home in Mountlake Terrace will take place in 2014 for design and the average from 2014 until the bond is paid off is $10.13 per month.

DID YOU KNOW your average 2013 property tax bill decreased by $159 since 2012 and $257 since 2011? This proposition will add about $122 per year on average from 2014 until the debt is retired after 30 years. The Civic Center is expected to last 50-100 years.



Source: Snohomish County Assessor's Office

Is there a senior citizen exemption?
Senior citizens, age 61 and older by December 31 of this year, as well as disabled persons, with a combined income of less than $35,000 a year may be exempt from all or part of special levy taxes. Call Snohomish County Assessor's Office at (425) 388-3540 for more information.

How can you learn more?
Visit our website at www.cityofmlt.com and find "Civic Center" under most requested services. Or, contact the city at cityhall@ci.mlt.wa.us or (425) 744-6206. The city is also available to provide a "Civic Center 101" informational presentation to you and your neighbors or community group.

What are the components and cost of the project?*

PROJECT COMPONENTS	COST & PERCENTAGE OF PROJECT	
Building Construction	$11.4 million	45.7%
Site Development	$ 6.7 million	27.0%
Architect & Design	$ 2.9 million	11.9%
Sales Tax	$ 1.8 million	7.4%
Construction Contingencies	$ 1.4 million	5.7%
Equipment & Furnishings	$ 383,000	1.5%
Municipal Arts Fund	$ 213,000	0.9%
TOTAL PROJECT COST	$25.0 million	100%

***Based on construction in 2014-2016**

Could this amount be less?
Yes, this amount will be less if construction costs or interest rates are lower than projected, and as more taxpayers are added to the tax rolls in the next 30 years. The interest rate is estimated high at 4%. Construction contingencies and cost escalators to account for construction in 2014-2016 are already included as shown above.

How was the plan developed?
The Civic Center plan, including all the community amenities and police/library facility improvements, was developed by citizens who served on the Civic Facilities Advisory Task Force in 2008-2009. They received input from other citizens at 13 open public meetings and 4 town hall meetings. The Task Force recommended funding the project with a 30-year voter-approved capital bond. The City Council adopted the citizen Task Force recommendation.

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MEMORANDUM

To: John Sinclair, Fire Chief, Kittitas County Fire District #2

From: Tony Perkins, Lead Political Finance Specialist

Date: March 19, 2014

Subject: Review of Information Regarding Fire Station Bond Proposition

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed mailing that you submitted by email on March 18, 2014, regarding the upcoming bond measure in Kittitas County Fire District #2.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the "normal and regular" conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #04-02, Guidelines for Local Government Agencies in Election Campaigns. That interpretation may be found on our Web site at www.pdc.wa.gov by hovering on "Home," then on "Laws and Rules," and finally clicking on "Commission Interpretations." (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules.)

We cannot certify that the proposed mailing would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the bond proposal, may be construed by residents of Kittitas County Fire District #2 as "campaigning" in support of a ballot proposition.

Reviewing the proposed mailing, we found that much of it represented an objective and fair presentation of the facts. However, there were areas of some concern, prompting the following recommendations:

- In this fact sheet mailing, we recommend that you identify the bond ballot proposition number, and state the date of the election.
- If Kittitas County Fire District #2 proposes to include information about current bond rates in this fact sheet, we recommend that the agency include more specific information, e.g. trends in bond financing costs over the last decade. Otherwise, you may wish to omit statements concerning the favorability of the current bond climate.
- The heading, *"How will emergency services improve?"* and the paragraph that follows convey a tenor of support for the proposed bond. In place of this content, you may wish to simply describe the agency's considerations in choosing a location for its new fire station. In addition, since the proposed bond is not being sponsored by the City of Ellensburg, and would not fund or require any expansion of the city's police facilities, we recommend that you omit discussion regarding the police department's handling of emergency calls.
- The heading, *"What is unique about the fire station property?"* and the paragraph that follows convey a tenor of support for the proposed bond. In this fact sheet, you may wish to include basic information identifying and describing the property chosen for the new fire station. However, we recommend that you omit statements such as, *"This will allow us to place an important piece of property into community service,"* since such statements do not communicate any essential fact about the bond proposal, and convey a tenor of support for the bond.
- We recommend that you omit discussion of options for a bond proposal that were considered and then rejected (e.g., the original $12.6 million price tag). An objective and fair presentation of the facts concerning a ballot proposition should present the facts about what is on the ballot, rather than speak about what is *not* on the ballot.

Following this memo is a copy of the draft mailing reviewed by PDC staff. For your reference, the segments that our staff suggests be modified have been highlighted in blue; click on the highlighted content to review staff's comments and recommendations.

While we cannot require you to follow PDC staff's recommendations, they do constitute our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended or the information included in the proposed mailing. Those decisions are the responsibility of Kittitas County Fire District #2, and the agency's legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at tony.perkins@pdc.wa.gov.

KITTITAS VALLEY FIRE & RESCUE
PO Box 218
Ellensburg, WA 98926
(509) 856-7714
www.kvfr.org

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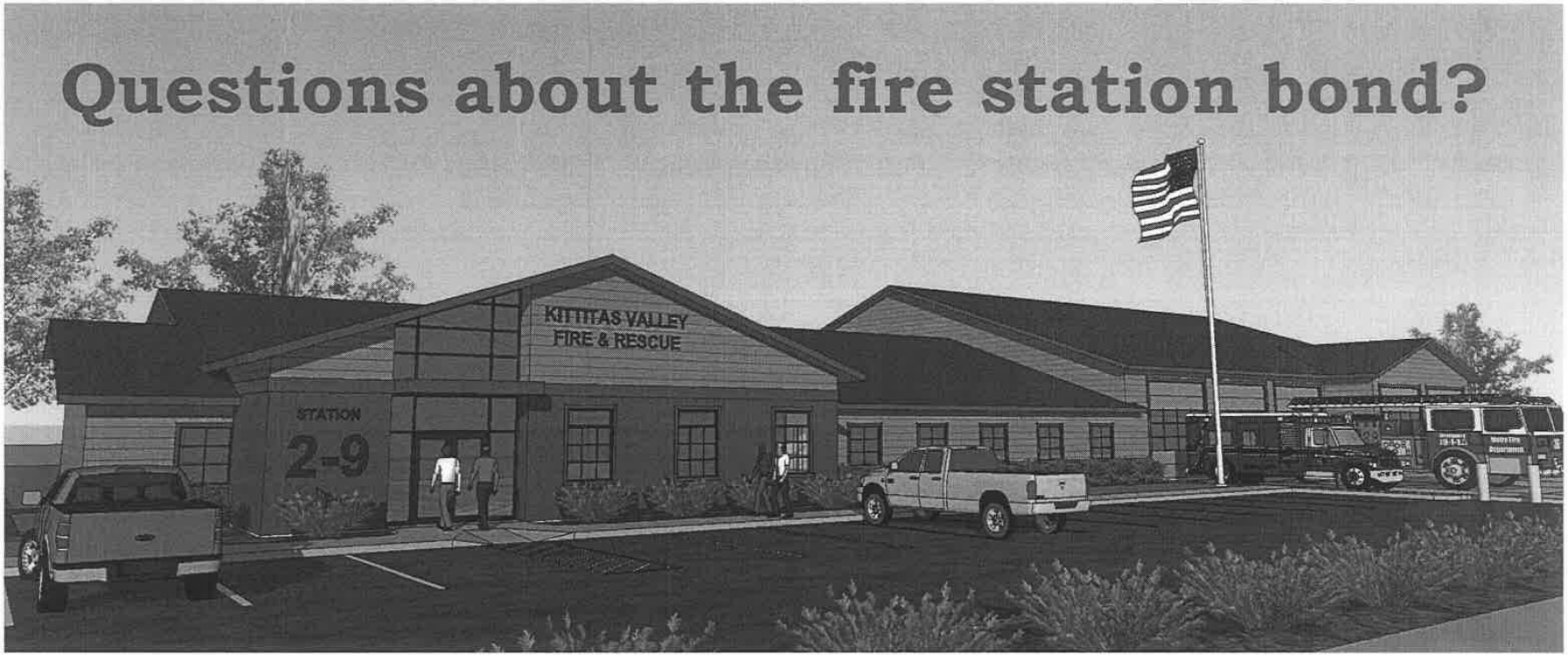

We have the answers.

What is on my election ballot?
Kittitas County Fire District 2 (Kittitas Valley Fire and Rescue) is asking voters to approve a bond to build a fire station on East Mountain View Avenue.

Why is my fire district asking for this?
The fire district currently leases space from the City of Ellensburg, which needs the space for its police department. Building a fire station is the next step in a plan to improve emergency services for the community. Our lease expires at the end of 2016 at which time construction on the new fire station should be complete. In addition, bond rates to fund construction are at historic lows.

How will emergency services improve?
The location for the fire station on East Mountain View Avenue is closer to a majority of fire and emergency medical calls we receive. Allowing the police department to expand at its current location is better for the types of emergency calls it receives, too.

What is unique about the fire station property?
The fire district purchased property on East Mountain View Avenue, which was home to Mackner Scales for many years. Grants are being pursued to pay for the environmental cleanup required at the site. This will allow us to place an important piece of property into community service.

How long will the bond last? How much will it raise?
The bond will last for 20 years and will raise $6.7 million to build the station.

What was the original amount?
Originally, the fire district considered building one fire station on East Mountain View and renovating another along Vantage Highway for $12.6 million. Our Citizen Advisory Group said that was too much, so we scaled back the project to one station on East Mountain View Avenue for $6.7 million.

Does the fire district have any other bond?
No, this would be the first bond measure for Kittitas Valley Fire and Rescue. The fire district is debt-free, operates under a balanced budget and has passed all financial and accountability audits by the State of Washington.

How much will it cost?
The fire station would cost 20 cents per $1,000 of assessed valuation, or approximately $3.33 per month for the owner of a $200,000 home. You can use this chart to find your property's assessed value and what the bond would be.

Property Assessed Value (0.20/$1000)	Monthly Cost	Annual Cost
$100,000	$1.67	$20
$150,000	$2.50	$30
$200,000	$3.33	$40
$250,000	$4.17	$50
$300,000	$5.00	$60
$350,000	$5.83	$70
$400,000	$6.67	$80
$450,000	$7.50	$90
$500,000	$8.33	$100
$600,000	$10.00	$120

Amounts have been rounded to the nearest cent.

Where can I find additional information?
Additional information can be found on our web site at www.kvfr.org. Chief John Sinclair can be reached at (509) 856-7714 (sinclairj@kvfr.org), or Pat Clerf, Chair of the Board of Fire Commissioners at (509) 925-7447 are available to answer any questions.

Thank you for taking the time to read our materials. Please contact us with any questions or comments!

KITTITAS VALLEY KVFR EST 2007 FIRE & RESCUE

EXHIBIT B

WHATCOM COUNTY
SHERIFF'S OFFICE
BILL ELFO
SHERIFF

PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4078
(360) 676-6650

JEFF PARKS
UNDERSHERIFF
ART EDGE
CHIEF DEPUTY
DOUG CHADWICK
CHIEF DEPUTY
STEVE COOLEY
CHIEF INSPECTOR
WENDY JONES
CHIEF OF CORRECTIONS

April 9, 2015

Dear Members of the Whatcom County Council:

The purpose of this communication is to provide you with information I wish you to consider in conjunction with the public hearing entitled on the agenda as "*comment on the proposal for a new Whatcom County Jail and offer specific ideas for jail diversion programs*" scheduled for April 14th, 2015.

I previously testified before Council and provided written information regarding the conditions within the Whatcom County Jail and Sheriff's Office headquarters. [i] As Sheriff, I am responsible for operating the Jail in a safe, constitutional and humane manner. I am also responsible for our dedicated and professional jail staff that put their lives on the line every day to protect the citizens of Whatcom County; the many contracted service providers who work in the Jail; and those who visit the facility.

We have a desperate need to replace the failing Whatcom County Jail. I join the Whatcom County Public Defender, the Whatcom County Prosecuting Attorney, all four Whatcom County Superior Court Judges, both Whatcom County District Court Judges and the County Executive in emphasizing the critical state we are in and the urgency of moving forward. While it is ultimately the County Council's responsibility to determine whether or not the Jail will be replaced and the timetable for doing so, the consequences of not moving forward will place Whatcom County and other jurisdictions that use the Jail in a precarious position. I fully understand the complexity of this issue given the cost and the need for concurrence seven mayors and city council bodies. However the cost of delaying or ignoring this issue indefinitely will be higher

Given significant concerns regarding the structural integrity of the building; the constant failure of critical operating systems; reports from the United States Department of Justice National Institute of Corrections and the Bellingham Fire Department that raised the specter of a "catastrophic loss of life," in the event of fire or other calamity; a report by the Jail Planning Task Force identifying a "critical" need to replace the jail citing "life-safety" issues; and our consistent exceeding of rated jail capacity by substantial margins, I have serious reservations about our ability to continue to maintain legal, safety and health standards. Long before my initial appointment as Sheriff in 2003, published standards for correctional facilities that included physical plant criteria for space, plumbing and infrastructure requirements were suspended because of "overcrowded conditions." The deviation from these standards has only grown worse.

The extent and nature of the problem are not new and were identified in the 1990s by the "Blue Ribbon Committee on Criminal Justice." A 2003 Bellingham Herald editorial referenced: *"jail*

overcrowding and its consequences have been apparent for at least six years [1997]*...because local law makers have been unable or unwilling to find ways to pay for new facilities."* In 2008, the Whatcom County Law and Justice Council reported on progress on a 2000 Law and Justice Report recommendation that identified a need to build a new jail and stated *"[T[he Law and Justice Council puts building a new main jail as soon as possible as its highest priority recommendation."* The report went on to discuss the need to expand secure adult jail facilities and noted that the then new work center was expected to be filled primarily with misdemeanant commitments for jail time due to the lack of jail space and noted that its impact on the main jail and would be minimal. It emphasized the County's plan to move ahead with a larger expandable facility to meet the county's need for fifty years and anticipated that the project would take five to eight years.[ii]

The Sheriff's Office established one of the highest standards for the recruitment and selection of Corrections Deputies. We do not experience misconduct issues involving inmate abuse that are described in articles from around the country that were sent to Council. Our Corrections deputies have made huge concessions to keep the facility functioning. However, in part due to conditions within the facility, we are finding it challenging to attract and retain our high-quality personnel. This has resulted in workplace safety issues and deputies constantly being summoned back to work for mandatory overtime. If we are going to maintain the degree of professionalism that now exists, the jail issue needs to be resolved and working conditions improved.

The main Jail facility opened in 1984. Over the years jail population levels were significantly impacted by a variety of factors including legislative mandates relating to sentences for driving under the influence and related offenses; mandatory arrest and incarceration for domestic violence offenses; and a series of changes to sentencing laws that transferred responsibility for convicted felons from the State Department of Corrections to County Jails.

For example, in this Legislative session, 2SHB1884 proposed to convert sentences for several serious crimes from state prison to county jail sentences and once again, did not provide any of the operational or capital funding needed to effectuate this change.

OFFENSE	CURRENT	2SHB1885
3rd time Auto Theft	17-22 months state prison	Possible 60 days county jail
3rd time Burglary 2nd	12-16 months state prison	Possible 30 days county jail
3rd time Identity Theft	12-14 months state prison	Possible 30 days County Jail

Local ordinances criminalizing various behaviors often result in arrests for either the crime committed or in arrest warrants for failing to appear in court for the alleged violation of the ordinance. For example, while Bellingham police officers exercise good discretion, they have no choice but to arrest a person wanted on a warrant for failure to appear or when there is a threat or a continual issue of public disorder. Below is a list of 2014 bookings into the Whatcom County Jail on charges of violating various provisions of the Bellingham Municipal Code.

Bellingham Municipal Code Violations (does not include violations of RCW)	**Number of Offenses Booked into Whatcom County Jail**
Person under 21 <40 grams of marijuana 10.08.020A	2

Unlawful Inhalation 10.080.030	2
Shoplifting Less than $50 goods 10.12.020	175
Disorderly Conduct/Abusive Language 10.24.010.A	6
Disorderly Conduct/Disrupt Lawful Assembly 10.24.010D	1
Disorderly Conduct / Cause/Engage/Provoke Fight 10.24.010D	19
Disorderly Conduct/Disturbing the Peace	11
Urinating in Public 10.24.020	15
Sitting or Lying on Public Sidewalks 10.24.070	15
Obstructing 10.24.100	61
Discharging Firearms 10.30.010	1
Stun Guns/Tasers 10.30.020	4
Animal Cruelty 7.16.010	2
Parks Restricted Area 8.04.130	4
Garbage Violation 9.12.080	19
Rodent Control 9.28.060	1

During the 1990s and early 2000s, space designated for storage, education and treatment were converted to hold inmates and additional beds were installed in cells and showers. The bottom line is that the facility, originally designed to hold 148 inmates with mixed security and classification ratings, has held up to 321. As most low-risk sentenced offenders are now housed at the Jail Work Center, the population of the Main Jail consists mostly of higher risk offenders; those who are dangerously mentally ill; and those who may not for a variety of circumstances be diverted.

Eight inmates housed in a cell originally designed as a shower room and converted to hold two inmates

Our County Jail system is the only jail system in Whatcom County and since opening, has booked and detained offenders on charges and sentences generated by all municipalities, tribes, state agencies and the courts. We are also required by law to detain all fugitives from justice wanted in other states. County Executive Louws recent presentation to Council highlighted the division of jail beds and bookings by the responsible entity and presented a plan that includes continuing to provide jail space for the cities and other entities to incarcerate their misdemeanor and gross misdemeanor offenders.

Structural failures have raised grave security concerns. Inmates have been able to push out windows and drop lines to the street below to introduce contraband into the facility; manipulate locks to open cell doors; and gain access to adjoining cells by removing grout between the cinder block walls. Public health and the control of contagious disease within the facility is a major problem given that a large segment of the population does not exercise good hygiene or health practices and are detained closely together in small cells. Our staff has contracted some of these contagious diseases that include Methicillin-resistant Staphylococcus aureus (MRSA).

Aggravating matters further is a constantly failing plumbing system that results in toilets backing up; sewage pipes leaking and a frequent lack of hot water for hand washing, showering and general sanitation. In 2013, the Jail experienced an increase in its water usage by 1 million gallons. This continued into 2014. The County Facilities Department has not definitively determined the reason for this dramatic increase but believes the issue is attributable to an antiquated and overused plumbing system and its manipulation by inmates. The County Facilities staff does its best to address these issues but problems constantly recur and remediation is expensive.

While the electronic control system was recently replaced through a retrofit, failures posing security risks continue. I recently gave a tour of the facility to a group of citizens when a cell door opened without any prompting from staff. Many of these deficiencies in the physical structure and operating systems are likely the result of decades of use far beyond their designed purpose.

Questions arose about diverting offenders from jail and the issue of bail for those housed within the jail. Law enforcement only has the discretion to book a person into jail for up to 24 hours on

either probable cause to believe a crime has been committed or in their execution of an arrest warrant commanding them to take a named person into custody. Within 24 hours, the incarcerated person will generally appear before a judge who will render a decision on release conditions. While I do not purport to speak for the ten separate courts that adjudicate issues related to inmates within our jail, these decisions are made on the basis of existing law and court rules. Many offenders are released on their own recognizance after first appearance.

Specific questions were raised about the appropriateness of bail as a condition of release. Rules for setting bail are promulgated by the Washington State Supreme Court and contained in Criminal Court Rules (Superior Court) and the Criminal Rules for Courts of Limited Jurisdiction (District and Municipal Court). [iii] The Rules state that there is a presumption in the law that a person charged with a non-capital crime shall be entitled to release pending trial on their personal recognizance. The court may impose a number of conditions of release, including bail, if it makes a finding that such recognizance will not assure the accused's appearance; there is a likely danger that the accuse will commit a violent crime; or that the accused will seek to intimidate witnesses or unlawfully interfere with the administration of justice. The court may require bail only if no less restrictive condition or combination of conditions would reasonable assure the safety of the community; prevent witness intimidation or the administration of justice. In setting a bond, the court is required to consider the accused's financial resources. During 2014, 58% of the people who are booked into the Whatcom County Jail are released within 3 days and 64.6% are released within 7 days.

The court is also responsible for sentencing and consistent with the requirements of the law, determine if and for how long a person will remain incarcerated in the jail.

As Sheriff, I formerly had the authority to release sentenced inmates when the jail reached critical peaks. The courts ordered a halt to this practice and the Sheriff does not have the authority to unilaterally release sentenced offenders as a mechanism to control the jail population. While judges are attuned to the problem and are very cooperative in helping control the jail population crisis, they must follow the law in making their release decisions.

Sheriff's deputies and most other law enforcement officers make extensive use of field citations as an alternative to booking misdemeanor and gross misdemeanor offenders who are charged with relatively minor crimes not involving an imminent threat to public safety. In 2014, Whatcom County deputy sheriffs alone cited and released 566 misdemeanor/gross misdemeanor offenders without booking them into jail. Jail staff also has the ability to "book and release" misdemeanor/gross misdemeanor offenders with a field citation to help free up jail space and move appropriate offenders out of custody. Law enforcement may not unilaterally release a suspect if there is an outstanding arrest warrant. Most domestic violence and order violations and cases involving Driving Under the Influence (DUI) also mandate booking. In many instances law enforcement officers refer cases (felony and misdemeanor) directly to the appropriate prosecutor's office for a decision as to whether charges will be filed. In these cases, offenders are often issued a summons to appear in court rather than physically arrested and booked into jail.

Many offenders are diverted from Jail due to the efforts of Whatcom County District Court Probation which supervises over 2,000 pre-trial and convicted misdemeanor and gross misdemeanor offenders.

I previously provided Council with an extensive review and information on the Sheriff's Office internal jail alternative programs that provide appropriately classified offenders alternatives to incarceration in the main jail. Whatcom County Sheriff's Office operates one of the most robust

jail alternative programs in Washington State maximizing the use of electronic home monitoring; electronic home detention; and out of custody and in-custody work crews to the extent these programs are consistent with public safety and the advice we receive from the Prosecuting Attorney's Office regarding the law and liability. These programs often enable offenders to maintain employment and continue their education while serving their sentence. For others, the programs help instill the habits and skills needed to gain employment. In essence, every sentenced offender who meets appropriate security classifications is eligible to participate.

At present, there are approximately 300 offenders who are required to serve court-imposed jail sentences (e.g. DUI) that the Sheriff's Office has not been able to accept into the facility due to the lack of space. These offenders make arrangements to commence serving their sentences to move on with their lives. However upon reporting to Jail, we all too often have to turn them away as the jail population has swelled and there is no space available.

There have been questions about mental illness, addiction and the use of jail space. America is experiencing a disturbing and increasing trend in the number of offenders housed in its county jails that suffer from severe, persistent and often dangerous forms of mental illness and addiction disorders. The Whatcom County Jail is no exception. While most people with mental illness do not commit crime, certain types of mental illness and addictions ultimately lead to crime and incarceration. The severity of crimes varies greatly, but range from offenses against public order and property to those involving extremely serious and violent offenses such as rape, arson and murder.

Over the past 60 years, there has been a 95% reduction in the supply of inpatient psychiatric beds in the United States. Correspondingly, alternative treatment models never materialized so as to fully meet needs. As a result, there is less access to long-term care options. This population includes those assessed as lacking insight, chronically unable to care for themselves, and potentially dangerous to themselves and the public.[iv] The lack of available treatment and housing for those suffering from dangerous forms of mental illness and addictions has unfortunately resulted in jails becoming the largest mental health care providers in America. The United States Department of Justice Bureau of Justice Assistance reported that over 64% of people in jails suffer from mental health problems (24% reported as "serious mental illness) and 68% have a substance abuse disorder.[v] The Whatcom County Jail population approximates these same proportions and many offenders have co-occurring mental health and addiction issues.

Over the past decade, reductions in state and federal funding for community-based mental health and substance abuse treatment in Washington State have resulted in a crisis in terms of available treatment and housing. The Associated Press reported: "A report by Mental Health America that ranked states based on whether mentally ill people had access to care placed Washington 48th."[vi] The presentation by Mr. Valentine of the North Sound Regional Service Network on the State's expanded Medicaid program at the March and the potential funding of crisis centers at the March 31st Council Finance Committee meeting does offer some potential opportunities for improvement.

Research further indicates that even when treatment is available; it is often episodic and lacks the continuity needed to stabilize symptoms. Many patients become homeless, which may increases the likelihood of crime and arrest. Family members of people with mental illness who attempt to intervene and seek involuntary treatment are often frustrated by the lack of services and the high threshold criteria for involuntary commitments. Psychiatric in-patient care providers frequently refuse to admit patients because they are ill; have co-occurring addiction issues; or are violently

out of control. In some cases, hospitals and other health care providers refer patients for arrest because they are unmanageable and assault staff and other patients.

Several years ago, following recommendations from the Law and Justice Council, leaders in the Sheriff's Office Law Enforcement and Corrections Bureaus; the Health Department; the Prosecuting Attorney's Office; local police representatives and the mental health community were tasked with forming a working group to study the need for a fully functional mental health triage center. A plan was developed to provide a fully functional center that would allow law enforcement to divert minor offenders with mental health issues from the criminal justice system to treatment. While in 2007 a 14-bed behavioral health triage center opened to divert offenders whose main issues were mental health, alcohol or substance abuse, the facility was not fully funded for its intended and recommended purpose. It currently does little to directly divert offenders from jail. [vii]

Law enforcement has the ability to involuntarily take people who as a result of mental illness are gravely disabled or present a likelihood of serious harm. The local process involves taking them to the emergency room for an evaluation by a mental health professional. A frequently occurring theme is for the person to be quickly released from custody. For example, in February deputies responded to a 9-1-1 call from a man who indicated that he had armed himself with a knife and wanted deputies to kill him. Deputies arrived to find the man standing in the middle of the road waiving a knife and hammer. He took off his clothes. Our crisis negotiators spent over an hour convincing him to surrender. He was taken for a mental health evaluation and within 24 hours, was released from the hospital and was on the Sheriff's Office Facebook page wanting to know how to get his knife back. He continued to make implied threats against law enforcement the following week. This example is not an aberration but rather a common theme officers encountered by officers on a recurring basis.

While some options exist under existing federal law for the use of crisis stabilization units and triage centers as an alternative to incarceration, the Legislature enacted a series of statutes (RCW 10.31-110-10.31.120) that will allow law enforcement to divert an *"individual who committed acts constituting a non-felony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder"* to several alternatives that include triage and crisis stabilization units. The law takes effect on April 1, 2016 and requires concurrence with the Prosecutor.

Compounding the problem are Washington State laws governing competency determinations and treatment to restore the competency and stability to offenders with acute symptoms of mental illness. While the law requires that evaluations and involuntary treatment be performed at Western State Hospital, the Legislature in recent years reduced the programs that provide these services. The result is very violent offenders accused of the most dangerous of crimes remain confined in the County Jail for months while they await the treatment needed to restore competency and stability. The backlog of those awaiting competency determinations and treatment within jails exacerbates existing safety and offender management issues.

One only has to do a Google search of news articles to find that Western State Hospital is the highest risk place to work in Washington State. Workers are assaulted by violence the job 60 times more than the average worker in the State. These offenders are now housed for longer periods in our jail which has little room to manage them. This has exposed staff and contracted workers to increased risk.

The Whatcom County Jail is the de facto largest behavioral health institution in our community. However, it operates at nearly twice its designed capacity and lacks sufficient space to safely house, manage or optimally treat those with serious forms of mental illness and addiction issues.

Offenders requiring close monitoring are housed in a busy booking area that operates 24-hours a day. As little space exists for mental health and chemical dependency professionals to communicate with offenders, evaluation, treatment and counseling normally occur through a hatch in the steel door that separates inmates from staff. These physical limitations and the lack of privacy hamper the effectiveness of treatment and efforts to restore stability. The lack of staffing and space also preclude frequent visitation and the maintenance of family connections that are often vital to post-release success. An absence of appropriate housing for those with dangerous forms of mental illness creates enormous safety issues for staff and other inmates. Persistently overcrowded conditions often aggravate existing mental health symptoms.

Close Observation cell used for housing offenders with significant and threatening mental health issues is located in the noisy and busy booking area

Mental health services are often delivered by "whispering" through a food tray hatch in the cell door

While jails may not be the optimal first default for minor offenders with behavioral disorders who do not pose a threat to public safety, the law requires and will likely continue to require that jails hold some people who suffer from mental illness or addiction issues who have committed crimes. While these offenders are committed to our custody, we have a moral, ethical and legal obligation to hold them in a safe and humane manner and not aggravate or compound existing disorders.

While there are no simple or immediate solutions to this problem, the Sheriff's Office worked within the parameters of existing limitations to ensure that the offenders with serious mental health and addiction problems are to the extent possible, evaluated and treated while in jail. However, our experience with recidivism demonstrated many offenders upon being released from jail, either lacked access to or had an unwillingness to follow through with referrals for community-based treatment and soon re-offended. Without appropriate treatment and medication, disabling symptoms often generate the same behaviors that send them back to jail as

a direct result of their untreated disorders. Nationally, studies report that offenders with serious mental illness are 2 to 3 times more likely that those without mental illness to be re-incarcerated. [viii]

One major obstacle to the availability of community-based mental health services for released offenders is their inability to pay. Most mentally ill offenders are uninsured. Even when eligible for health care subsidies, most have not enrolled. While many are eligible for Medicaid that would otherwise help pay costs, federal and state regulations suspend Medicaid eligibility once offenders are incarcerated in jail. Re-enrollment in Medicaid and application for other federal insurance benefits is an onerous process. Mentally ill and chronically addicted offenders often need help to access these benefits. Without these benefits and the connection to treatment, their untreated symptoms may quickly return them to jail.

In 2008, the County Council enacted Chapter 3.37 "Sales and Use Tax for Chemical Dependency or Mental Health Treatment Services and Therapeutic Court Programs" *for the purpose of "providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs, and as otherwise authorized by the laws of the state of Washington..."* Revenues collected pursuant to that sales and use tax have funded programs that have made significant improvements to the delivery of mental health services within the jail and to offenders who re-entering the community. Ms. Deacon of the Health Department and her staff provided you a summary of these programs at the March 31st Council meeting.

In 2013, the Sheriff's Office partnered with the County Health Department to enhance the delivery of mental health and addiction services within the jail through the "Jail Behavioral Health Program." Relying on sales tax funding, the goal of this program is to stabilize behavioral health symptoms for those incarcerated in the jail and ensure effective connections to community-based services upon their release. A local psychiatric clinic places professionals within the jail to diagnose and treat acute symptoms. This process includes screening, triage, assessment, treatment planning, medications, counseling, coordination of civil commitment and evaluations. Behavioral health staff develop release plans that include solid connections and follow up with community-based treatment; assistance with health care enrollment or re-enrollment; and if needed, assisting with "co-pays" and housing. Ms. Deacon and her staff provided you with the most recent program evaluation and report on these jail-based programs at the March 31st Council meeting.

As law enforcement is often the first and the only 24/7 first responders available to address emergencies involving mental health crisis, the Sheriff's Office has trained all deputies to address issues involving those in mental health crisis. It also established a specialized team of highly-trained professionals to peaceably resolve the most dangerous and challenging of cases.

As highlighted by Ms. Deacon and her staff, the sales tax has supported a number of prevention and treatment programs external to the Sheriff's Office that helps prevent persons from entering the criminal justice system.

Juvenile Detention Alternative Initiative an evidence-based program that dramatically dropped the number of incarcerated children in the Whatcom County Juvenile Detention Center and resulted in a decrease in the number of children who go on to commit crime as adults;

School Based Behavioral Health Specialist Program: at least one behavioral health specialist is assigned to every school district in Whatcom County to address issues of addiction and manifestations of mental illness;

Behavioral Health Triage Center: provides mental health crisis and substance abuse treatment; while originally envisioned as a potential means for law enforcement to divert those in crisis from the criminal justice to the mental health system, changes in funding streams prevented the facility from fully serving this purpose; however, it provides an alternative for those seeking professional assistance before committing crimes. Recent developments related to the expansion of the state Medicaid program may fund future expanded capabilities and capacity;

Mental Health Courts: Whatcom County funded the recently established Mental Health Courts within the Whatcom County District Court and the Bellingham Municipal Court. These courts are modeled under evidence-based research and success in other jurisdictions and follow a model requiring treatment and compliance;

Drug Court: Whatcom County completely funds the Whatcom Superior Court Drug Court that offers treatment alternatives for selected offenders whose crimes can be attributed to addictions;

Special Intensive District Court Probation: This program provides intensive pre-trial and post-conviction supervision and treatment of those with addiction issues and has helped reduce jail population through community-based supervision and successful no-return rates for habitual offenders.

I appreciate the support of the Council in working with the Legislature to establish a fourth Superior Court Judge position in and for Whatcom County. This may help the courts more rapidly resolve felony cases and ultimately, help control the jail population.

As Sheriff I fully supported treatment and diversion programs and have worked in close partnership with the Health Department and the Executive's Office to make these programs successful. While opportunities may exist to reduce or control jail needs, the current jail needs to be replaced as quickly as possible. The proposed new jail will provide space for mental health and substance abuse programs for those that must be incarcerated while providing safe and humane conditions for visitors, staff and offenders.

Please be assured of my continued coordination and cooperation as treatment and diversion programs external to the Sheriff's Office are expanded or pursued.

Sincerely,

Bill Elfo, Sheriff

[i] The Sheriff's Office headquarters is grossly inadequate, undersized and faces structural issues. Located in the basement of the Jail, it is constantly plagued with breaking overhead water and sewer pipes that have repeatedly contaminated and flooded work areas and destroyed important records. The small lobby and reception area is not accessible to persons with disabilities and often has standing-room only. Sex offenders waiting to register frequently come into contact with victims of crime and those seeking to renew their pistol licenses. Detectives work in cramped spaces and limited room exists to ensure the privacy of victims or to secure suspects. The Sheriff's Office has rented discounted off-site space for patrol functions resulting in four moves when the space is needed by the landlords for other purposes.

[ii] Whatcom County Law and Justice 2008 Plan 5. Expand Secure Adult Jail Facilities
The Whatcom County Sheriff's website reports that "Jail booking restrictions initiated in the mid-1990s because of jail overcrowding, have increased in severity to the point where law enforcement officers are unable to book offenders for some serious crimes such as drunk driving, theft and assault. Even when offenders fail to appear in court and judges issue arrest warrants, law enforcement is precluded from taking them into custody. A situation exists where hard-core and repeat offenders openly mock the system and a breakdown in respect for the criminal justice have occurred. As offenders cannot be booked, they are not identified and a strong possibility exists that wanted felons from across the country evade justice by simply giving officers the wrong name. Short and long-range plans have been developed to address this problem."
In late 2003 the County developed a plan to build a medium security community corrections center on six acres in the Bakerview Spur area of Bellingham. State law allowed the County to propose an increase in the sales tax by 1/10th of 1% to finance construction and operation of corrections facilities. A citizens committee, "People for a Safer Community", campaigned successfully. Voters approved the tax increase in November 2004. The new Jail Work Center, built on time and within budget, opened in November 2006. It provides 150 male and female beds, a staging area for expanded alternative to jail work programs, kitchen and laundry facilities, and a co-located 14-bed mental health and substance abuse Behavioral Health Triage Center operated by the County Health Department. The Work Center is expected to be filled primarily with misdemeanants with unserved commitments for jail time or with outstanding warrants unserved due to the lack of space in the main jail. It will help to control overcrowding, but its impact on the main jail may be minimal. Meanwhile the County's long range plan is to replace the current jail with a larger expandable facility that will meet the county's needs for fifty years. It is anticipated that this project will take five to eight years. The Work Center is designed to facilitate conversion and sale for industrial use when the permanent jail project is completed. Facility and program planning is underway in 2008 for the new main jail.

[iii] Washington CrR 3.2 "Release of Accused" and Washington CrRLJ 3.2

[iv] Dominic Sisti, Andrea Segal and Ezekiel Emanuel, Department of Medical Ethics and Health Policy, Perelman School of Medicine at the University of Pennsylvania, Philadelphia *Opinion: Improving Long-Term Psychiatric Care – Bring Back the Asylum*, Journal of American Medical Association, January 20, 2015 Vol. 313, Number 3

[v] James DJ, Glaze LE. *Mental Health Problems of Prison and Jail Inmates*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2006)

[vi] Bernton, H. and Carter M., *"Families seek an easier way to detain mentally ill involuntarily,"* The Associated Press as reported in the Bellingham Herald, February 9th, 2015

[vii] 2008 Whatcom Law and Justice Council Plan: *Behavioral Health Triage Center. Develop plans to maintain Triage Center behavioral health services. The Triage Center is now co-located with the Jail Work Center at 2003 Division Street. The Center provides crisis screening and assessment, stabilization, and referral to treatment services for individuals picked up by officers on the street, whose behavior seems primarily caused by mental health problems, alcohol or substance abuse. Thirteen beds are available for recovery 24 hours a day. Detoxification is provided by the Whatcom Psychiatric Clinic and Pioneer Human Services. Its purpose is to divert eligible Individuals from jail and prevent recidivism in that population, providing a control to jail overcrowding . When a new main jail is built in eight to ten years, the Triage Center building is slated to be closed and converted to private industrial use.*

[viii] Baillargeon J, Binswanger IA, Penn JV,Williams BA, Murray OJ. Psychiatric disorders and repeat incarcerations: the revolving prison door. *Am J Psychiatry*. 2009;166(1):103-109.

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April 23, 2015

Dear Executive Louws:

The purpose of this communication is to provide the County Executive's Office the Sheriff's Office perspective on issues raised by County Council members relating to the proposed replacement jail and Sheriff's Office headquarters project. In reviewing this communication, it must be remembered that the Sheriff is responsible for the operation of the jail. The County Facilities Division is responsible for maintenance and the assessment of the physical condition of the facility. However, even as a "non-architect, non-engineer and having no expertise in building codes," I would be remiss if I did not provide perspective on known issues that have been repeatedly highlighted by those with expertise and have been very apparent for well over a decade to all who work in and directly rely on the jail.

Please feel free to incorporate this information into your response to Council.

Questions were raised regarding the feasibility and approximate cost of remodeling the current downtown jail for continued use as opposed to replacing the facility.

From my perspective as Sheriff, it would be imprudent to invest major capital to remodel and continue utilizing a facility that experts have repeatedly described as inadequate, failing and dangerous.

From a matter of public policy, the County Council expressed concerns about locating a correctional facility less than one mile from a public or private school. On March 9, 2004 the County Council adopted Ordinance 2004-014, an essential public facilities plan that precludes locating correctional facilities within one mile of a public or private school. [1] While I will need to defer to others for a decision on whether a remodel as extensive as the one contemplated would trigger the need to comport with County policies on siting essential facilities, the former County Executive articulated this as one of many reasons why the replacement county jail should not be located downtown. The courthouse and jail area are within a mile of Bellingham High School, Whatcom Middle School and the School of the Church of the Assumption.

The current jail "footprint" is limited and will not likely be able to accommodate future needs if and when they arise. Building essential modifications into the current facility will undoubtedly result in a loss of desperately needed inmate housing areas. Furthermore, the current facility has no space for secure refuge in the event of an emergency evacuation.

I was reinforced in my decision not to recommend or advocate for a remodel of the current facility by a number of reports, recommendations and policy decisions that included:

[1] While the County ordinance only has applicability in unincorporated Whatcom County, the language requiring a one mile setback from schools was not contained in the language proposed by staff but was added by motion of a Council member and adopted by the County Council on a 6-0 vote.

- 1999 and 2000 Whatcom County Law and Justice Plan, Vol. 1 & 2;
- 2002 to 2010 assessments and reports of the HDR Jail Planning Group
- 2003 Whatcom County Public Safety Building Evaluation, HDR Group;
- 2003 Whatcom County Public Safety Building Preliminary Study for Story Addition, Geiger Engineers;
- 2004 public policy of not locating jails near schools as reflected in the unanimously ordinance adopted by the Whatcom County Council in the Essential Public Facilities Ordinance (2004-014) (requiring one mile setbacks of jails from schools);
- 2004 United States Department of Justice, National Institute of Corrections Technical Assistance Report "Operational Review of the Whatcom County Jail;"
- 2008 Whatcom Law and Justice Council Report;
- 2011 United States Department of Justice, National Institute of Corrections Technical Assistance Report "Assessment of Existing Jail and Work Center;"
- Whatcom County Council Resolution 2011-14 "Establishing a Jail Planning Task Force;"
- Whatcom County Jail Planning Task Force report to Council dated March 29, 2012;
- 2013 Whatcom County Council decision to retain jail planners, architects, engineers and others relative to planning for the replacement jail and sheriff's office headquarters in Ferndale;
- 2013 Whatcom County Council decision to purchase the LaBounty site in Ferndale for the jail and Sheriff's Office;
- 2014 Whatcom County Council decision to pursue a conditional use permit for a jail and sheriff's office headquarters in Ferndale;
- Evaluations from the County Facilities Division and their contactors;
- Apparent conditions and the below listed considerations relating to remodeling.

1999 & 2000 Whatcom County Law and Justice Plan

In 2000, under the auspices of the Northwest Regional Council, the County engaged consultants, Alvin Cohn, Ph.D. and Stuart Readio to prepare a Law & Justice Plan. In phase II of the report it stated:

Much of the discussion of remodeling the existing county jail in Bellingham is applicable to this discussion. The catalyst for new construction is the chronic crowding of the existing jail, anticipated future demands for secure space in Whatcom County, and the crippling effects of constrained incarceration on local law enforcement practices, judicial prerogatives, and the ability to change offender behaviors.

2003 Whatcom County Public Safety Building Evaluation, HDR Group

When I took office in 2003the jail planning firm HDR was engaged in a building evaluation for the Whatcom County Public Safety Building. This report included a preliminary study by Geiger Engineers, done in 2003, and incorporated findings from Fire and Life Safety Report, prepared by DLR Group in 2000. The HDR report concluded that due to the type of construction and the building configuration, the Whatcom County Public Safety building does not conform to current standards of design for detention facilities, has a limited useful life potential, recognizes that it will be necessary to replace this structure sometime in the future and that the structure is not a candidate for reuse:

The Public Safety Building does not conform to current standards of design for detention facilities. This facility is chronically overcrowded and cannot meet the levels of offender classification that are required. The support functions are inadequate and the detention areas are ill configured.

The security systems are inadequate and the structure and mechanical systems are unsound. Smoke evacuation for the central control room is currently a security and life safety issue and needs to rectified as soon as possible. Emergency power is inadequate to this facility and also needs to be rectified.

The security monitoring system is outdated and does not adequately cover all the detention areas well. This system also needs to be replaced with a state of the art system.

The 2000 life safety assessment by the DLR Group needs to be implemented in its entirety if this building continues to be utilized as a detention center. The issues are too important to be dismissed and could cause the county potential liability.

This building has a limited useful life potential and it will be necessary to replace this structure sometime in the future. Any upgrades or renovations to this building should be looked at as short term operational and life safety fixes, only. Large monetary expenditures on this building are not recommended and funds should be set aside to construct new detention facilities. If funding cannot be found to abandon this facility completely, then it would be still be possible to utilize this building in the interim as a post adjudication or alternative detention facility. This would reduce the functional and security demands on this building until a new facility could be constructed.

The support functions for this facility, such as food service and laundry, are undersized for the number of offenders that are housed here. Programmatically these functions are stressed beyond capacity and this condition will need to be rectified. As mentioned in the evaluation of the courthouse, there is no secure loading dock or service area. This also needs to be rectified in order to provide efficient and secure operational and functional support. Due to the type of construction and the building configuration, this structure is not a candidate for reuse.

The report also indicates that large monetary expenditures on the building are not recommended and any upgrades and renovations to this building should be looked at as short term operational and life safety fixes. A number of the short term operational and life safety fixes including; ADA compliance, Jail Control Project, limited HVAC work, limited electrical work, boiler work, new roof installed, exterior wall work, have been made in the last decade as the County continued to plan for a New Countywide Jail.

This report was discussed during the Jail Planning Task Force meetings and used to inform the task force's recommendation on the need for a "new jail" as discussed later in this document.

2003 Whatcom County Public Safety Building Preliminary Study for Story Addition, Geiger Engineers

In 2003, Geiger Engineers performed a preliminary study for an additional story addition on the Whatcom County Public Safety Building. This study was done in coordination with the 2003 HDR building evaluation. The report recognized that *"in reviewing the original project plans, we confirmed that the building was initially designed for this addition. However, past structural modifications and current changes to the building codes have influenced the potential for future expansions."* The scope of the study was intended to be a first step in such an assessment, and included document review of construction plans, approximate gravity and lateral loads of a new story, and structural review based on

the 1997 Uniform Building Code. The results from the structural review were that *"the addition of a top story to the existing structure will be costly, yet may be possible."* The conclusions and recommendations of the report are as follows:

We have identified several structural deficiencies that would require extensive modifications to accommodate the addition of a new floor. Some of these modifications (such as addition of transverse shearwalls) may have severe architectural and/or cost ramifications. However, the gravity load-resisting system appears mostly adequate to handle the weight of the new story. With required modifications, the addition of a new level may be possible. If there is further interest in adding a level to the existing building, we recommend a more comprehensive review be performed to more closely identify problem areas as well as possible solutions and approximate costs. Ideally, this review will include a preliminary geotechnical investigation, as well as architectural input to provide a better idea of what the new story would be comprised of. Further engineering analysis will better illuminate the extent of structural modifications that will be necessary.

This preliminary study, done in 2003, is the last study prepared by an engineer on the likelihood of additions or remodels to the Whatcom County Public Safety Building. This is because the focus and discussion at the Whatcom County Council and Administration turned to finding an appropriate location for a New Countywide Jail.

United States Department of Justice, National Institute of Corrections (2004)

In 2004, I requested that the United States Department of Justice's National Institute of Corrections conduct a review of the Whatcom County Jail. A portion of the report focused on the "Current Whatcom County Jail that made it readily apparent that a remodel was not a viable alternative. The following "2004 United States Department of Justice, National Institute of Corrections Technical Assistance Report (TA#04J1051)-"Operational Review of the Whatcom County Jail" by Jeffrey Schwartz, PhD highlighted the limitations and safety issues inherent in the current main jail:

The current Whatcom County Jail was opened in late 1983. The design, however, is reminiscent of jails built ten and fifteen years before that, with small dormitories and linear cell blocks. No portion of the Jail was designed for direct supervision and if the current jail were to be operated with inmates being actively supervised, it would be staff intensive and expensive.

Even as an indirect supervision facility, the Jail design is poor. *There is only one control room for all three floors and there is little visibility from that control room except by security cameras and monitors. Visibility from the corridors into the living areas is poor and even general population areas have "vestibules" or sally ports between the living units and the main corridor, further restricting visibility and speed of access. There are no waiting or seating areas for inmates in the booking and intake process, except for a few "tanks". The overarching problem is the Jail building is much too small for its current number of inmates and the number of inmates in the Jail is much too small to meet the County's needs. There are many other problematic design issues, but a thorough analysis of these is beyond the scope of this report.*

The infrastructure within the Jail is perhaps worse than its design. The control panels which operate the doors and gates throughout the Jail are almost constantly malfunctioning to some degree, and whole panels stop working frequently. That means large areas of the Jail must be operated manually, keying each door. The company that manufactured the control panel system has been out of business for some

years and the County reputedly purchased the system at a discount because it was obsolete even at that time, in the early '80's. The fire alarm system doesn't work, and hasn't worked for years. That is shocking, particularly in a jail that is dramatically under-staffed and over-crowed. The door locks in some portions of the Jail do not function properly. While the consultant was in the Jail, a water pipe in the preheating unit of the HVAC system ruptured. The first sign to staff that something was amiss was large quantities of water pouring from the ceiling of the first floor in a number of different locations. It soon became apparent that there was far too much water to be explained as a toilet intentionally stopped up by an inmate. A maintenance staff person did an admirable job of locating the problem quickly and turning off the preheat water, but leaking continued on two floors of the Jail for another half day. Again, a comprehensive treatment of the infrastructure problems in the Jail is beyond the intent of this report and determination about which infrastructure problems are due to lack of maintenance and which are due to overuse or aging is well beyond the expertise of the consultant. On a related note, the jail alternatives building, across the street from the current jail, is itself in very poor physical condition.

The lowest level, of the Jail's four levels, was designed and built as a storage area. Some years later it was decided to retrofit the garage area as office space and move the Sheriff's office into it. This wrongheaded decision was compounded when the building alterations were done improperly, removing some vertical support columns that were essential to the building's lateral stability and resistance to collapse. Earthquake risk in Bellingham is substantial and all of the employees who work in the Sheriff's administrative offices joke morbidly about the top three floors of the Jail "pancaking" the garage level during a seismic event. The morning after the water pipe rupture described above, the consultant was meeting with the Sheriff in his office. Several water leaks through the suspended ceiling in that office were still active.

The Sheriff, the Undersheriff and county officials are well aware of the limitations and severe problems in the current Jail. When Dr. Schwartz met with the County Executive and his Deputy, and later with three County Council members, they were to a person dismayed by the past County planning failures with the Jail and firmly committed to building a new jail that will take account of County growth and projections for the long term, and not leave future County officials in the difficult position in which they find themselves.

The County is currently moving on three fronts to deal with the Jail situation. The County Executive Office and the County Council are now beginning to analyze alternative designs and plans that have been developed by architectural consultants. The County is actively examining short and mid-term measures that might mitigate the situation until the new jail is constructed. The County is also spending a substantial amount of money replacing some of the systems that are most seriously compromised in the current Jail. (All Emphasis Added)

Whatcom County Law and Justice Council Report (2008)

The Whatcom Law and Justice Council extensively reviewed the County's jail requirements and the adequacy of existing facilities.

In 2008, the Whatcom County Law and Justice Council provided a Law and Justice Report containing recommendations that identified a need to build a new jail and stated *"[T[he Law and Justice Council puts building a **new** main jail as soon as possible as its highest priority recommendation."* The report went on to discuss the need to expand secure adult jail facilities and noted that the then new work center was expected to be filled primarily with misdemeanant commitments for jail time due to the lack

of jail space and noted that its impact on the main jail and would be minimal. It emphasized the County's plan to move ahead with a larger expandable facility to meet the county's need for fifty years and anticipated that the project would take five to eight years.

United States Department of Justice, National Institute of Corrections (2011)

An August 31, 2011 report by the United States Department of Justice's National Institute of Corrections "Assessment of Existing Jail and Work Center," highlighted the physical limitations of the existing jail that made in apparent that remodeling the facility was not a viable alternative to replacing the facility to include findings that:

- Mixed booking, suicide watch and medical housing area and reported that these functions which were and are mixed, should be separated;
- The lack of "confidential" medical interview capacity and noted that interviews are performed through a food portal;
- The lack of appropriate accommodations for inmates with substance abuse and mental health issues;
- The use of cells exceeding their designed capacity;
- The difficulty of seeing into housing units; the necessity for intermittent supervision; drab and potentially dangerous conditions;
- That almost all space has been converted to accommodate housing needs and inmates often sleep on the floor;
- The lack of inmate recreation space and negative impacts on inmate mental health;
- The lack of storage;
- The laundry now serving twice as many inmates as originally intended;
- The "very crowded" kitchen serving more than twice as many meals as intended;
- The availability of an array of programs and volunteers but limited space for conducting them.

Whatcom County Council Resolution 2011-14

Whatcom County Council Resolution 2011-14 "Establishing a Jail Planning Task Force" was put forth by then County Executive Kremen and passed by the County Council on April 26th, 2011 on a vote of 7-0. The first clause of the Resolution states: "**Whereas, the existing jail at the Courthouse is in poor condition and a permanent facility for housing higher risk offenders is needed**." The second clause stated: "**Whereas we require a new jail** that will be the right size for present jail population projections, sited at a reasonable location and be designed in a **manner to maximize efficiencies and accommodate expansion if and when the need arises**." The resolution resolved that the Jail Planning Task Force be "charged with providing the County Council and the County Executive advice on the appropriate size and location of **new jail facilities**."

Whatcom County Jail Planning Task Force Recommendations 2012

The Jail Planning Task Force (JPTF) issued a Final Report to the Whatcom County Council on March 29, 2012. The summary of the report highlighted the need for a "**new jail**" and highlighted the inadequacies of the facility: *"Due to inadequate existing conditions of the physical plant, life safety concerns and overcrowding, significant and urgent improvements are*

needed to current adult correctional facilities...." The Task Force provided a comprehensive list on non-discretionary jail structure needs that should be incorporated into the replacement facility and indicated that the facility should be located reasonably close to I-5 and the courthouse.

DLR 2012-2015

DLR, a jail planning firm retained by the County to extensively review and plan for jail needs, did not recommend for consideration nor was direction given, to remodeling the current jail facility.

Factors to Consider Relative to Re-Modeling the Main Jail
Some factors that should be assessed if a serious pursuit of whether the main jail facility should be remodeled rather than replaced include:

- Careful consideration to the afore stated reports from the United States Department of Justice National Institution of Corrections as well as the Jail Planning Task Force regarding the capacity, structural and operating system of the building and associated life-safety issues;

- Known and existing problems as documented by the County Facilities Division that relate to HVAC; water and drain pipes; boilers; kitchen including refrigeration units; security locks on cell doors. The plumbing issues include constantly leaking pipes, contamination from sewage and the lack of hot water for sanitary purposes; Code and legal requirements triggered by extensive remodeling to include bringing the building into compliance with:
    - Applicable building and seismic codes requirements;
    - Americans with Disability Act and similar provisions of state law including ADA accessible showers;
    - Federal Prison Rape Elimination Act facility requirements as applicable to local jails to include reconfiguring showers and changing areas;
    - Elimination of all blind spots;
    - Contemporary legal standards for lighting and access to natural light;

- Consideration of how extensive remodeling would affect recently installed electronic control system and the possible needs and costs of restructuring and replacing portions of the system;

- The difficulty of retrofitting electronic control systems in an aging and poorly designed facility that has been repeatedly evidenced by failures in the recently installed control system;

- Plan and design cells to accommodate diverse inmate population including growing proportion of female inmates; the ability to segregate inmates exhibiting severe or dangerous disciplinary issues and the need to house sex offenders and other vulnerable inmates from the general population;

- Plan for the creation of housing areas for those mentally ill inmates requiring specialized housing and observation;

- Consideration of the impact of the removal of housing units to create other required spaces that will need to be incorporated into a major remodel of the existing jail facility.

- Plan space for expanding behavioral health evaluation and treatment;

- Plan for secure space for prison bus when transferring inmates to the custody of the Department of Corrections to ensure the safety of the public;

- Legal question as to whether an extensively remodeled jail would be considered a "new" jail for purposes of the County Code relating to the Siting of Essential Facilities which precludes siting jails within one mile of any school (Whatcom Middle School) and public policy implications;

- Issues relating to relocating all or a substantial portion of the offender population during reconstruction and transportation of inmates to jail space that likely would be available in Des Moines or Yakima; costs and the impact on the justice system and families of inmates. At this point, it is likely that some of the more difficult to manage inmates(particularly those with severe mental or physical health issues)would not be accepted into either facility;

- Issues related to our highly dedicated, professional, experienced and loyal jail staff during the construction period and the potential need to train a large cadre of new and largely inexperienced employees when the project was completed;

- The inability to expand the facility to meet future needs should they become available and the likelihood of incurring expenses relating to the operations of additional correctional facilities.

Questions were raised about the fiscal impact (capital and operations) of using the jail work center as a Sheriff's Office headquarters and retaining the Jail Work Center as a lower security facility, thereby reducing the build out on site.

Separating the Sheriff's Office staff, law enforcement and other functions from the Correctional Facility will result in increased operational expenses and decreased efficiencies. Each facility or operation not co-located on a main jail/headquarters campus will require additional staff to operate, which translates into significant ongoing personnel costs. Consideration should be given to:

- Locating the Law Enforcement and Support functions of the Sheriff's Office is central to our campus and neighborhood security plan. This vision was presented to interested stakeholders including the City of Ferndale, neighbors and the public. It is also contemplated in the conditional use permit application that was submitted to the City of Ferndale;

- As a condition of receiving a conditional use permit, the then County Executive with the concurrence of the County Council committed to the City of Bellingham that it would vacate the Jail Work Center at the end of its use (5-7 years); sell the property and put the it back on the City's industrial tax base. To effectuate this intent, the structure was designed and constructed to industrial standards;

- The proximity of the current work center to the population and geographical areas primarily served by the Sheriff's Office. The current site in downtown Bellingham is not located central to primary response areas or the major north-south and east-west routes to the unincorporated areas. Re-locating to Division Street would not result in much of an improvement. The Sheriff's Office current attempts to remedy this situation by renting space for patrol deputies. This has

resulted in communication issues and multiple daily trips outside primary patrol areas. The entire Sheriff's Office should be located on a single campus (jail and other operations);

- The proximity of the current Sheriff's Office to the primary population we serve is inconvenient for citizens seeking services. The facility should be more centrally located for convenient accessibility to residents of unincorporated Whatcom County-the co-located facility is a "one-shop stop" for all Sheriff's Office services;

- Having the Sheriff's Office located on site is central to our plan for security and extra manpower including supporting and controlling emergency operations on a single campus. This will have a fiscal impact on staffing needs relative to the operation of separate facilities that were not included in operational budget projections;

- The plan of the Sheriff's Office is to reduce future support costs by combining similar functions within its Bureau of Law Enforcement; Bureau of Support and Bureau of Corrections. Currently there are separate staff and facilities for records, finance, reception, etc. located in separate building – we need to take advantage of all opportunities for consolidation to control future costs;

- Having all Sheriff's Office functions co-located on the same campus supports our vision of "One Sheriff's Office" and associated team-building, morale and member loyalty;

- Detectives and other deputies are frequently called upon to investigate crimes that occur within the jail (assaults, contraband smuggling, etc.). The physical separation of these functions will increase costs and decrease efficiencies;

- The current site plan calls for a single warehouse structure to accommodate law enforcement and correctional needs (food and supply storage; evidence; etc.) Siting these functions separately will result in a need for two separate buildings;

- Over past years, the Sheriff's Office has embarked on sharing resources, personnel and intellect among bureaus. Physically separating people and resources will impair that process and the resulting efficiencies;

- Retaining the Jail Work Center as a minimum security facility would frustrate the prior commitment made by the former County Executive with the concurrence of the County Council, to the City of Bellingham, promising vacation of the Jail Work Center at the end of its use (5-7 years); and to sell the property and put it back on the City's industrial tax base. To effectuate this intent, the structure was designed and constructed to industrial standards so it could easily be converted to commercial use.

- Retaining the Jail Work Center as a minimum security facility would require the maintenance of redundant medical, behavioral health, food service and commissary functions leading to an increase in costs;

- Retaining the Jail Work Center as a minimum security facility would require that volunteer groups such as those associated with churches, Narcotics/Alcoholics Anonymous, etc. continue

- The efficiencies inherent in the replacement facility should help control future staffing needs;

- We plan on combing reception functions with other functions of the Sheriff's Office to reduce some personnel needs;

- Security features in the replacement facility may allow us to transition some positions that currently require a commissioned corrections officer, to be performed by a non-commissioned clerical-type position;

- We are affected by unpredictable court decisions that continually evolve and set new standards affecting jail operations. For example, a recent appellate court decision limited the use of handcuffs when a defendant appears before the court at preliminary hearings. This was a major shift in the law requiring us to adapt security procedures that have reduced the number of offenders who can be transported into a courtroom and the number of deputies needed to maintain safety and control;

- We want to ensure that we have resources to continue to provide programming for education, evaluation and treatment – all of which are important to the community.

Cost saving will result from a consolidation of Sheriff's Office and Corrections Administrative Functions to include the elimination of redundancies to include:

- Receptionist—all three facilities
- Records processing and storage—all three facilities
- Hiring and Personnel Administration—Law Enforcement, Support and Corrections Administration
- Training—Law Enforcement and Corrections
- Finance—bookkeeping, accounting and billing tasks
- Purchasing—Law Enforcement and Corrections

Centralizing these functions will streamline the processes and increase efficiency. It will also allow for a greater degree of cross-training and shift coverage. Currently, in the Corrections Bureau, when our receptionists are out due to vacation/illness, their position is covered with a commissioned Corrections Deputy.

- Consolidation of space requirements. We currently have items such as records, supplies, evidence and tactical equipment stored in a variety of different places, as no one space is large enough. The new facility is designed with this consolidation in mind;

- Staff areas: staff locker rooms and support areas (training space, conference space, break rooms, etc.) will be common areas used by all Sheriff's Office staff with one exception; There will be a small break room within the secure confines of the jail portion of the new facility. This is so that in the case of an emergency, Deputies will be able to respond quickly.

- Increase in productivity: Since the administrative functions will be centralized, there will be less time moving back and forth between the facilities.

A question was raised as to whether we can we divert 15% of the jail population and what would be the savings if we did: (**Chief Corrections Deputy Jones responded**): Short term, maybe, depending on how we did it. Longer term, probably not, due to a number of factors beyond the Sheriff's and County's control.

If the reduction were due to forces outside of the criminal justice process, there would be a small variable cost reduction to the jail budget. Since the jail is a heavily fixed cost enterprise, this would have a relatively minor impact on the overall expenditures. There would be off-setting increases in costs to other budgets, most probably in the Behavioral Health sector.

A significant caution in depending on social service programs to effect long-term reductions in jail populations is the lack of stability in funding. Given the multiple demands on State funds, Behavioral Health programs are often the targets of reductions. One example was the $17.4 million dollars statewide that were cut from community health programs in 2011.

If the population reduction were due to forces within the criminal justice programs, such as increased use of program such as Electronic Home Detention, increases in the number of offenders placed on probation, or participation in specialty courts, there would be a possible reduction in full custody offenders. The variable costs would be shifted, but not eliminated.

If the reduction were due to changes such as a decrease in the amount of time to move a felony case through the system, it could result in a variable cost decrease, as the offender would be resolved more quickly and may either be transferred to the Department of Corrections or be eligible for participation in jail programs.

The major difficulty in responding to this question is that the jail is a reactionary entity. There are a myriad of outside influences on the jail population on any given day, and limits to the ability of local policy decisions to control it.

Sincerely

Bill Elfo, Sheriff

EXHIBIT C

Flooding in Whatcom County

What to do Before, During, and After a Flood

My parents-in-law lived on the Emmerson Road near Everson for many years. They were right next to the river, and flooding was a fact of life for them. Like them, many in Whatcom County have earned a healthy respect for our rivers and streams. They have learned that it pays to be prepared when waters rise beyond their banks.

Your county government strives to minimize the hazards and perils of flood season. This newsletter is distributed as part of our advance planning to give you the information you need to deal with flooding. It describes the hazards, shows the general locations of our flood-prone areas, and explains what to do and what to expect when flooding occurs.

Flooding in Whatcom County is a reality. Our ability to safely respond to a flood event is a partnership between the County and you - please do your part. Be aware. Be prepared.

Jack Louws
County Executive

Flooding Hazards in Whatcom County

Whatcom County floods occur between the months of November and February. The Nooksack River and its tributaries impact the largest area of the county, including the overflow corridor between Everson and Sumas. The Sumas River, Samish River, numerous alluvial fan areas, lakes, and coastal areas of Whatcom County are also susceptible to flooding. Significant floods occurred in 1935, 1945, 1951, 1955, 1975, 1989, 1990, 1995, and 2009, and more major floods are likely in the future.

Natural & Beneficial Functions of our Floodplain

The floodplain – the low land adjacent to a river or stream that is susceptible to flooding – is essentially nature's "safety valve" for managing floods. One of its crucial functions is to store and slow down excess water. When a river has access to its floodplain, floodwaters from rain or snowmelt spread over a wider area, reducing and slowing the amount of water heading downstream. When the size of a floodplain is reduced by dikes or altered by impervious surfaces like pavement, the speed, depth, and peak flows of floodwaters increase and may cause greater damage to both natural and manmade resources.

Floodplains are shaped by a river's movement. In the Nooksack basin, the floodplain contains old river channels and side channels that are critical for fish and wildlife, particularly for local salmon runs that use them for spawning and rearing. Old river channels provide storage for floodwaters and sediment, and help to dissipate the force and energy, of floodwaters. Fresh sediments deposited by floodwaters on floodplains help to enrich soils, making for fertile agricultural areas.

South-easterly view of Guide Meridian at the Nooksack River during January 2009 flood.

Debris flow in the South Fork Valley during January 2009

Flood Warning System

Whatcom County and the National Weather Service work together before and during a potential flood event to try to warn county residents of imminent flooding. If warranted, the Emergency Alert System (EAS) may be activated. The following local stations broadcast emergency information:

- KGMI – AM 790
- KISM – FM 92.9
- KPUG – AM 1170

Flood information is also aired on NOAA Weather Radio at 162.425 MHz (Puget Sound), 162.525 MHz (Blaine) and WeatherRadio Canada 162.55 MHz.

The Whatcom County Division of Emergency Management records important information on an Incident Hotline during floods and other emergencies. You can reach the hotline at (360) 738-4551. To request sandbags during a flood, please call (360) 778-8500.

If an evacuation is advised, you will be notified either by telephone, the Emergency Alert System, door-to-door visits, or public address systems. During times of heavy rain, listen closely to one of the radio stations listed above, or call the hotline.

If you have internet access, visit these sites for flood information:

- Weather warnings: www.wrh.noaa.gov/sew
- River forecast: www.nwrfc.noaa.gov
- River levels: wa.water.usgs.gov/data/realtime/adr/interactive/index2.html

This newsletter is published by:

Whatcom County River and Flood Division
322 N. Commercial Street, Suite 120
Bellingham, WA 98225
(360) 676-6876
www.whatcomcounty.us/publicworks/riverflood

Before A Flood

Protecting Your Property

Before flood season starts in earnest, take steps to limit your losses.

- Buy flood insurance.
- Elevate your house above the 100-year flood elevation.
- Floodproof structures – either make them watertight or able to withstand flooding with little or no damage.
- Construct barriers or berms between the river and your home.
- Fight floods using sandbags, plywood and plastic during a flood event.

For more details or for help in selecting and planning property protection measures, stop by the Whatcom County River and Flood Division at 322 N. Commercial Street, Bellingham, or call (360) 676-6876.

Flood Insurance

You don't need to live in a floodplain to purchase flood insurance. In fact, because Whatcom County participates in the National Flood Insurance Program (NFIP), any property owner is eligible for flood insurance. About 50% of all flood damages nationwide occur outside of the mapped 100-year floodplain area. Note that flood damage is not covered under standard homeowner's insurance policies, and lenders require flood insurance for most floodplain home loans.

There is a 30-day waiting period, so contact an insurance agent about getting flood insurance now.

For more information about NFIP visit www.fema.gov/business/nfip, or call 1-877-FEMA-MAP (1-877-336-2627).

Floodplain Development Permi

Before you build, remodel, repair, fill or re-gr
check with the county or city government in
mits and conditions will be required. It is alw
ments before you commit to any plans, cons

If your proposed repair or improvement is
the value of the existing structure, then your
and will be considered new construction. T
or requirements for construction, substantial
grading in the floodplain, please contact eith
sion at (360) 676-6876 or Planning and D
676-6907.

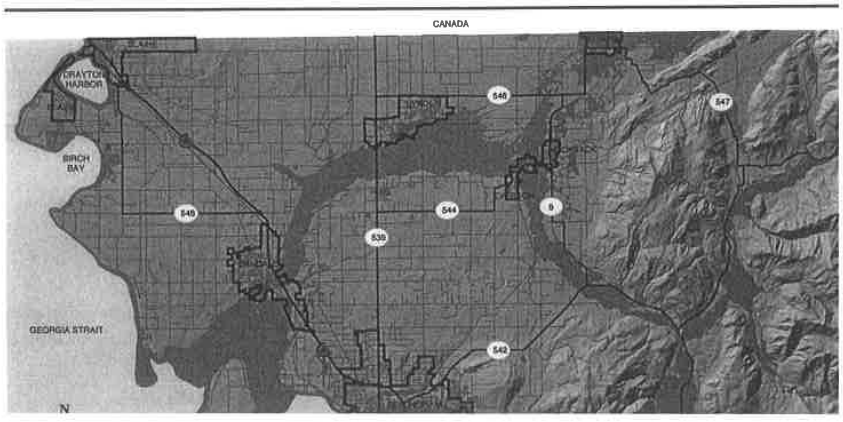
Drainage System Maintenance

When flooding occurs, a common problem
drainage systems. It is important to inspect s
and remove debris that may clog or reduce
water arrives. A plugged channel cannot dis

Where Will It Flood?

The blue areas of the map show Whatcom County's 100-year floodplain – the high-risk flood hazard areas in the county. These areas are lands in the floodplain that have a 1% or greater chance of flooding in any year. If your property is in the 100-year floodplain, it has about a 25% chance of being flooded over the term of a 30-year mortgage.

If you would like more information regardir
ance, or flood preparedness, including wheth
want to purchase is in a floodplain, please co
sion of Whatcom County Public Works at (3
ence sections of the Bellingham and Whatco



During A Flood

Flood Advisories

When there is a possibility of a flood, the National Weather Service issues flood advisories. The advisories may use these terms:

River Forecast Point: A river gauge site that represents a specific reach of the river and has a flood stage established by local emergency management officials and the National Weather Service.

Flood Stage: The water level height in feet at a river forecast point where flood waters begin to potentially damage buildings, roadways and bridges.

Flood Outlooks, Watches and Warnings: These are the three levels of flood awareness that provide communities lead time and raise awareness and preparedness before and during a flood.

- *Hydrologic (Flood Potential) Outlook:* The initial level, which raises awareness of and preparedness for a possible flood event in 2 or 3 days.
- *Flood Watch:* The next level of community flood awareness and preparedness, when conditions are becoming more likely for flooding in a day or so, but are not yet imminent or certain.
- *Flood Warning:* The highest flood level message, when flooding is imminent within 12 hours or is occurring. Since there are many variables in a flood forecast, they are issued with an accuracy of plus or minus one foot.

Flood Safety

Flooding can be extremely dangerous and unpredictable. Long periods of rain may cause slowly rising floodwaters over several hours or days, but a dam or levee failure could cause a rapid and dramatic rise in floodwaters.

To decrease the potential for injury due to flooding:

- Know the flood warning procedures.
- Move to a safe area before access is cut off.
- Don't drive where water is over the road; the road may be washed out.
- If your vehicle stalls in a flooded area, abandon if it is safe to do so, and seek higher ground.
- If you are caught in the house by suddenly rising waters, move to the second floor and, if necessary, the roof.
- Keep children away from floodwaters, ditches, culverts and storm drains.

After A Flood

Food and Drinking Water Safety

- Do not use food or water that has been exposed to floodwaters, it may be contaminated.
- Until the public water system or your private well has been declared safe, water for drinking and preparing food should be boiled vigorously for 10 minutes.

Re-Entering Your Home

- Return home only when local officials say it is safe to do so.
- Before entering, check for structural damage that could cause collapse. Turn off any outside gas lines at the meter, or tank, and let the house air for several minutes.
- Do not strike a match when entering your home. There may have been a gas leak.
- Be careful about turning the power on again. Watch for electrical shorts or live wires. Do not use water-damaged appliances.
- Document your flood losses and contact your insurance agent for flood loss claims.
- Dry your house slowly. Carpets and drywall may have to be removed. Remember, water can be trapped between walls and will not dry.
- If your home or business has suffered extensive structural damage, this may be the time to elevate or floodproof the structure.
- Contact the Whatcom County chapter of the American Red Cross for disaster assistance at (360) 733-3290. The Red Cross provides shelter, food, and health and mental health services to address basic human needs.

If You Evacuate

- Secure your home. Cut off all electrical circuits at the fuse panel or disconnect switches. If you can't, turn off or disconnect all electrical appliances. Shut off the water and gas.
- Pack your disaster supplies kit, prescription drugs, eyeglasses, clothing, money, ID, child supplies and personal items.
- Don't forget about your pets. Most shelters don't allow any animals other than service dogs, so make arrangements before a flood for your household pets.

Debris from the November 1990 flood lies across Ferndale Road. Photo courtesy of The Bellingham Herald.

Contact Information

Before a Flood

Whatcom County Public Works, River and Flood Division: **(360) 676-6876**

Whatcom County Division of Emergency Management: **(360) 676-6681**

Whatcom County Planning and Development Services: **(360) 676-6907**
www.whatcomready.org

American Red Cross – Whatcom Chapter: **(360) 733-3290**

During a Flood

Incident Hotline: **(360) 738-4551**

Sandbag Requests: **(360) 778-8500**

After a Flood

American Red Cross: **(360) 733-3290**

Damage Report: **(360) 778-8500**

Emergency Information

Radio and Internet

Emergency Alert System messages are broadcast on:
KGMI – AM 790
KISM – FM 92.9
KPUG – AM 1170
NOAA Weather Radio – Puget Sound (162.425 MHz)
NOAA Weather Radio – Blaine (162.525 MHz)
WeatherRadio Canada (162.55 MHz)

Weather information is available at:
www.weather.gov/seattle

Incident Hotline: (360) 738-4551

During incidents, call this number for up-to-date information.

Evacuation

If an evacuation is advised, you will be notified either by telephone, the Emergency Alert System, door-to-door contact or public address systems.

Sandbags can provide temporary protection from floods. During a flood emergency, county residents can request sandbags by calling (360) 778-8500. Photo courtesy of The Bellingham Herald.

Whatcom County River and Flood Division
322 N. Commercial Street, Suite 120
Bellingham, WA 98225

Create a 72-Hour Kit

When a disaster strikes, your community emergency services and government agencies may not be able to respond to your needs immediately. Their buildings, equipment, personnel, communications and mobility may be severely hampered by the event. They will be overwhelmed.

Experts warn that you should be prepared to be on your own for a minimum of three days after a disaster. One of the most important elements of this preparedness is the 72-hour kit for your home of office. The contents of this kit will vary, but in every case it should contain the things you need to survive for three days on your own.

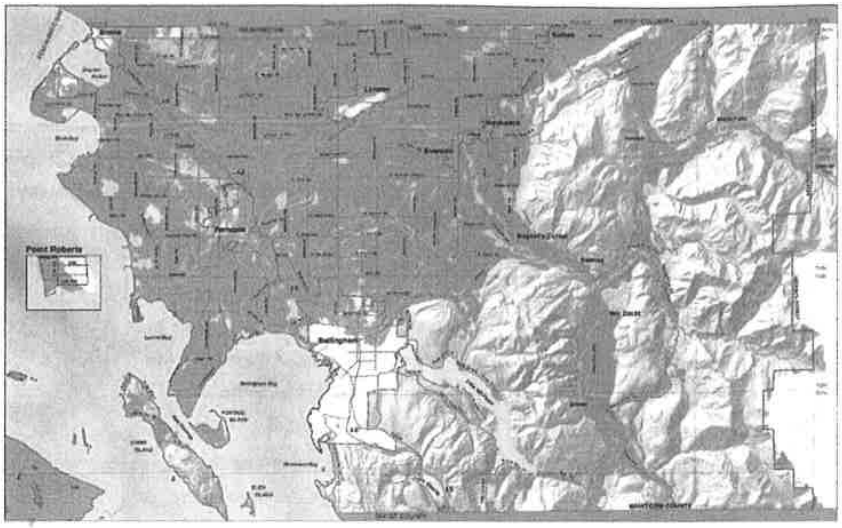
Your home 72-hour kit should contain at least the following items:

- One gallon of water per person per day. This means at least three gallons of water per person.
- Sufficient non-perishable food for three days. Ideally, these foods will be lightweight and high in energy. If you pack canned foods, remember a can opener!
- Prescription and non-prescription medications. If you wear glasses, include a spare pair.
- Battery-powered portable radio. This may be your only source of information during a disaster.
- First aid kit. The small camping kits work well. Remember to get enough supplies for the number of people who may be using them.
- Personal hygiene items
- Clothing and bedding. A spare pair of socks and a space saver blanket would be a minimum.
- Special items such as baby needs or contact lens supplies, etc.
- Personal comfort items. Books, games, personal electronics, etc.

Remember, this is only a bare bones kit. You can add things to this list that you or your family will need.

This information was taken from the Whatcom County Division of Emergency Management's website. For more details visit www.whatcomcounty.us/dem

Protecting prime soils in Whatcom County



According to the Natural Resource Conservation Service (NRCS), Whatcom County has 222,932 acres of prime farmland soils. Of the prime soil acreage 81,996 acres are protected through agricultural zoning. Of course, just because soil is prime does not mean that it is actively being farmed, contains ideal farming characteristics, or should be protected for agricultural use. But these numbers do illustrate that there is a very significant amount of prime soil in Whatcom County beyond that zoned agriculture.

The NRCS published policy and procedures on prime and unique farmlands in the "Federal Register," Vol. 43, No.21, January 31, 1978, p.4030 through p. 4033. This document states that prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods.

In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

Rural Study Areas

Whatcom County completed the Rural Land Study Area Report in 2007. This report addresses the impacts of development on rural zoned agricultural land and was drafted due to the rapid residential development of agricultural and forest lands resulting in the need for greater protection efforts by the community. The Rural Land Study Areas (RSAs) are made up of 21,950 acres of agricultural soils in the county zoned rural, not agriculture, but in close proximity to the heart of actively farmed land within Whatcom County. The Agricultural Advisory Committee recommended that Whatcom County develop heightened agricultural protection measures for the rural areas identified by this study. This study was updated in 2013 with the Whatcom County Agricultural Land Cover Analysis.

Staff recently released a report that analyzes potentially rezoning these RSAs from their respective Rural district (R-5 and R-10) to a Small Lot Agriculture District (Ag-5, Ag-10, or Ag-20) at densities higher than the County's current Agriculture zone (Ag-40). Such a small-lot ag district could add heightened protection to these productive agricultural areas by: 1) reducing the types and number of non-agricultural uses and increasing the types and number of permitted agricultural uses in these areas: and 2) reducing the likelihood of the affected parcels being taken out of agricultural use by rezoning them to increase residential density in the future.

Whatcom County could help mitigate losses through both its existing Purchase of Development Rights (PDR) Program and by implementing a new Transfer of Development Rights (TDR) Program.

Purchase of Development Rights Program

Through the PDR Program, Whatcom County has preserved 826 acres and removed 118 development rights from prime agricultural soils in the past 13 years. Willing property owners can apply to sell development rights on their prime agricultural land to permanently preserve farmland for current and future farmers. If you have additional questions about the program or would like to know whether your property is eligible, please contact PDR Outreach Coordinator Chris Elder at celder@whatcomcounty.us or at (360)676-6907

Farmer Spotlight: Chris Paul

Chris Paul and her husband Clarence operated the Paul Dairy for many years off of Haynie Road. They loved dairying and enjoyed the open space and agricultural nature of Northwest Whatcom County. But Chris and Clarence were not immune to the challenges of being a dairy family. They hadn't taken a vacation in over a decade and each year they continued the cycle of borrowing money to keep the operation running and paying it back with each gallon of milk sold. In 2003, the Paul's lost their son who played an important role in the dairy operation. This prompted them to take advantage of that year's dairy buyout and sell off their herd. But this didn't completely clear them from some of the debt they had acquired from running the dairy.

At that time they heard about the Purchase of Development Rights Program from some friends with a dairy who were also exploring the program. The Paul's worked with the current PDR Program Administrator through the process of applying and getting their development rights appraised. In the end, Chris and Clarence sold 31 development rights on 157 acres of prime farmland to permanently preserve their land for current and future farmers. Through the sale of these development rights, the Paul's were able to finally pay off all of their debts and continue on with the next phase of their life debt-free.

Chris Paul is also a local hero. She is one of the founding members of the Whatcom County Youth Fair. This is an organization that began primarily teaches young people how to care for livestock and how to compete in livestock shows but has expanded over the years to include other areas such as photography, chess, homemaking, and much more. This year's fair had over 500 young people in attendance. This included many of our Whatcom County 4H and FFA youth but also many others from around the state. Chris believes in the next generation of farmers. She supports their learning process and wants to see the land remain for them to use. She is concerned about a possible future when there are no farmers left. She has taken many steps to ensure that farming remains a viable opportunity for current and future residents of Whatcom County.

Farm Plans and how they can work for you

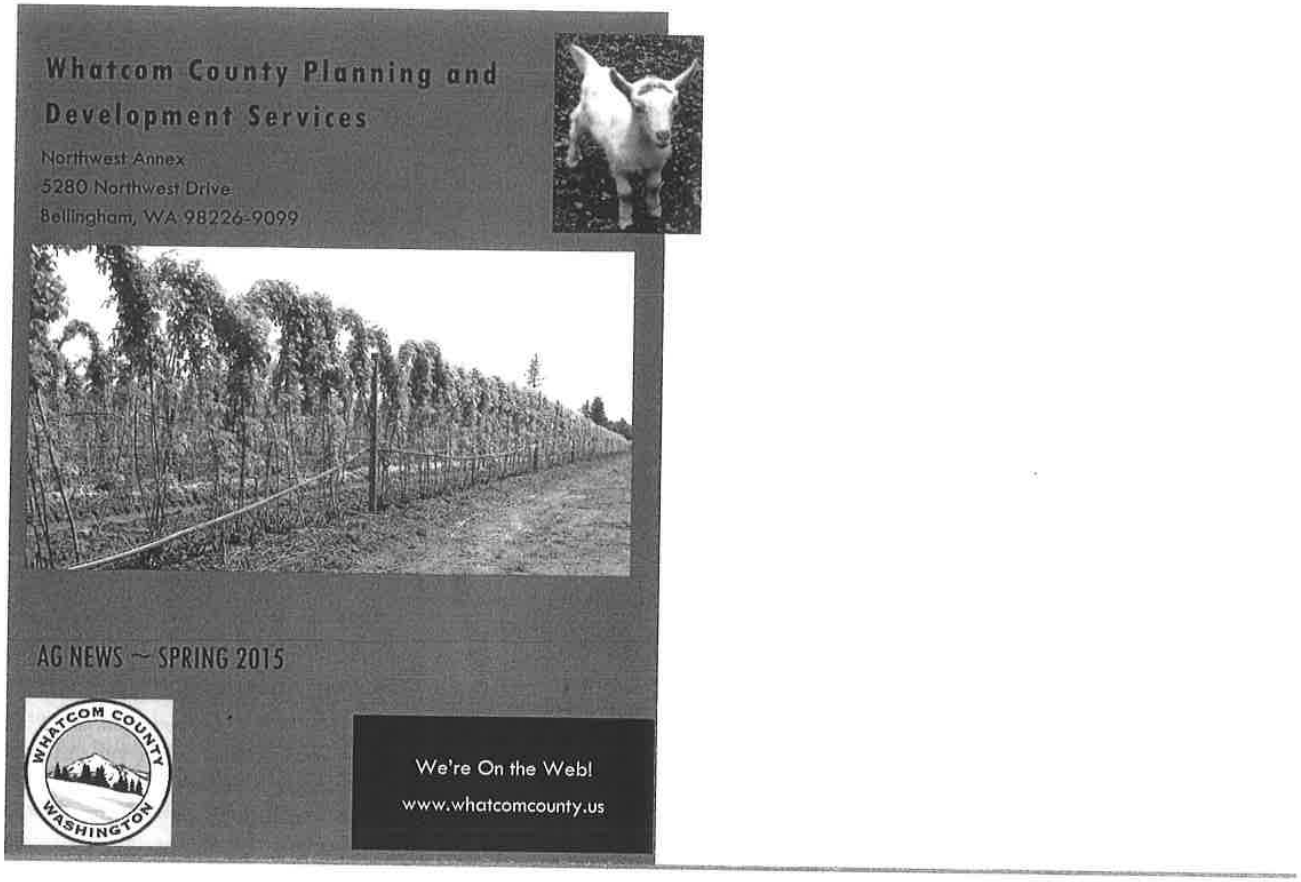
A farm plan is a living document that can provide a number of benefits to a property owner. A farm plan supports a property owner in developing a land management system that encourages productive land use as well as the maintenance of a healthy ecosystem.

Many things are considered in a farm plan including farm acreage available for grazing/hayland, soil types, slope of the land, location of well head and septic system, proximity to streams, wetlands, and/or water bodies (i.e. swales, ditches, ponds, etc.), type and numbers of livestock or crops, and resources such as machinery or buildings.

A farm plan can provide the property owner with relief from the standard buffers required by the County's Critical Areas Ordinance and still ensure that watershed values are being protected. Through the process of creating and following a farm plan, a property owner can assess farm goals and objectives. This acknowledges ways to actively (rather than passively) manage your animals and your land in a way that is protective of water quality and critical areas habitats. You'll find that what protects our environment also benefits you through better livestock health and through better forage production that can save you money in the long run! Debbie VanderVeen of Veen Huizen Farms, LLC says that "A Farm Plan assists the farmer in his efficiency of using Best Management Practices to grow highly productive crops, keep water clean, and soils nutrient rich."

You don't have to be a commercial operation to benefit from developing a farm plan! The Whatcom Conservation District works with farms of all sizes, from backyard horse or llama owners to dairy and beef operations with larger numbers of livestock.

For more information on Farm Conservation Plans contact the Whatcom Conservation District at (360)526-2381, wcd@whatcomcd.org, or at 6975 Hannegan Road just South of Lynden. Whatcom Conservation District is a non-enforcement subdivision of the State of Washington and is supported by grants. The District is charged with the duties of protecting the soil and water of Whatcom County, particularly in relation to farming and animal keeping practices, through technical assistance and education. Development of farm plans is a free service offered by the District.



Ag Watershed Project

The Ag-Watershed Project (June 2012-June 2015) is examining how incentive-based tools can work with current regulation to strengthen agricultural viability while enhancing large-scale watershed processes and functions.

The project research team has been testing various scientific measurement tools with the help of landowners, project review committee members and partners.

The prototype Ag Metric tool has been designed to quantify changes in ag function and viability resulting from specific actions taken by landowners on ag lands (e.g., protection of land from conversion, provision of adequate drainage, protection of ag fields from flooding etc). For more information see *Ag News,* Spring 2014.

Other scientific measurement tools tested in this project have focused on quantifying the watershed benefits of specific actions (e.g., wetland function, stream function, stream shading by riparian vegetation) that could be taken at a site (a farm or group of farms). The tools have been tested at two pilot sites on farmland in the North Lynden watersheds.

Phase 1 work identified *potential* projects involving specific voluntary actions on agricultural lands in the project focus area that could advance both watershed and ag land planning objectives in Whatcom County.

Phase 2 focused on adapting and testing tools for measuring, tracking and accounting for specific ag and watershed benefits that could be achieved in these potential projects, in order to examine how an incentive-based marketplace approach might be used to encourage voluntary actions that go above and beyond what is required.

The project ends in June 2015. The research reports will be released via the website. Karin Beringer will be accepting comments and can be contacted for notification when scientific tools and technical reports are posted. Karin can be contacted at kberinge@co.whatcom.wa.us

For more information visit the project website https://sites.google.com/site/wcwatershedag/

Whatcom County Planning and Development Services has applied for a Department of Ecology National Estuary Program Grant to continue refining the metrics and mapping that were developed in the first phases of the AgWatershed Project. The grant proposal also focuses on developing a mitigation program for the loss of agricultural land.

If you liked this newsletter, and would like to see more like it in the future, email kberinge@co.whatcom.wa.us and let us know!

Ag News

Issue 3 Spring 2015

Whatcom County Planning and Development Services

Inside this issue:

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Whatcom County Ag Organizations:

- Washington Red Raspberry Commission: www.red-raspberry.org
- Washington Blueberry Commission www.blueberrycommission.com
- Washington Seed Potato Commission: www.waseedpotato.com
- Whatcom County Cattlemen's Association : Call Wes Kentch ~ wwkentch@comcast.net
- Whatcom County Dairy Federation www.wadairyfederation.org
- Whatcom County Farm Bureau www.whatcomfarmbureau.com
- Whatcom Farm Friends www.wcfarmfriends.com
- Sustainable Connections www.sconnect.org

Whatcom County Entities Related to Ag:

- Whatcom Conservation District www.whatcomcd.org
- WSU Extension whatcom.wsu.edu
- USDA Service Center 6975 Hannegan Rd, Lynden 98264

2016 Comprehensive Plan Update

Whatcom County Planning and Development Services (PDS) is working to amend the Comprehensive Plan as part of our 2016 update. Chapter 8 Resource Lands describes policies in place to protect and support agriculture in Whatcom County.

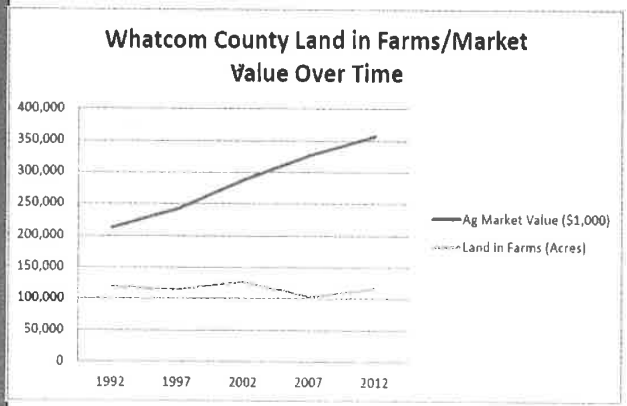
Whatcom County has been actively farming a little more than 100,000 acres for the past 20+ years, according to the United States AgCensus. In that same period the market value produced on that acreage continues to increase. The chart below illustrates the significant value of agricultural products in Whatcom County and reinforces our resolve to protect it.

The 2016 Update of the Comprehensive Plan has amended language to encourage continued protection of agricultural lands and includes the following highlights.

Policy 8A-2 Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base may include (only a few highlighted for this article):

1. Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.

2. Implementing a Transfer of Development Rights (TDR) Program in which the development potential of a site could be transferred to another location where development is more favorable.



4. Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.

6. Mitigation for loss of productive agricultural lands.

Policy 8A-2 can be found on page 8-6 in the 2016 Comprehensive Plan update draft.

The drafts of the comprehensive plan elements are currently posted online at www.whatcomcounty.us/1170/Comprehensive-Plan-Updates. Whatcom County PDS is currently accepting public comments on the draft elements as well as the draft Environmental Impact Statement of the Update. The Planning Commission is currently scheduled to review Chapter 8 at the June 11 meeting (Meeting time is subject to change). The public is encouraged to attend and address the Planning Commission with any comments or concerns. Planning commission meeting schedule can be found at http://www.whatcomcounty.us/552/Planning-Commission.

Comments can be mailed to:

Whatcom County Planning Attn: Becky Boxx 5280 Northwest Drive Bellingham, WA 98226

Or emailed to: PDS_Planning_Commission@co.whatcom.wa.us

Terrell Creek & Birch Bay
State of the Watershed Report

10,000+ people make this area their home along with a wonderful variety of fish, birds and other wildlife.

Do you live, work, or play in the Terrell Creek & Birch Bay watershed?

CHUMS of Terrell Creek
Whatcom Conservation District
6975 Hannegan Road
Lynden, WA 98264

Nonprofit Organization
U.S. Postage Paid
Lynden, WA
Permit No. 192

What's Inside:

Watershed & Who Lives Here ..... 2 & 3
History 4
Health Concerns 5
Map & Places of Interest ..... 6 & 7
Chums of Terrell Creek 8
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What is a Watershed?

A *watershed* is an area of land where water falls and drains to a common place.

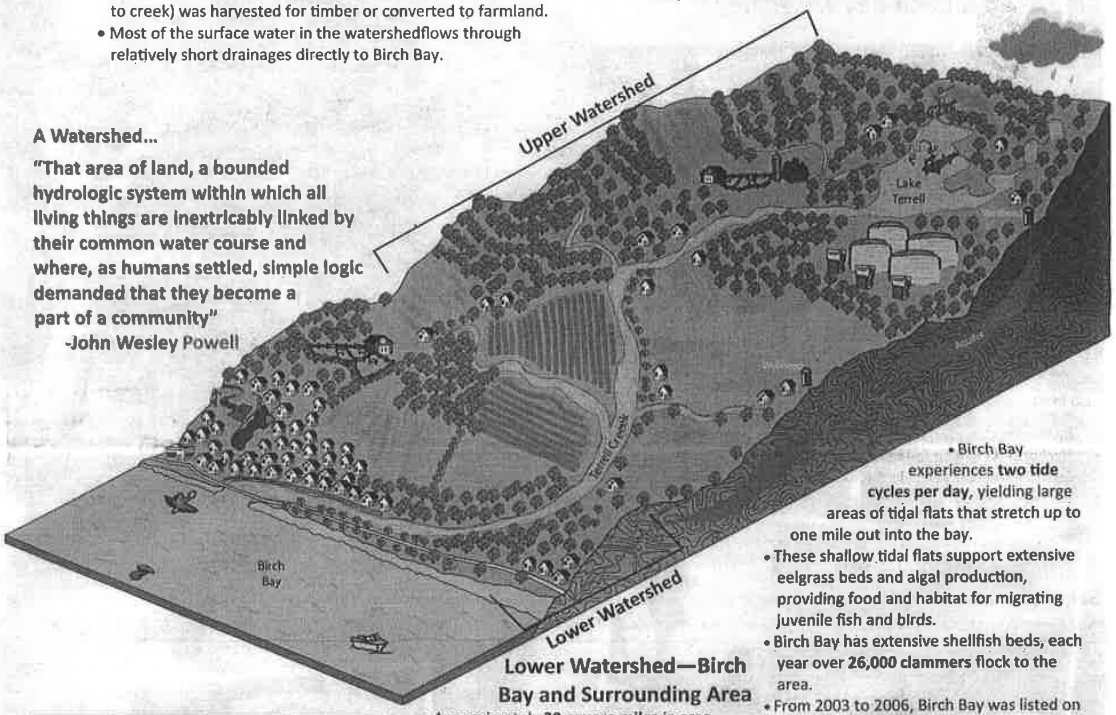
The Terrell Creek/Birch Bay watershed is home to about 10,400 people and a large variety of fish and wildlife. A healthy watershed has healthy water quality, healthy flows, and healthy habitat. The future of Terrell Creek and Birch Bay will be shaped by the efforts of the community to keep water clean and restore habitat today.

Upper Watershed—Terrell Creek Highlands

- The upper watershed is the area of land surrounding Lake Terrell east to Ferndale and west towards Point Whitehorn.
- Approximately **17 square miles** in area.
- The highest point in the watershed is **240 feet above sea level.**
- Historically, **58%** of the Terrell Creek riparian zone (area next to creek) was harvested for timber or converted to farmland.
- Most of the surface water in the watershedflows through relatively short drainages directly to Birch Bay.
- Terrell Creek is approximately **9 miles long** and originates in a large area of ponds and wetlands including Lake Terrell.
- Historically, **coho salmon** and **steelhead trout** had prolific runs in Terrell Creek. Currently, these fish are found in significantly lower numbers along with **chum salmon.**

A Watershed...

"That area of land, a bounded hydrologic system within which all living things are inextricably linked by their common water course and where, as humans settled, simple logic demanded that they become a part of a community"
-John Wesley Powell



Lower Watershed—Birch Bay and Surrounding Area

- Approximately **20 square miles** in area.
- 19 miles of **marine shoreline.**
- **Birch Bay State Park** was established in 1954, totals 194 acres, and includes a campground.
- **8,000+ people** live in the Birch Bay community.
- Birch Bay experiences **two tide cycles per day**, yielding large areas of tidal flats that stretch up to one mile out into the bay.
- These shallow tidal flats support extensive eelgrass beds and algal production, providing food and habitat for migrating juvenile fish and birds.
- Birch Bay has extensive shellfish beds, each year over **26,000 clammers** flock to the area.
- From 2003 to 2006, Birch Bay was listed on the Washington State Dept. of Health's list of "threatened" shellfish harvesting areas due to poor water quality.
- Since 2008, marine water quality in Birch Bay has consistently been good, meeting the Department of Health's highest standard for marine water quality.

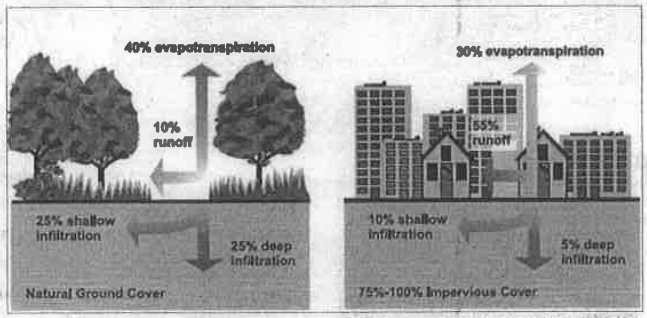
How does this watershed flow?

Rain and snow falls in the watershed. Some of it soaks into the ground to recharge **underground aquifers**. The rest becomes surface flow traveling downhill through ditches, then creeks, and then into Birch Bay.

The upper most reaches of the Terrell Creek watershed begin as small streams and ditches flowing into a large wetland area that includes **Lake Terrell**. Terrell Creek then flows through a rural residential area with a mix of open space, agriculture, and industry where it picks up more water from **Fingalson Creek** and other small tributary streams.

At **Birch Bay State Park**, Terrell Creek takes a right-hand turn and runs parallel to the marine shoreline through residential and commercial properties before entering Birch Bay. Smaller systems of ditches and unnamed streams drain the remainder of the watershed around Birch Point, central Birch Bay, and Point Whitehorn.

How development effects natural watershed function



Credit Environmental Protection Agency.

Development increases the volume and rate of potentially unhealthy runoff from a site, and reduces groundwater recharge and evapotranspiration (evaporation from soil, plants, and other surfaces into atmosphere).

Who Lives Here?

People and Their Animals

From multigenerational families to short term vacationers, people live, work, and play in this watershed.

Enjoying Birch Bay with a canine friend.

- Fishing, clamming, and crabbing in Birch Bay are as popular as ever.
- Domestic animals found in this watershed include cows, horses, sheep, llamas, alpacas, goats, chickens, ducks, rabbits, dogs, and cats. All of these animals contribute to quality of life in the watershed, but they can also be sources of pollution.
- Over 3,000 acres of the watershed are owned by British Petroleum and Intalco Alcoa, both of which lease a portion of their land to agricultural operations and Department of Fish and Wildlife for wildlife reserves.

Landowner enjoys the company of his Scottish Highlander cattle and sheep.

Birds

The wetlands, fields, forests, streams, saltwater estuaries, and Birch Bay itself are home to many bird species from Bald Eagles to hummingbirds.

Bald Eagles and Great Blue Heron found in Birch Bay.

- Great Blue Herons are a fixture in Birch Bay and elsewhere in the watershed. No visit to Birch Bay would be complete without viewing herons feeding in the mudflats.
- Waterfowl use Lake Terrell, Birch Bay, and other wet areas for feeding, nesting, and migration stopovers. Lake Terrell is one of the premier duck and goose hunting sites in the state and is also frequented by swans and other waterfowl.
- Birch Bay provides incredible overwintering habitat for a variety of water loving birds like Dulin, brant, and goldeneye.
- Resident and migratory song birds frequent all habitats in the watershed. Avid birdwatchers love the area for Pileated Woodpeckers, Red-winged Blackbirds, and many more.
- Birds of prey like Great Horned Owls, Red-Tailed Hawks, and Marsh Hawks are common in the area and are invaluable allies in controlling rodent populations.

Mammals

By land or by sea, wildlife love this watershed with impressive populations closest to the water. Many residents have learned to "share" their gardens with local deer. Others are occasionally surprised to find that beavers also like their trees.

- *River otters, beaver, mink,* and muskrat all use Terrell Creek and other streams.
- Harbor seals can be found feeding in Birch Bay.
- Coyotes and weasels help the hawks and owls control rodent populations.
- Beavers can be aggravating when they build dams and flood property, but they also fill an essential role by storing water in their ponds and creating incredible stream habitat.
- Raccoons may be the most commonly seen wild mammal in the watershed. They are drawn to human neighborhoods where they can find an easy meal in a garbage can or pet dish.

Black-tailed deer at a Butler Creek restoration site. 'Blue tubes' protect the plants from foraging wildlife.

Salmon & Trout

Can you see the fish?

Terrell Creek was once home to robust fish populations. Now salmon are making a comeback thanks to the efforts of volunteers, improving spawning habitat with the Chums of Terrell Creek and the Nooksack Salmon Enhancement Association (NSEA).

- Coho and chum salmon can often be seen in Terrell Creek in November and December.
- Juvenile fry emerge from spawning gravels in the spring and either migrate directly to the salt water or spend a year growing in the stream.
- Threatened Chinook salmon and bull trout use Birch Bay for overwintering and foraging.
- Eelgrass beds in Birch Bay provide habitat for young salmon and other marine species.

Forage Fish

Healthy eelgrass.

Small forage fish in Birch Bay are food for many other animals including salmon, other marine fish, birds, and mammals.

- Eelgrass in Birch Bay provides critical habitat for these fish.
- Pacific herring, pacific sand lance, and surf smelt all provide an important link in the Birch Bay food chain and make excellent bait fish for salmon fishermen.

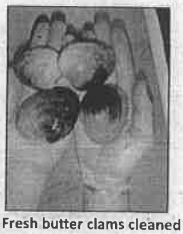
Seagull eating a clam in the Birch Bay tidal flats.

Shellfish

Family trying their hand at clamming on the Birch Bay tidal flats.

Shellfish are an important and delicious food for humans, birds, and other mammals in this watershed.

- Dungeness crab shells and claws are among kids' favorite beach treasures.
- Crab harvest seasons are posted annually.
- Horse, butter, native littleneck, and manila littleneck clams can all be found and harvested in Birch Bay.
- Know Before You Dig: www.doh.wa.gov/ShellfishSafety.htm
- Recreational Shellfish Safety Hotline: 1-800-562-5632

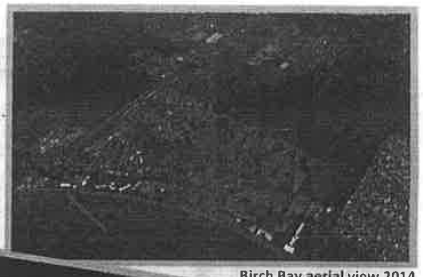


Fresh butter clams cleaned and ready to be cooked.

Watershed History

Prior to 1800, the Semiahmoo tribe, a group of Coast Salish people, inhabited the area from Boundary Bay to Point Whitehorn. Archaeological evidence indicates the Lummi and the Nooksack Tribes used Birch Bay seasonally as foraging and ceremonial grounds. The Lummis called the area *Strav-a-wa*, which means 'the place for clams'. The Spanish and British explored Birch Bay in the late 1700s. The Spanish called the area Garzon, but the British named it Birch Bay because of the thick stands of black birch trees that grew in abundance near the shore. Like much of the Puget Sound region, early explorers and settlers were attracted to Birch Bay and the surrounding areas by the abundance of natural resources.

The Fraser Valley Gold Rush and the Boundary Survey of the 49th Parallel created a short lived wave of new settlers in the late 1850s. In the 1870s, homesteading brought a second influx of settlers to the small but growing community at the northern terminus of the Union Pacific Railway. By the early 20th century, much of the timber resources in the area had been depleted and new regulations banning the use of fish traps served to further dissolve the local natural resource-based economy. By the 1920s, local entrepreneurs in the Birch Bay area were focusing their efforts on an international recreation and resort community serving Canadian and U.S. residents.



Birch Bay aerial view 2014

Birch Bay aerial view 1950

Bay Center Resort, Birch Bay. C. 1946. Presently it is Bay Center Market at the intersection of Harborview and Birch Bay Drive.

Clam Bake Anyone?

According to Robert Hawley's *Skqee Mus, or Pioneer Days on the Nooksack*, Lynden residents established an annual community clam bake near the turn of the 20th century that still exists today.

The tradition started in November 1891, when four men from Lynden traveled all day by wagon to Birch Bay. They collected butter and horse clams by night when the tides were low enough and celebrated with a community clam bake the following day when they returned to Lynden creating the Clam Diggers Club.

Clam Diggers at Birch Bay display their catch.

Lake Terrell

A large wetland historically known as Lake Terrell was expanded into a much larger open water lake in 1950 following construction of the Lake Terrell dam.

The lake and land around it was acquired by the Washington State Department of Fish and Wildlife in the 1940s primarily for waterfowl habitat preservation and recreation. The area was historically used by Native American tribes now known as the Semiahmoo and Lummi for deer and elk hunting and beaver trapping.

Prior to dam construction in 1950, Lake Terrell was primarily a wetland.

Agricultural History of Whatcom County

As the harvest of timber continued to clear land, the agriculture economy grew. By the 1880s, agriculture was established throughout the county. Hops fields appeared in Everson, Nooksack, Lynden, and Birch Bay. Ferndale farmers grew sugar beets, while others grew potatoes, lettuce, and celery.

Dairy and poultry production was also gaining ground during this time and the first creamery was opened in Custer in 1892. Lynden and Sumas opened creameries in 1894 and Bellingham followed in 1896. In 1919, the Whatcom Dairyman association formed and in 1920 started another Lynden creamery which is now the site of the Darigold powdered milk plant.

Today, dairying is still prominent, while poultry production has significantly decreased. Hops are no longer grown commercially in Whatcom County, but the last decade has seen a significant increase in the production of blueberries and raspberries. Agriculture in Whatcom County now supports over a $326 million economy.

Birch Bay's first post office in 1853.

Many women and men are captured here socializing on the veranda of the vacation resort Shore Acres at Birch Bay in 1937.

Watershed Health

Healthy People and Communities

The people living in the Terrell Creek/Birch Bay watershed depend on healthy water quality, adequate stream flows, and healthy habitat for fish, shellfish, and wildlife.

- Safe water to wade or play in.
- Reduced risk of flooding.
- Safe shellfish harvesting from Birch Bay.
- Backyards free of bacteria and pathogens from pet waste.
- Fish and wildlife to see and enjoy.

Children explore the tide flats.

Marine Resources Committee volunteers conduct a shellfish population surveys in clam seeding areas.

Healthy Water

Healthy watersheds need clean water. In the Terrell Creek/Birch Bay watershed, the focus is on keeping pollutants that threaten public health and harm wildlife out of the water. Pollutants include nutrients, pathogens, and bacteria come from yard fertilizers, animals manure, and septic systems.

Warm summer water causes an algae bloom in lower Terrell Creek that can lead to low dissolved oxygen levels.

Native trees shade creeks throughout the summer keeping water temperatures low and dissolved oxygen high.

Bacteria

Fecal coliform bacteria live in the intestines of warm-blooded animals. When found in water, they indicate that human or animal waste has entered the water upstream and it may be contaminated with disease-causing organisms. Keeping sources of bacteria out of the water is necessary to keep Terrell Creek and Birch Bay safe for swimming, fishing, and shellfish harvesting.

Temperature & Dissolved Oxygen

When it comes to healthy water, cold is good. Salmon, especially vulnerable juvenile salmon, need cold water (less than 16°C or 60°F) to avoid stress or death. Cold water holds more dissolved oxygen (DO) which fish and other aquatic animals need to live. Increasing shade trees, protecting wetlands, and restoring stream channels can help lower summer water temperatures in Terrell Creek and keep DO levels from getting too low.

Healthy Flows

Healthy watersheds need reliable stream flows—not too much or too little. With development, hard surfaces like pavement and roof tops have replaced forests and wetlands changing stream flows in our watershed. However, retaining or planting trees and native plants, protecting wetlands, and using building techniques that limit hard surfaces and allow stormwater to soak into the ground help maintain healthy stream flow. This also ensures adequate groundwater recharge to keep the aquifer full and support the needs of county wells for both drinking and agriculture.

Too Much Water

Hard, or impervious, surfaces don't allow rainfall to enter the soil for groundwater recharge. As a result, water rushes downstream during storms causing flooding, erosion, and property damage.

Too Little Water

Summer flows diminish because of increased temperature and less precipitation. Low flows harm fish and wildlife when temperatures get too high and dissolved oxygen levels get too low. Low flows also lead to unpleasant, stagnant water in Terrell Creek which increases the growth of bacteria and algae.

Just the Right Amount

There will always be winter floods and summer droughts, but taking steps to limit impervious surfaces and retain native plants as streamside vegetation helps keep seasonally appropriate flows in our streams.

Healthy Habitat

Healthy watersheds provide good habitat for fish and wildlife. Good habitat has good water quality, healthy stream flows, natural stream channels, and lots of native plants.

Left: A channelized reach of Terrell Creek.

Right: A natural reach of Terrell Creek with bends and low banks provides good habitat.

Natural Stream Channels

Natural stream channels that change over time have bends, pools, flood plains, and downed trees which offer great habitat for fish and wildlife. People have altered these natural stream channels over time, like when the Lake Terrell dam was built, upper Terrell Creek was dug straight and deep. Lower Terrell Creek may have once entered the bay at Birch Bay State Park. Now its channel is locked in place behind Birch Bay Drive. Many smaller stream channels that used to flow into Birch Bay have been replaced with pipes. Stream restoration projects recreate a more natural channel and improve habitat in areas where the channel has been altered.

Native Plants

Maintaining native plants along our waterways creates healthy habitat and protects water quality. Native plants provide food and shelter for fish and wildlife. They also keep the water cool and filter pollutants out of stormwater. In many areas, native plants have been removed from streambanks and invasive plants like reed canarygrass or Himalayan blackberry have taken over. Replanting native species in these areas creates healthy habitat in our watershed for people and wildlife.

Explore Terrell C

Cottonwood Bioswale

Bioswales are engineered drainage features that use soils and plants to naturally filter pollutants from stormwater. The Cottonwood Bioswale was built in 2013 at the corner of Seaview Drive and Maple Crest Avenue. Stormwater runoff from the neighborhood is directed into a series of six cells with plants and a special soil mix that trap pollutants. Clean water collects in a layer of drain rock and flows out through a pipe to Birch Bay.

Mutt Mitt Stations

Protect Birch Bay water quality by picking up after your pet. You will find these stations all along the bay and at most parks. Please remember, dogs must be on leash.

Birch Bay Beaches

Birch Bay is a popular destination for summer fun, clamming, and crabbing. There are multiple public beach access point around the bay.

Birch Bay Visitor Center

7900 Birch Bay Dr

Birch Bay State Park

BBSP has 8,255 feet of saltwater shoreline on Birch Bay and 15,000 feet of freshwater shoreline along Terrell Creek. The park has an active summer interpretive program, a half mile Terrell Marsh Interpretive Trail, and four interpretive signs throughout the park.

Point Whitehorn Marine Reserve

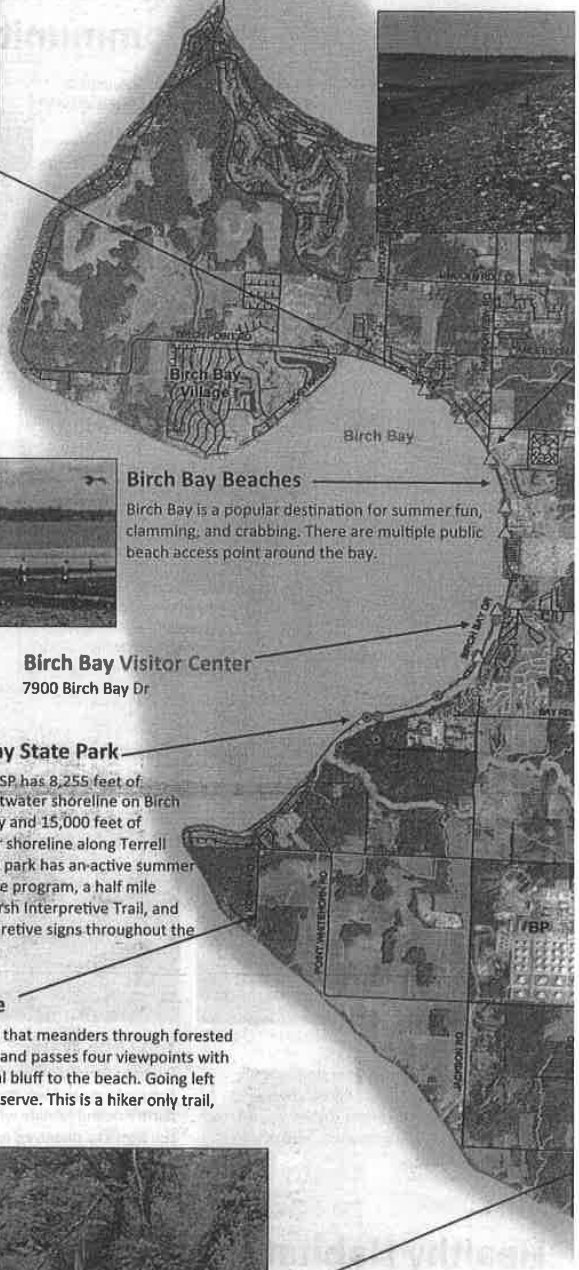
This park offers a 0.75 mile interpretive trail that meanders through forested wetlands on a level, gravel path interspersed with boardwalks and passes four viewpoints with benches to enjoy the views, and ends with stairs down the final bluff to the beach. Going left from the stairs you can walk along the Cherry Point Aquatic Reserve. This is a hiker only trail, no pets.

Lake Terrell Dam Before

Lake Terrell Dam

The Lake Terrell dam was modified in 2012 to restore fish passage and improve flows in Terrell Creek. The dam was replaced with a concrete weir that meters out summer flows and an elevated stream channel to provide fish passage over the dam. Funding for this project came from the National Fish and Wildlife Foundation and British Petroleum.

Lake Terrell Dam After



Legend

- Stormwater Projects
- Mutt Mitt Stations
- Fish Passage Projects
- Place of Interest
- Remote Site Incubator
- Restoration Projects
- Beach Access Parking
- Birch Bay Drive & Pedestrian

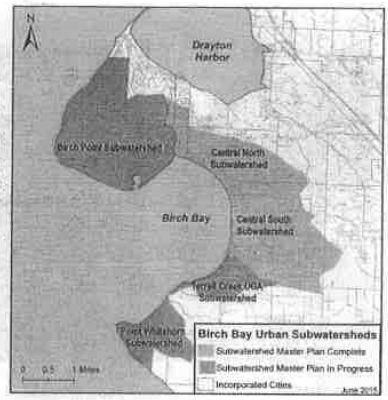
...eek and Birch Bay

Beach Restoration

Restoring the beach along Birch Bay has been a long-term community goal. Plans to build a more natural, soft shoreline and berm to protect Birch Bay Drive from storm damage started in the 1970s. Whatcom County completed a portion of restored beach berm in 1986 and is currently planning to extend the area of restored berm with improved pedestrian facilities.

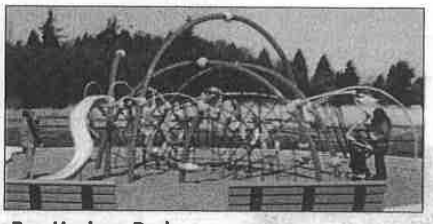
Subwatershed Master Plans

BBWARM is completing subwatershed master plans for developed subbasins in the Birch Bay watershed. Each plan identifies and evaluates stormwater problems and recommends solutions. To learn more and download completed plans visit www.bbwarm.whatcomcounty.org/programs/swmp



Sunset Farm Equestrian Park

70 acre horse park is open to the public and includes riding trails, a cross country jump field, round pen, and all weather arena. For more information visit: www.friendsofsunsetfarm.org



Bay Horizon Park

7467 Gemini St, Blaine, WA 98230
This 6.82 acre neighborhood park features a basketball court, playground, open grassy fields and activity center. This park was home to the Blaine Air Force Station from 1951 - 1979 and was acquired by Whatcom County in 2005.

Salmon Remote Site Incubator

The Nooksack Salmon Enhancement Association, assisted by the Bellingham Technical College fisheries program and the Chums of Terrell Creek, are reintroducing chum salmon to Terrell Creek by incubating salmon eggs and releasing the fry to migrate downstream. The incubator has a capacity for up to 100,000 eggs, but the number incubated yearly depends on how many eggs the hatchery can supply.

Lake Terrell

Perhaps the most well known feature of the upper watershed is 500 acre Lake Terrell. The lake and surrounding areas are managed for recreation and as a wildlife refuge. Bird watching, waterfowl hunting and fishing are among the activities making Lake Terrell popular among residents and visitors alike.

WDFW Intalco Unit– Archery Range

The Intalco Unit is 1,000 acres of industrial property, leased by Washington Department of Fish and Wildlife (WDFW) for public hunting, fishing, and other wildlife recreation. A walk-through archery range includes a two-mile loop through woods with 21 shooting stations, several water impoundments and associated wetlands.

Meet your Chums

The Chums of Terrell Creek (Chums) were organized in 2003 to promote salmon recovery in the Terrell Creek watershed. In response to community concerns about safe shellfish harvesting and clean recreational water they have expanded their efforts to improve water quality in Terrell Creek and Birch Bay. Clean water is not just an environmental concern, it's also a health concern for everyone using water for recreation.

Samantha the Salmon and Chums Advisory Committee members Elie and John along with WCD staff at the Earth Day community work party.

Chums and NSEA organize a work party to clean up a stretch of Terrell Creek that was historically used as a *dumping area.*

Community Driven Group

The Chums work with many other organizations towards the common goal of improved water quality, healthy fish, and safe shellfish harvesting. Other partners include: British Petroleum (BP), Birch Bay Water and Sewer District, Marine Resources Committee, Birch Bay State Park, Washington State Department of Fish and Wildlife, Whatcom Conservation District (WCD), Nooksack Salmon Enhancement Association (NSEA), and Birch Bay Watershed and Aquatic Resources Management (BBWARM) District.

Chums making a difference: Earth Day community work party on Jackson Road. 192 volunteers planted 1000 trees along Terrell Creek.

Clean Terrell Campaign

A scenic lake, a meandering stream and a beautiful bay; these are the natural features that make the Terrell Creek watershed and Birch Bay a special place to live, work, and play. However the health of these features depends upon one very real constraint: clean water (water quality).
Humans, fish, and shellfish all need clean and cool water. Clean water is free of harmful pathogens and other pollutants. Cool water provides habitat for native fish, helps to keep dissolved oxygen levels high for fish and other aquatic organisms, and inhibits the growth of harmful and unsightly algae.

Run with the Chums

The annual Run with the Chums occurs in September during Whatcom Water Weeks. This is a family friendly 5k Fun Run or Walk and 1k kids Smolt Sprint. The event promotes watershed stewardship by exploring the watershed you live in; what fish, wildlife and animals live here; how the water quality is impacted; and how you can reduce your run off through stormwater management.

Asher Louis finishes the 1K Smolt Sprint.

Over 250 folks take off from the start line and run 5K around BP Highlands.

Making a Difference

Since the Chums and NSEA began rallying resources for the watershed, six major barriers to fish passage have been removed and native tree and shrub buffers have been planted along nearly five miles of stream bank, improving habitat from the bay, upstream to Lake Terrell and beyond.

Replacing fish passage barriers, like this culvert, with bridges improves the opportunity for returning salmon to navigate upstream toward Lake Terrell. NSEA replaced this culvert in 2014.

Interested in joining the Chums?

Contact **Rachel Vasak**,
your watershed steward

(360) 715-0283 x 108
rvasak@n-sea.org

Rachel Vasak
NSEA, Executive Director

Water Quality

What's happening in YOUR watershed?

Collecting a water quality sample at the mouth of Terrell Creek (Ingrid Enschede, BBWARM).

Bacteria

When fecal coliform bacteria is in your water, it indicates that animal waste has entered the water upstream and that water could carry disease-causing organisms. This creates a public health concern for people wading, playing, or harvesting shellfish. To protect public health, **monitoring for fecal coliform bacteria occurs at over 40 sites** throughout the Birch Bay and Terrell Creek watershed. Look at the map on this page for a monitoring site near you to see if water quality standards have been met over the past three years in your neighborhood.

Where does the bacteria come from?

Fecal coliform bacteria comes from many different sources including: pet and wildlife waste, failing septic systems, leaks in sewer connections or sewer lines, farm animals, and poorly managed manure. Waste from these sources enters waterways flowing to Birch Bay.

Is the water clean?

We have good news. Thanks to all of the farm improvements, septic maintenance, and stream restoration projects by local citizens, **the marine water in Birch Bay is clean with low bacteria levels** well within state marine water quality standards. In addition, the State Department of Health is considering lifting a shellfish harvest closure area around the mouth of Terrell Creek due to improving water quality. But sections of Terrell Creek still have elevated bacteria levels, so continued efforts by watershed residents to protect water quality essential. Keeping animal waste and bacteria out of Terrell Creek and the many small drainages entering Birch Bay through stormwater pipes in an on-going challenge. These freshwater streams and ditches have variable bacteria levels—sometimes very low and sometimes very high, exceeding fresh water quality standards. Comparing the one year and three year geometric mean (average bacteria level) at each monitoring site is one way to evaluate if water quality is improving or declining at that location. **Look at the graph on this page and see for yourself.**

Who is doing the monitoring?

Water quality monitoring is performed by different organizations and citizen volunteers. Whatcom County Public Works (WCPW) Natural Resources manages the water quality monitoring program in the Birch Bay and Terrell Creek watershed with assistance from BBWARM, Whatcom County Marine Resources Committee, Nooksack Salmon Enhancement Association (NSEA), Whatcom Conservation District (WCD), and volunteers.

Want to get involved?

Visit www.whatcomcd.org/volunteer-opportunities

Want more information?

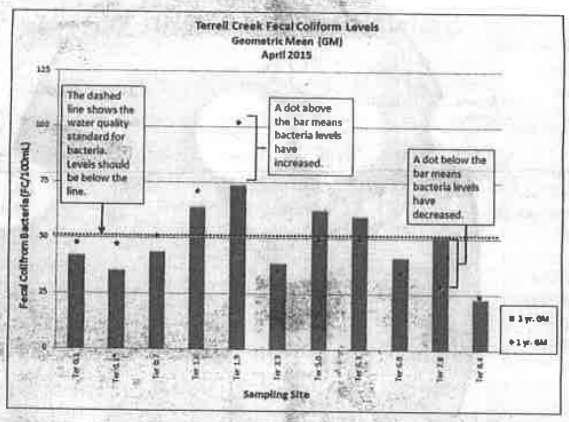
Water quality data summaries, maps, and monitoring reports are posted on the BBWARM website at **www.bbwarm.whatcomcounty.org/programs/wq**.

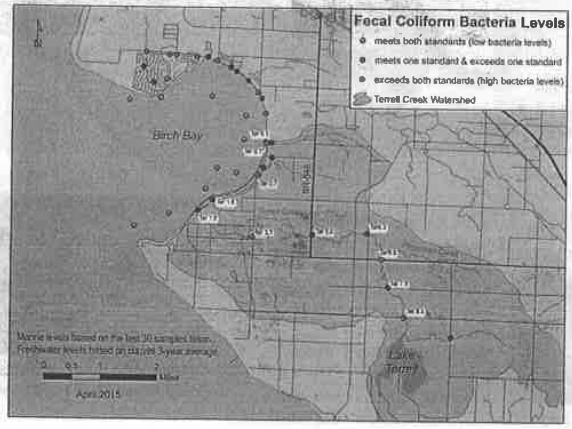
BBWARM WCD

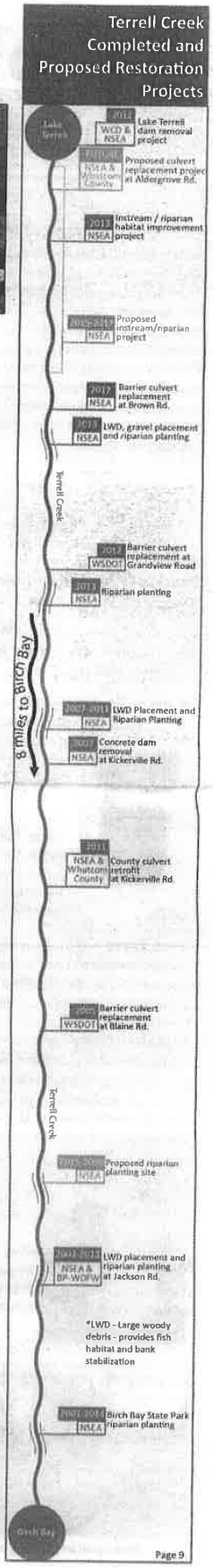
An up to date map on fecal coliform water quality throughout Whatcom County is available from Whatcom County Public Works at: **www.wa-whatcomcounty.civicplus.com/1072/Water-Quality**

and Whatcom Conservation District at: **www.whatcomcd.org/watershed-health-assessment**

Collecting a water quality sample from Terrell Creek (Melissa Roberts, BBWARM).







Keep Your Watershed Healthy

From Lake Terrell to Birch Bay, the entire watershed needs out help. Clean beaches, an abundance of fish and shellfish, and healthy streams will take all of our efforts to protect.

Watershed Health Goals

Water Quality

GOAL: Meet freshwater standards for Fecal Coliform established by the state (<50 FC/100mL) to ensure safe swimming and shellfish harvesting downstream.

GOAL: Decrease amounts of excess nutrients and harmful pesticides entering the stream system through improved landscaping and farming practices and by regular inspection and maintenance of septic systems.

GOAL: Maintain high levels of dissolved oxygen to support aquatic life.

GOAL: Maintain cool summer water temperatures to allow salmon and other aquatic organisms to survive.

GOAL: Minimize sediment runoff through wetland preservation and replanting riparian areas.

Water Quantity

GOAL: Work with Lake Terrell management to release adequate flows from Lake Terrell through the summer months.

GOAL: Minimize water use to sustain resource.

GOAL: Reduce impervious surfaces to decrease stormwater runoff.

GOAL: Minimize runoff through wetland preservation and enhancement to facilitate increased groundwater storage.

In-stream Habitat

GOAL: Replace culverts that are fish passage barriers.

GOAL: Replant stream channels with native plants and remove invasive species.

GOAL: Improve fish spawning habitat with placement of large woody debris in channel and re-naturalize altered channels.

What can you do?

Keep Bacteria and Pathogens Out of Water

Do you have a pet?

Pick up pet waste and put it in the trash both in your backyard and on walks. Check for Mutt Mitt stations at beaches and parks.

Mutt Mitt station

Where do you keep garbage?

Secure trash from wildlife

Raccoons create latrines in ditches and creek bottoms where pathogens from their feces enter water. Make sure raccoons can't find their next meal at your house. Keep pet food inside. Secure garbage cans and compost bins.

Keep Water Clean and Clear

Do you compost?

Dispose of lawn clippings and yard waste away from waterways to prevent flooding and pollution. Decaying plant material and extra nutrients reduce oxygen available in streams, harming aquatic life. Yard waste may contain chemicals, fertilizers, or pet waste that can harm water quality. Use a compost bin or the Food Plus composting service.

Porta potties are placed along Birch Bay drive every summer for visitors to use.

Inspect your Septic System

A regularly inspected and maintained system will decrease the need for expensive repairs and ensure that only clean water leaves your property. Contact the Whatcom County Health Department for more information. www.whatcomcounty.us/health

Septic System dye test to check for system failures.

New risers installed on septic tank for easier inspection and maintenance.

Have a Farm Plan

Do you have livestock or crops?

A free confidential, consultation may help you save money, improve animal health, increase production, and ensure that water leaving your farm is clean. Developing a farm plan is an easy way to both improve your farm and protect water quality in your watershed. Financial assistance may be available to assist you with good stewardship practices that will improve your farm. Contact Whatcom Conservation District for more information.

Heavy Use Area

www.whatcomcd.org

Cross fencing is used to improve forage through pasture rotation.

Plant Native Plants

Are there streams, ditches, ponds, or wetlands on your property?

Improving the area along your waterway by planting native trees and shrubs is an easy way to help keep the water clean. You may qualify for programs to fund planting along your stream or wetland.

www.whatcomcd.org

New riparian planting in progress

Native plant garden provides habitat and filters surface water.

Do you have a landscaped yard?

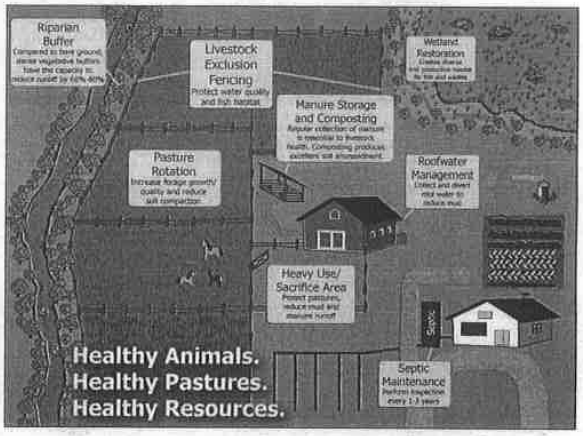
Native plants are beautiful, and they are easy to grow without extra water, fertilizer, or chemicals. Native plants slow down rainfall and help filter pollutants out of stormwater before it enters the bay.

Every Action Makes a Difference

Landowners, organizations, agencies, and businesses have been hard at work installing best management practices (BMPs).

Scott and Kristy Mcallister have been living in the Terrell Creek area with their daughters for the last eight years. The Mcallisters raise alpacas, pigmy goats, chickens, donkeys, and a pony.
They learned how to build their small farm through trial and error along with advice from 4H and FFA. They were thrilled to work alongside a Whatcom Conservation District (WCD) farm planner to develop a **pasture rotation system, wetland restoration site,** and **roof water management** on their five acre farm.

"We learned so much from WCD, It was actually embarrassing some of the things we didn't know. We found simple, easy solutions to mud management, healthier animals, and greener pastures."



After hearing about the efforts by the Chums, Harry and Mary Pardue enrolled in the Conservation Reserve Enhancement Program (CREP) through WCD to improve the functionality of 3.9 acres of stream banks and wetland on their property. Their **riparian buffer** and **wetland restoration** included 1,350 native trees and shrubs. These plants will help protect water quality, reduce erosion, create shade, provide habitat, and add an aesthetic backdrop to their lovely home.

"We didn't know how degraded our backyard wetland had been because of all of the invasive plants; the scotch broom, blackberries and reed canary grass. Knowing all that, and at our age, we couldn't have done it ourselves. CREP was a package deal and how could we say no? They did everything for us."

Dave Klieber and his family moved from Seattle about nine years ago to the Terrell Creek area for more space for his kids and to enjoy a more rural lifestyle. Their early 1900s farm house, however, had an aging **septic system.** They were thankful for the WCD's financial assistance to help with the cost of a new system.

"Programs like this are great motivators to keep you moving down the path toward doing the right thing. The Whatcom Conservation District had plans in place, the steps to take and motivation to get the work done, we would not have done it as quickly otherwise."

Birch Bay and Blaine area residents are installing **rain barrels** to reduce stormwater runoff from their property, conserve water, and save money on their summer water bill. BBWARM and the Birch Bay Water and Sewer District have been hosting free rain barrel workshops every spring since 2011. Participants receive a free barrel and learn how to install their barrel at home. Look for rain barrels around your neighborhood. For more information visit **www.bbwarm.whatcomcounty.org/programs/education/rainbarrels.**

Stormwater Capital Improvement Projects

The BBWARM stormwater program is building stormwater capital improvement projects around the Birch Bay watershed to replace or improve old stormwater drainage systems that no longer work properly. These construction projects are designed to reduce the risk of flooding and erosion and improve water quality. In 2013 and 2014 improvements included:

- Installing a bioswale and a storm filter vault to remove pollutants from stormwater flows.
- Building new high level/high flow stormwater systems down Cedar Avenue, Park Lane, Fern Street, and Beachway Drive.
- Building new low level/low flow stormwater systems along Birch Bay Drive.
- Removing a derelict concrete boat ramp to improve the shoreline.

Installing a new culvert under Birch Bay Drive.

- ☑ 5,276 feet of exclusion fence installed
- ☑ 5 manure/composting storage facilities installed
- ☑ 163 rain barrels installed (8,965 gallon storage capacity)
- ☑ 9 septic systems inspected, 3 repaired and 2 replaced
- ☑ 23 Farms Assessed, 9 Farm Plans Developed

- ☑ 6 fish barriers replaced
- ☑ 15 stream miles opened to fish
- ☑ 2012 Lake Terrell Dam made fish passable through improvements
- ☑ Up to 100,000 fish eggs incubated yearly in the Lake Terrell Remote Site Incubator

- ☑ 5 Miles of Terrell Creek restored
- ☑ 18,000 native plants planted by landowners, volunteers, NSEA and CREP
- ☑ 14 large woody debris structures installed
- ☑ 14 Volunteer work parties, 610 volunteers

Community Resources

Restoration of Butler Creek, a Terrell Creek tributary that begins west of Ferndale.

The Chums of Terrell Creek
A community group made of Terrell Creek/Birch Bay citizens and associated organizations that work to improve water quality and fish habitat in the watershed. www.chumsofterrellcreek.org

Birch Bay Watershed and Aquatic Resources Management District (BBWARM)
Works to protect water quality and reduce storm water impacts.
c/o Whatcom County Public Works (360) 715-7450 or www.bbwarm.whatcomcounty.org

Birch Bay State Park
Provides great public waterfront access and educational opportunities.
(360) 371-2800 or www.parks.wa.gov/170/Birch-Bay

Friends of Birch Bay State Park
Supports education programs at Birch Bay State Park. www.fobbsp.org

Nooksack Salmon Enhancement Association (NSEA)
A community based nonprofit organization dedicated to restoring sustainable wild salmon runs in Whatcom County.
(360) 715-0283 or www.n-sea.org

Whatcom Conservation District (WCD)
Helps landowners plan and implement best management farming practices, assists landowners with riparian restoration, and sponsors an annual native plant sale.
(360) 526-2381 or www.whatcomcd.org

Marine Resources Committee (MRC)
A citizen-based group committed to revitalizing and preserving marine resources for future generations.
c/o Whatcom County Public Works
(360) 676-6876 or www.mrc.whatcomcounty.org

Butler Ditch District
Maintains agricultural drainage provided by the Butler Ditch from Northstar Rd. east to Olson Rd.
c/o Whatcom County Public Works (360) 676-6876

Washington Department of Fish and Wildlife (WDFW)
Whatcom Wildlife Area—Provides public recreation opportunities on lands around Lake Terrell and manages public access on lands owned by British Petroleum and ALCOA.
(360) 384-4723 or www.wdfw.wa.gov
Hunting, fishing, and shellfish harvesting permits and regulations
Shellfish Rule Change Hotline (866) 880-5431

Washington State Department of Health
Water quality monitoring and shellfish safety programs. Establishes marine biotoxin closures.
Shellfish Safety Hotline (800) 562-5632 or ww4.doh.gov/gis/mogifs/biotoxin.htm

Whatcom Land Trust
Preserves and protects wildlife habitat, scenic, agricultural, and open space lands in Whatcom County for future generations by securing interests in land and promoting land stewardship.
(360) 650-9470 or www.whatcomlandtrust.org

WSU Whatcom County Extension
Provides educational and volunteer opportunities for agriculture, gardening, composting, nutrition, food safety, health, and natural resources.
(360) 676-6736 or www.whatcom.wsu.edu

Whatcom County
Planning and Development Services—Oversees and regulates development, construction, and land use activities. (360) 676-6907 or www.whatcomcounty.us

Department of Health—Provides services and programs to protect public health including. the On-Site Sewage System Program with homeowner education and regulatory enforcement of on-site septic systems. (360) 676-6724 or www.whatcomcounty.us

Public Works Natural Resources (WCPW) and Stormwater Divisions—Manages water quality monitoring and improvement programs, species recovery, and stormwater projects.
(360) 676-6876 or www.whatcomcounty.us

RE Sources for Sustainable Communities
The North Sound Baykeeper Team is charged with protecting and restoring the marine and nearshore habitats of the northern Puget Sound region.
(360) 733-8307 or www.re-sources.org

Other Contacts
Lummi Natural Resources (360) 312-2319
Nooksack Indian Tribe (360) 592-5176
Washington State Department of Ecology (360) 715-5200

Report Sponsors:
Whatcom Conservation District
Whatcom County Public Works
Birch Bay Watershed & Aquatic Resources Management District
Environmental Protection Agency
Nooksack Salmon Enhancement Association

our Watershed

BBWARM Newsletter • Issue 4 • Summer 2015

Run with the Chums & Whatcom Water Weeks

Join the Chums of Terrell Creek for the 3rd Annual Run with the Chums 5k fun run during Whatcom Water Weeks. Run or walk on a scenic loop through the BP highlands and learn more about watershed health while taking care of your own health. This family friendly event offers a kids' Smolt Sprint, prizes, and more. Free registration, T-shirts, and fun for all ages!

Saturday, September 19
10 a.m. (come early to park and walk to the start)
Jackson Road south of Grandview
To register: www.chumsofterrellcreek.org

Whatcom Water Weeks is a two-week long event that celebrates our local water resources. Events are happening all over Whatcom County September 12-26.
www.whatcomwaterweeks.org

2014 Run with the Chums Celebration

Improving Stormwater Systems with Capital Projects

BBWARM constructs stormwater capital improvement projects to address flooding and water quality problems in places where the existing infrastructure is undersized, failing, or non-existent.

Beachway Drive and Fern/Park Stormwater Improvements 2014-2015 —This project replaced a failing drainage system with a new high-level system from Park Lane and Fern Street down Beachway Drive to the bay and a new low-level drainage system along Birch Bay Drive. A treatment vault was installed at the intersection of Fern Street and Beachway Drive to remove pollutants from stormwater as it flows to Birch Bay.

Seaview Drive Drainage Upgrade 2015—Construction is scheduled for this fall to replace the failing drainage system along Seaview Drive. The new system will capture stormwater flows and direct them to the bioswale at the corner of Seaview Drive and Maple Crest Avenue.

Current Projects Under Development:

- Birch Point Collaborative Drainage System Repair
- Harborview Road High and Low Drainage Systems
- Harborview Road Culvert Replacement

Installing a new stormwater vault on Beachway Drive

Want more information on BBWARM capital projects?
www.bbwarm.whatcomcounty.org/programs/cip

Community Involvement Beach Clean-Up

Every 4th of July, Birch Bay is a popular destination for beach parties and fireworks. This year, Birch Bay's beaches were especially full and the fireworks impressive. Unfortunately, the amount of trash left behind was staggering, damaging wildlife habitat, polluting the water, and impacting beachgoers. Every summer, the Birch Bay community steps up to clean-up, and this year your efforts were impressive.

- More than 75 volunteers
- Over 100 hours spent
- 5.43 tons of trash removed
- 258 garbage bags used
- 3 dumpsters filled

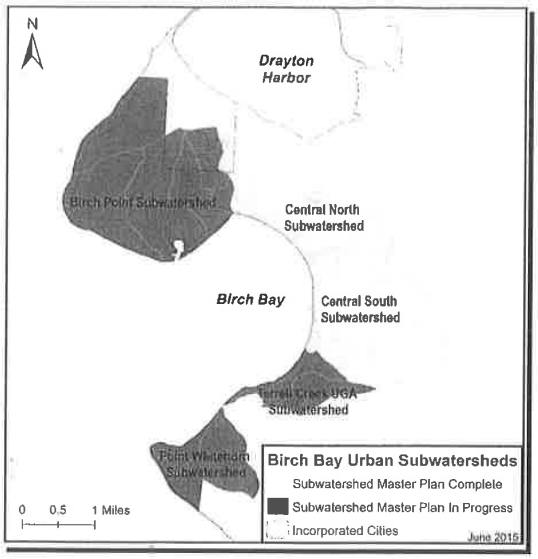
Clean-up efforts are organized by the Birch Bay Chamber of Commerce with help from the Sanitary Service Company, Whatcom County Health, and the Alternative Jail Offender Crew.

Trash waiting for pick up after the 4th of July beach clean-up

CHUMS of Terrell Creek

www.chumsofterrellcreek.org

Subwatershed Master Plans—Taking a closer look at drainage problems



Download completed plans at www.bbwarm.whatcomcounty.org/programs/swmp

BBWARM is completing subwatershed master plans for developed subbasins in the Birch Bay watershed. Each plan identifies and evaluates stormwater problems and solutions. BBWARM uses these plans to identify and prioritize capital improvement, small works, and maintenance projects.

Your input is important. In 2015, BBWARM will begin field work for the remaining subwatersheds (see map). To receive notification of future subwatershed master plan meetings and provide your input on stormwater problems in these areas, sign up to receive BBWARM email notifications at www.bbwarm.whatcomcounty.org.

Chumming Around with Elie

In 2003, the Nooksack Salmon Enhancement Association reached out to Terrell Creek area residents and asked for their help with salmon recovery. Elie Friedlob responded with enthusiasm and started working with other community members as the Chums of Terrell Creek. The Chums have been working hard ever since organizing tree planting parties, monitoring a chum egg incubator, and increasing community awareness of salmon restoration and water quality issues. Elie shared important lessons she has learned from her work with the Chums.

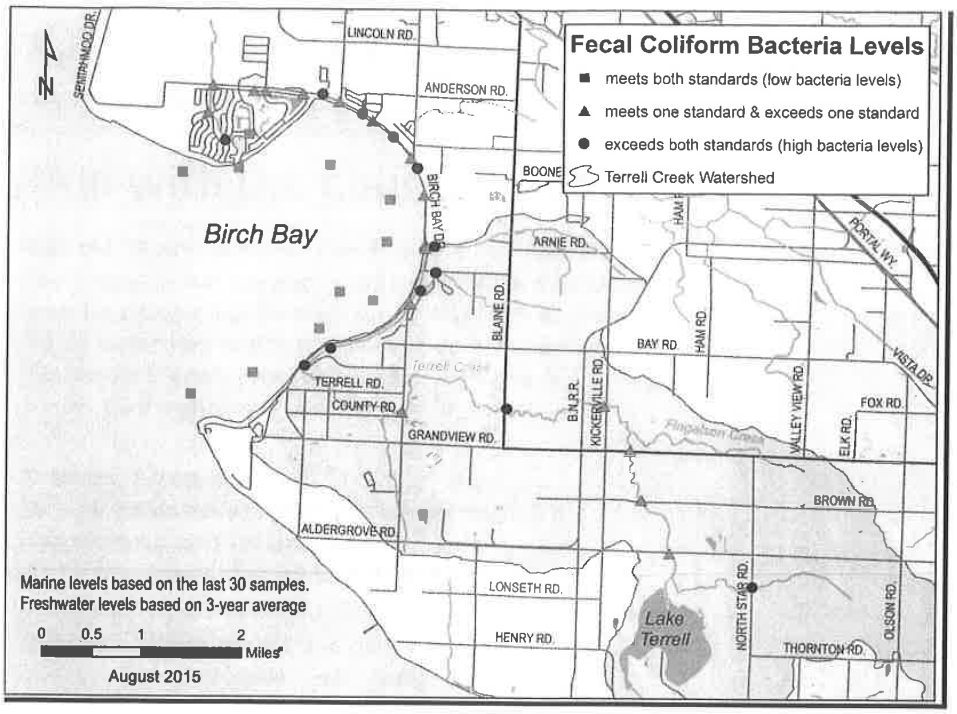
Elie at the Chums 2015 Earth Day celebration

- Success comes from perseverance; it is critical to not ever give up.
- Everything is related; doing the right thing for salmon helps every species in the ecosystem, including people, thrive.
- Nature is very resilient, and salmon represent incredible strength.

Join Elie and the Chums of Terrell Creek and make a difference!
www.whatcomcd.org/volunteer-opportunities

BBWARM is partnering with the Chums and Whatcom Conservation District to support the **Terrell Creek Landowner Stewardship Program**. This program helps rural landowners make improvements on their land that benefit both them and the watershed. For more information or to schedule a free and confidential home visit, contact Rachel Vasak, Terrell Creek Watershed Steward, at (360) 715-0283 or rvasak@n-sea.org.

Water Quality Update



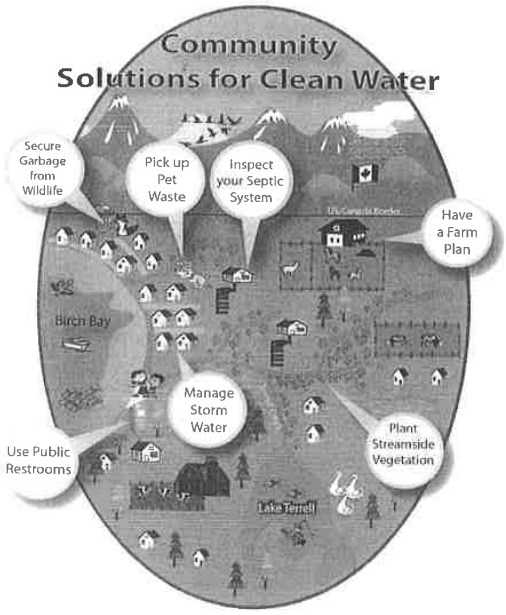
Visit www.bbwarm.whatcomcounty.org/programs/wq for more information.

Your Backyard—Keep it clean

Keeping our water clean requires a little help from everyone. There are many possible sources of pollution in your backyard.

What can you do to keep pollutants out of stormwater runoff?

- ✓ Pick up pet waste and put it in the trash.
- ✓ Inspect and maintain septic systems.
- ✓ Compost yard waste away from waterways or use FoodPlus!*
- ✓ Don't feed wildlife and secure your garbage (reduces bacteria from wildlife waste).
- ✓ Use a farm plan.
- ✓ Plant streamside vegetation.
- ✓ Limit your use of chemicals and fertilizer in yard care.
- ✓ Fix engine leaks.
- ✓ Use a commercial car wash.



**FoodPlus! is a curbside compost service. Visit www.ssc-inc.com for more information.*

Getting Ready for Rain

It's easy to forget about rain during this long, dry summer, but Birch Bay residents are frequently faced with soggy yards, wet crawl spaces, and other drainage problems during the winter time. Most drainage problems are due to poorly draining clay soils and/or poorly functioning drainage systems. Some areas have no drainage system at all. Now is a good time to take stock of drainage problems you experienced last winter and do what you can to address them before the fall rains return.

Flooding on Morrison Avenue, December 2014

What can you do?

- Make sure your gutters and downspouts are clean and in good repair.
- Direct the water from your downspouts to a location where it won't cause flooding (ditch, catch basin, rain barrel, or rain garden)
- Talk to your neighbors about installing a shared drainage system and get two dry yards for the price of one!
- Install a sump pump if your crawl space fills up with water. Pump the water to the nearest ditch or catch basin.

Call the BBWARM Stormwater 1-call Hotline to report drainage or water quality problems

(360) 778-6300

Please note our <u>new</u> hotline number.

Whatcom County Public Works Stormwater
322 N. Commercial St., Suite 301
Bellingham, WA 98225
360.778.6210

our Watershed

BBWARM Newsletter • Issue 4 • Summer 2015

Look Inside For Information On

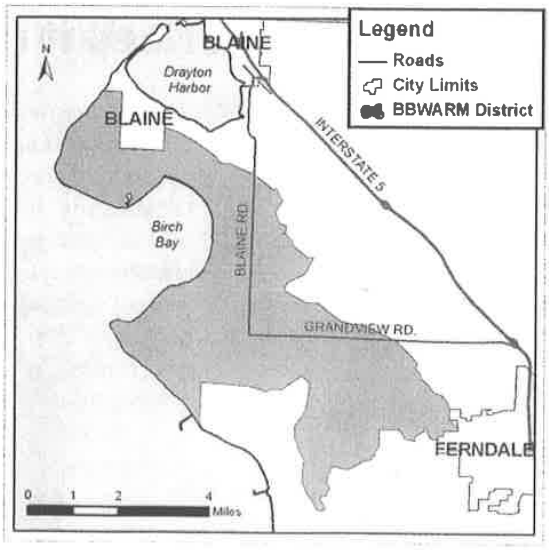
- 3rd Annual Run with the Chums & Whatcom Water Weeks
- Stormwater capital improvement projects
- Birch Bay subwatershed master planning
- The Chums of Terrell Creek
- Birch Bay 4th of July clean-up
- Water quality monitoring information
- Community solutions for clean water
- Getting ready for the rain

What is BBWARM?

The Birch Bay Watershed and Aquatic Resources Management (BBWARM) District is the stormwater management district for the Birch Bay watershed. BBWARM was established by the Whatcom County Council to address citizen concerns about water quality, flooding, and the loss of aquatic habitat.

www.bbwarm.whatcomcounty.org

Visit our website to learn about BBWARM programs, history, and funding. Sign up to receive email notifications of meetings and special events.



BBWARM District location

EXHIBIT D

Royce Buckingham

From: Royce Buckingham <rbucking@co.whatcom.wa.us>
Sent: Tuesday, September 29, 2015 10:53 AM
To: Daniel Gibson; Tyler Schroeder
Subject: RE: Whatcom - Mailer FINAL DRAFT - content

Tyler,

Dan says, and I agree, that if you can run this by the Public Disclosure Commission for their feedback, that is the best check on the content.

Royce Buckingham
Civil Deputy Prosecutor for Whatcom County
rbucking@co.whatcom.wa.us
360-778-5710

From: Daniel Gibson
Sent: Monday, September 28, 2015 11:35 AM
To: Royce Buckingham
Subject: FW: Whatcom - Mailer FINAL DRAFT

Royce:
FYI re: mailer for the New Jail.

From: Tyler Schroeder
Sent: Monday, September 28, 2015 11:34 AM
To: Jack Louws; Bill Elfo; David McEachran
Cc: Daniel Gibson; Dewey Desler; Tawni Helms
Subject: FW: Whatcom - Mailer FINAL DRAFT

Jack, Bill, and Dave,

Here is the Final Draft for the mailer associated with the New Jail. This is a 11"x17" mailer that is folded in half and then accordion style. Please share with me any thought that you may have so that I can incorporate them into the final mailer.

If you have head photos that you would like me to use please forward them onto me. I do have Dave's and they will be using that instead of the one shown.

Thanks,

Tyler R. Schroeder
Whatcom County Executive Office's Project Manager

Whatcom County Executive's Office
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Ph 360 778 5207

EXHIBIT E

WHATCOM COUNTY
EXECUTIVE'S OFFICE
County Courthouse
311 Grand Ave. Suite #108
Bellingham, WA 98225

Jack Louws
County Executive

MEMO TO: County Council Chair
County Council Members

FROM: Jack Louws, County Executive

DATE: October 16, 2015

SUBJECT: Jail Proposition Mailer

In the DLR services contract unanimously passed by the Whatcom Council on September 30th, 2014 there was a budget allocation authorizing public outreach on the project. This activity included providing assistance in developing clear public information and developing graphics, including images of the existing facilities and renderings of the new facility. The planned public information for the project also included developing materials for presentations and mailers. The schedule in the contract included the community report concerning the ballot measure. This report is being distributed to every registered voter household in Whatcom County.

According to the PDC guidelines, "**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate**;"

> *"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

The Administration worked with the Prosecuting Attorney's office to ensure consistency with state law in regards to local government and election activities. We also worked with the Public Disclosure Commission (PDC) that has prepared guidance on this subject (http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf).

The community report is consistent with public information efforts executed in other communities, such as the recent Skagit jail/sales tax measure. The report is a fair and factual presentation of the new jail project including the background leading to its development, the laws and circumstances related to the project and relevant information from key county officials. It neither asks for support or rejection of the ballot measure.

If you have additional questions please do not hesitate to call me for additional information.

Office 360 778 5200 Fax 360 778 5201 TDD 711

EXHIBIT F

Royce Buckingham

From:	VotersPamphlet
Sent:	Wednesday, August 19, 2015 11:52 AM
To:	Ray Baribeau; Tyler Schroeder; VotersPamphlet
Cc:	Susan McClendon; Pat Brown
Subject:	RE: Questions for Rebuttal of Prop 2015-1 (Jail) due Aug. 20
Attachments:	Explanatory Statement & ballot text.docx

Ray,

I believe this is the final version (see attached).

Amy Grasher
Whatcom County Auditor - Election Division
360-778-5102 www.whatcomcounty.us/auditor/

Email showing that we received a "final version" of the ballot proposition language. "(see attached)"

From: Ray Baribeau [mailto:ray_baribeau@q.com]
Sent: Wednesday, August 19, 2015 11:36 AM
To: Tyler Schroeder; VotersPamphlet
Cc: Susan McClendon; Pat Brown
Subject: RE: Questions for Rebuttal of Prop 2015-1 (Jail) due Aug. 20

Tyler & Amy,

Can you answer the two questions below. We never got the wording for Prop. 2015-1 from the county attorney.

Thanks,

Ray

Begin forwarded message:

From: Susan McClendon <susan.mcclendon@gmail.com>
Subject: Re: Rebuttal of Prop 2015-1 (Jail) due Aug. 20
Date: August 19, 2015 11:21:59 AM PDT
To: Ray Baribeau <ray_baribeau@q.com>
Cc: Pat Brown <pat077@comcast.net>

Did we ever get the document the county attorney is supposed to write on this propositions?

Do you know whether the $ to be charged to the cities for housing their inmates is the same under the new jail plan or different from the current charges?

On Tue, Aug 18, 2015 at 8:38 AM, Ray Baribeau <ray_baribeau@q.com> wrote:

Team,

As you can see below, we have the text of the CON committee to prepare a 75 word rebuttal. Laster today I'll send my thoughts.

Peace,

Ray
>

Voter Explanatory Statement – New Jail Sales and Use Tax

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs. If Proposition #1 passes, the County will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse.

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

Ballot Proposition Language – New Jail Sales and Use Tax

Whatcom County, Washington

Proposition Number 1

Jail Facilities Sales And Use Tax

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance. Should this proposition be:

Approved _____ Rejected _____

Attachment to Amy Grasher Aug. 19, 2015 email re: final version.

Voter Pamphlet showing both Proposition No. 2015-1 and Proposition #1.

Whatcom County
Proposition No. 2015-1
Jail Facilities Sales and Use Tax

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance. Should this proposition be:

Approved _____ Rejected _____

Explanatory Statement:
State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs. If Proposition #1 passes, the County will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail, and construct facilities for inmate transfer at the County Courthouse. The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

Statement For:
The Whatcom County Jail is an essential public facility and the only detention option in the County. Opening in 1984 to house 148 inmates, our existing Jail currently operates at nearly twice its designed capacity.
Overcrowding and structural deficiencies have shortened the Jail's lifespan. Visitors, staff and inmates are endangered by increasingly failing; security, structural integrity, life-safety systems; and lack of space to safely and responsibly house inmates with a variety of disorders. A fire or other catastrophe could result in an enormous loss of life and taxpayer liability.
The planned replacement Jail incorporates design features and systems to maximize safety, security and operational efficiencies. The new Jail provides for educational and treatment programs to prevent recidivism, including a separate specialized mental health and substance abuse unit. The replacement Jail site is centrally located and accommodates incremental expansion for future needs.
The 0.2% sales tax (20 cents on $100 purchase) will fund the construction, partial operations and maintenance of this desperately needed replacement facility while ensuring non-residents share in costs. One-half of the tax will expire upon re-payment of the construction bonds. Operating an efficient, safe and humane Jail is essential to our quality of life and fiscal responsibility.

Statement For prepared by: Ray Baribeau, Susan McClendon, and Pat Brown

Rebuttal of Statement For:
This tax doesn't include funding for much-needed programs that reduce incarceration; it's just for a very expensive jail. This also isn't a jail for all of Whatcom County; it will exclude misdemeanants from Bellingham. You already passed a sales tax in 2004 for a new jail and those funds are still being collected. Do not give a rubberstamp approval for this flawed jail proposal: vote no on this second sales tax for the jail!

Statement Against:
Vote *no* on the latest *jail tax*! In 2004, 61% of voters agreed to a sales tax to fund a new jail. Now the County is asking us to *pass another unstable sales tax for the same project* instead of a stable property tax. If we pass this tax it will lock up all of our public safety funding into one project.
We do need a new jail, but let's not sign another blank check. We also need cost effective alternative programs with stable funding. These programs reduce criminal justice costs. All of this sales tax will go into the jail - the most expensive option versus cost effective, humane alternatives.
This jail won't even house misdemeanants from Bellingham! The county jail plan up for voter approval calls for charging housing city misdemeanants $150/day. The cost is so high Bellingham has refused to join this plan and will save money by sending inmates to Yakima at a cost of $65/day.
In addition to this tax increase for a large jail, the county plans to use more than $20-million in other funds for a new Sheriff's office complex. Voters should set funding priorities and say *no* to this sales tax increase.

Statement Against prepared by: Patrick Alesse, Dan McShane, and Doug Starcher

Rebuttal of Statement Against:
The 2004 tax is used for the interim work release facility, jail improvements, design and future operation of a new jail. Existing jail diversion programs are currently funded at $11.5M and expanding. Property tax increases are not available for needed income to make bond payments. The elected leaders of 6 of our cities support a countywide agreement to build and operate a new jail. Costs of sending misdemeanants to another county have not been verified.

Statements For, Statements Against, and Rebuttals are the opinions of the authors and have not been checked for accuracy by any government agency.

EXHIBIT G

COPY
Original Document filed
In Whatcom County Council Office,
311 Grand Ave.,
Bellingham, WA 98225

Whatcom County Contract No.
201409013

CONTRACT FOR SERVICES AGREEMENT
DLR Group
Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 21,
Exhibit A (Scope of Work), pp. 22 to 25,
Exhibit B (Compensation), pp. 26 & 27
Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

Designer acknowledges and by signing this contract agrees that the Insurance provisions contained in this Agreement, and Indemnification provisions set forth in Paragraphs 11.1, and provisions 21.1, 30.1, 32.1, 34.2, 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 1st day of October, 2014.

DESIGNER:

DLR Group, Inc.

WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 3rd day of September, 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SHANNON E. SOADY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA. My commission expires May 7, 2018

WHATCOM COUNTY:
Approved as to form:

By: _____ September 23, 2014
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 1st day of October, 2014 before me personally appeared JACK LOUWS, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

SUZANNE M. MILDNER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12-31-2014

_____
NOTARY PUBLIC In and for the State of Washington, residing at Bellingham My commission expires 12-31-14.

DESIGNER INFORMATION

DLR Group

Address:
DLR Group
51 University Street, Suite 600
Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

GENERAL CONDITIONS

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

1.1.1 Scope of Services:
The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

1.2.1 Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

.1 *Additional Services* refers to those services identified in Section 2.8 hereof.

.2 *Agreement* refers to this executed contract between Owner and Designer.

.3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.

.6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

.7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.

.8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.

.9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.

.11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.

.13 *Site* is the land or premises on which the Project is located.

.14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.

.15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

.16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

.18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement;

.2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;

.3 Written Supplementary Conditions, if any, executed by Owner and Designer;

.4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.

2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

2.3 Legal Requirements

2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.

2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.

2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.

2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

Principal –
Project Architect –
Draftsperson –
Clerical –

2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Reponses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.

2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.

2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.

2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.

2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.

2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.

2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.

2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

2.8 Additional Services

2.8.1 Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

Timely Reviews, Approvals and Submittals

3.1.1 **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

3.1.2 **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

3.1.3 Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

3.1.4 Owner shall provide the following information and materials to Designer, unless otherwise agreed.

.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;

.4 A legal description of the Site;

.5 As-built and record drawings of any existing structures at the Site;

.6 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;

.7 Owner's Project Criteria;

.8 Test and Inspection reports.

3.4.1 If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.

6.1.1 Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

6.2 Applications for Payment

6.2.1 Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

6.2.2 The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

6.2.3 Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez
Title: Vice President, Principal
Address: 51 University Street, Suite 600
Seattle WA 98101
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	$1,000,000 each	accident
	$1,000,000 disease	policy limit
	$1,000,000 disease	each employee
Commercial General Liability	$2,000,000 each	occurrence
	$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	$2,000,000 each	accident
Professional Errors and Omissions	$2,000,000 each	claim
	$2,000,000 annual	aggregate

Commercial General Liability Insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

9.1.3 Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.

9.1.4 Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.

9.1.5 Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.

9.1.7 Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than $100,000 for each claim.

9.1.8 Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7)of the signing of this contract , which includes requests made by email.

9.1.9 All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

9.1.10 The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

9.2 Waiver of Subrogation: Designer and Designer's insurance waives all rights of subrogation.

9.2.1 Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

10.1 Patent and Copyright Infringement

10.1.1 Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

10.1.2 If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

10.1.3 Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

10.1.4 The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

11.1 Designer's General Indemnification Responsibilities

11.2.1 Indemnification by Designer. To the fullest extent permitted by law, the Designer agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

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Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Designer's indemnity obligations under this Agreement.

Survival of Designer's Indemnity Obligations. The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

Indemnity by Subcontractors. In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

11.2.2 If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.2.3 Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

11.6 Duty to Continue Performance

11.6.1 Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

11.7 Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor.
This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.
Provided that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

12.1 Assignment

12.1.1 Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law, Venue

12.3.1 This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

12.3.2 The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5.1 The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Survival

12.9.1 Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

12.10 No Release of Information for Advertising and Promotion

12.10.1 Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

2 Design Contingency. It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

12.11.1 **Termination for Default:**
If the Designer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Designer in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work

elsewhere. Termination shall be effective upon Designer's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Designer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Designer. The Designer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

12.11.2 Termination for Reduction in Funding: Not Applicable

12.11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Designer Services:

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Designer agrees to comply with state and federal requirements, as applicable, pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Designer:

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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 on a Schedule C, 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.

Designer 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 Designer. 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.

31.1 Ownership of Items Produced:
When the Designer creates any copyrightable materials or invents any patentable property, the Designer may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

32.1 Confidentiality:
The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Designer's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Designer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Designer. This waiver is mutually negotiated by the parties to this agreement.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants 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, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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:

Michael Russell, Facilities Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 676-6746

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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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 Designer 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: *consultant*

a. General:
All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any and all claims, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date or be considered a condition precedent to arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 <u>Venue and Choice of Law:</u>
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
SCOPE OF WORK

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.

2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
    a. Master Application
    b. CUP for EPF
    c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
    d. Encroachment Permit Application
    e. Planning Application
    f. Shoreline Management Application
    g. Site Plan Application
    h. Civil Plan Applications
        i. Sanitary Sewer Application – Ferndale
        ii. Storm Sewer Application – Ferndale
        iii. Water Application – Ferndale
        iv. Wetland Mitigation – Ferndale & USACE

3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.

4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project tis on Budget

5. Development of Project Schedule inclusive of public funding process

6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend pubic presentations.

7. Traffic Consultant

8. Site Survey

9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.

10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Schematic Design Services
In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

Project Administration
Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination
Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

Document Checking
Review and coordination of project documents

Consulting Permitting Authority
Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

Data Coordination User Agency
Review and coordination of data furnished for the project by the agency

Architectural Design
Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

Structural Design
Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design
Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design
Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary store water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating
Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations
Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research
Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling
Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach
Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3rd party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

EXHIBIT B
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase – CUP for EFP ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	$0	$0
2	Design Project Administration & Project Management Fee	$33,595	$397,097
3	Architectural Design Fee	$134,376	$1,588,388
4	Structural Engineering Design Fee	$53,750	$635,355
5	Mechanical Engineering Design Fee	$80,625	$953,033
6	Electrical Engineering Design Fee	$33,594	$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	$0	$119,000
9	Life Cycle Analysis	$0	$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	$0	$276,000
13	Detention & Courts Electronic Systems & Security Design	$4,000	$456,000
14	Kitchen & Laundry Consulting Design Services	$0	$49,400
15	Participation in Commissioning, Program Managed by Others	$0	$80,000
16	LEED Certification Documentation Process	$10,000	$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	$136,707	$534,950
18	Landscape, Hardscape, Community Integration Consultant	$61,510	$323,071
19	Traffic Consulting	$7,500	$0
20	Civil Engineering Consultant; Site Survey – Task 8	$43,142	$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	$77,185	$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	$35,313	$0
	Subtotal Professional Lump Sum Services	$711,297	$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	$28,452	$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	$86,138	$0
Services by Others, not included in DLR Group contract scope unless designated to (continued):			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	Grand Total Design Services – This Contract	**$825,887**	$6,274,310

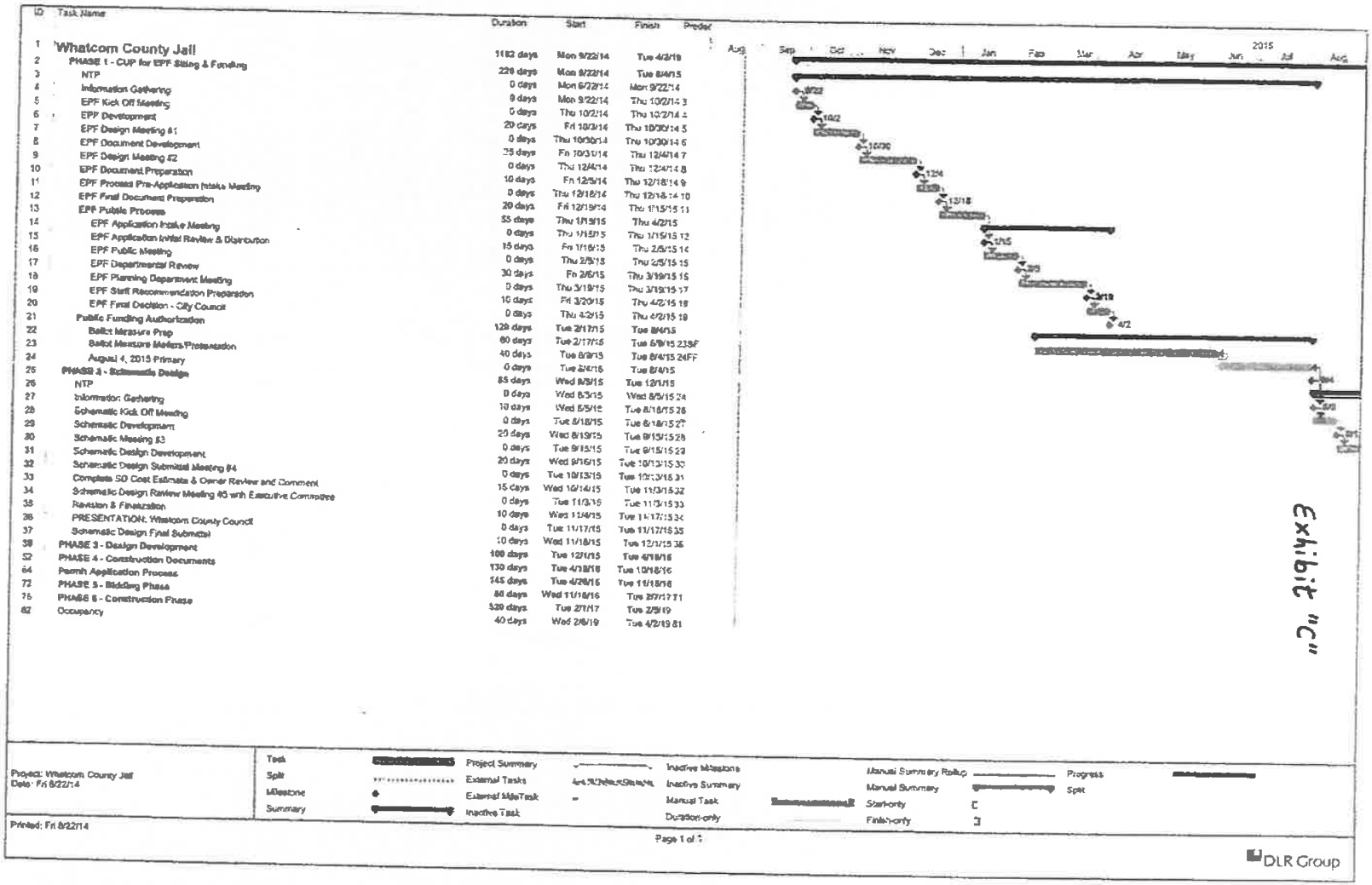


Exhibit "C"
Project: Whatcom County Jail
Date: Fri 8/22/14
Printed: Fri 8/22/14
Page 1 of 7
DLR Group

EXHIBIT H

Skagit County
Community Report
Skagit County Government
Summer 2013

Cities and County reach agreement

Jail overcrowding prompts call for new county facility

Like independent nations united to fight a common enemy, county and city leaders have joined forces to address the realities of a growing inmate population in Skagit County. On August 6, they will ask the voters of this region to finance a public safety initiative focused on the need for a new county jail.

After years of increasing stress on the public safety system in Skagit County, the decision was made in July 2012 to establish the Skagit County Public Safety Jail Coordinating Council.

That council, comprised primarily of elected public officials, represented Skagit County communities with voting members including three mayors, one county commissioner, two judges, one city supervisor and the county sheriff (see membership list, page 2).

After 10 months of study and deliberations, members of the council unanimously agreed on the need for a new county jail.

That proposal is dependent on a three-tenths of 1 percent increase of the sales tax in Skagit County – an increase that requires the approval of voters on the August 6, 2013 ballot.

Elected leaders and law enforcement officials endorse this plan as vital to the safety of this county's residents. Facts compiled by Skagit County and the Public Safety Jail Coordinating Council in anticipation of this ballot proposal are included on the pages of this publication.

Skagit County Commissioner Ken Dahlstedt, who represented the Board of Commissioners on the Council, expressed his thanks to those whose work led to the recommendation to build a new jail.

"We are grateful for the significant contributions made by Council members," said Dahlstedt. "Our deliberations sometimes reflected the desire to protect the interests of specific constituencies, and we still have some details to hash out in coming months. But in the end everyone agreed to a course of action intended to protect public safety in all corners of Skagit County, rural and municipal."

Law enforcement leaders from Skagit County meet on a monthly basis. At their May session, discussion included the importance of a new facility to replace the 30-year-old Skagit County Jail. Pictured above are (left to right) Sheriff Will Reichardt, Sedro-Woolley Police Chief Doug Wood, Anacortes Police Chief Bonnie Bowers, Burlington Police Chief Bill VanWieringen and Mount Vernon Police Chief Jerry Dodd. See statements, page eight.

Why a new jail?

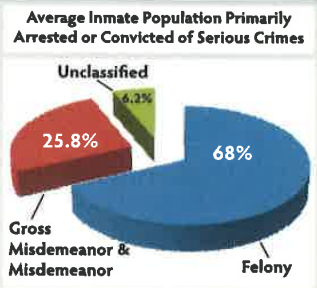
Cities in Skagit County do not operate municipal jails, in keeping with a 1980 agreement mandated before granting $6.4 million in state funds to build the existing Skagit County Jail. By law, Skagit County is required to accept into the county jail all accused/convicted felons whose cases originate in local municipalities.

In the first few years following the opening of the current Skagit County Jail in 1984, approximately 2,500 inmates were booked each year. By 2004, that number had grown to more than 6,000 inmates per year. In the last 30 years, the Skagit County Jail has experienced a 240 percent increase in the average daily population.

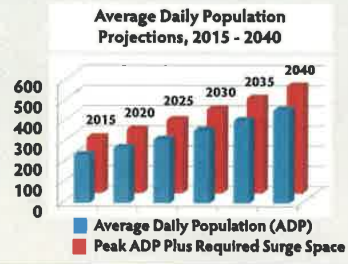
The current jail was built in 1984 to house 83 inmates ($6.4 million in state funds, $800,000 in county funds to meet local needs including an increase in the number of single cells). It was expanded in 1991 to 160 beds; again in 2002 to 180 beds. The daily average jail population today (on-site inmates) is 200, a fact that translates to serious staffing challenges and safety issues both inside and outside the jail.

Jail overcrowding creates a "shell game" scenario, both inside the Skagit County Jail and between this facility and Snohomish County Jail. Due to severely limited space, Skagit County has been forced to contract the services of Snohomish County to house an average of 25 inmates (up from 15 in 2012). This alternative is costly in terms of "outsourcing" fees and transportation costs associated with moving individuals back and forth between the distant jail and the local court system.

Statistics tell the story



Nine out of 10 inmates in the most seriously crowded section of the Skagit County Jail (North End males) fall into the felon category. The vast majority of inmates have been arrested or convicted of serious crimes, resulting in sentences of more than 30 days. At one point last spring the Skagit County Jail housed 13 people charged with homicide. Only one in four inmates is serving a short term sentence. "Unclassified" offenses include "holds" for the state Department of Corrections, other county felony warrants and federal agencies.



Members of the Skagit County Public Safety Jail Coordinating Council

Mayor Dean Maxwell	Anacortes
Mayor Steve Sexton	Burlington
Mayor Jill Boudreau	Mount Vernon
Supervisor Eron Berg	Sedro-Woolley
Sheriff Will Reichardt	Skagit County
Commissioner Ken Dahlstedt	Skagit County
Judge Michael Rickert	Superior Court
Judge David Svaren	District Court

Local leaders unanimous in call for new county jail

Today's issues of law and justice are complex, but local leaders unanimously agree that a new Skagit County jail is vital to the goal of protecting law abiding residents, their families and properties.

In recent months Skagit County Commissioners and the mayors of Anacortes, Burlington, Mount Vernon and Sedro-Woolley have conducted a series of discussions regarding a state provision to utilize sales tax to fund public safety/police and fire protection services.

In turn, mayors and city council members have conducted public meetings regarding the proposal to ask voters to approve a three-tenths of 1 percent sales tax increase on the August 6, 2013 ballot. Each city has also deliberated over possible use of sales tax funds in excess of those committed to construction and operation of a new Skagit County Jail.

Prior to a deadline on August 6 ballot proposals, all four mayors of Skagit County's largest cities endorsed a provisional agreement with the Skagit County Board of Commissioners. At the local level, city council members also gave unanimous support to the proposal (Among four councils: 27 "yes" votes, 0 "no" votes).

Under terms of the provisional agreement among Skagit County and cities, a "bed rate" for County Jail services will be eliminated, and some cities will also receive funds from the Public Safety Sales Tax fund for consideration in funding staff, services and equipment in police and fire departments.

Skagit County Commissioners Sharon Dillon, Ken Dahlstedt and Ron Wesen recently approved a provisional agreement to build and operate a new county jail.

Deficient county jail facility compromises entire system

Sheriff Will Reichardt has spent his entire law enforcement career in Skagit County. Over the years he worked his way up through the ranks, serving as Chief Criminal Deputy before being elected sheriff in 2010.

"As a new deputy in Skagit County in 1984, I began my career working in the newly opened Skagit County Jail," Reichardt recalls. "At the time it seemed as though it would last forever and we could never possibly fill it up. Unfortunately that was almost 30 years ago. The reality is that the jail began having 'growing pains' in the mid-1990s and by early 2000s we were seriously overcrowded."

Sheriff Reichardt

"Today," the sheriff continued, "the jail is routinely housing mostly felons at numbers that compromise safety to inmates and staff alike. The need for a new jail is critical. It is no longer acceptable to delay implementing this long overdue solution to this crisis."

"Every day as Skagit County Sheriff, I see the work being done by the officers and deputies 'on the street' solving crimes and making our community safer," said Reichardt. "Unfortunately, they are often left with no place to incarcerate these individuals."

"I also see our judges, prosecutors and probation officers trying to hold criminals accountable," he said. "But with no room in the jail they are often forced to make decisions based less on justice and more on what an outdated, overcrowded jail can handle."

Reichardt terms the jail "a critical component of the justice system," adding: "When it ceases to function efficiently, the entire system is compromised."

"Skagit County has always been a community that prides itself on compassion and tolerance," Reichardt concluded. "We expect civility and will hold those accountable who don't respect the law. A new jail with room to hold those needing to be incarcerated and room to provide programming for those receptive to treatment as they pay their debt to society is in keeping with the vision for Skagit County that I believe we all share."

Female inmates are housed in two 'dorm settings' including this space formerly used as an indoor recreational yard.

Scenes from inside the Skagit County Jail

Jail security technology is outdated.

Male inmates are in most cases housed three to a cell.

The jail booking area is a a 'pinch point,' often overcrowded due to multiple requirements for the space.

The Ballot Proposal

Skagit County Proposition No. 1
Sales and Use Tax for Jail Facilities and Police and Fire Protection

The Skagit County Board of County Commissioners has adopted Resolution No. R20130102 concerning a sales and use tax pursuant to RCW 82.14.450. If approved, this proposition would authorize an additional sales and use tax at a rate of 0.3 percent to be used for the construction, maintenance and operation of jail facilities and police and fire protection. Should this proposition be:

Approved ____
Rejected ____

The proposed Public Safety sales tax increase that will appear on the August 6, 2013 ballot is three-tenths of 1 percent, or three cents on a $10 purchase. Exemptions from this sales tax are: retail sale of motor vehicles, and lease of motor vehicles up to the first 36 months.

❑❑❑

Funds from this sales tax will be utilized by cities for a variety of Public Safety services, ranging from law enforcement to fire and emergency services. Under terms of the agreement, city "bed rates" for jail services will be eliminated.

❑❑❑

Funds to Skagit County will be applied to construction of a new, $60 million facility that would house a 400-inmate jail plus a space for legal activities including court arraignments. Sales tax revenue will also fund maintenance and operation of the jail.

❑❑❑

Contributors to the Public Safety sales tax fund will include Canadian shoppers and U.S. shoppers from outside Skagit County.

Sales tax rates from Puget Sound region

Bellevue	.095
Bellingham	.087
Everett	.092
Oak Harbor	.087
Port Townsend	.090
Seattle	.095
Tacoma	.095
Anacortes	.082
Burlington	.082
Mount Vernon	.082
Sedro-Woolley	.083
Skagit County	.082

Mayors on Public Safety

Mount Vernon

Mayor Jill Boudreau notes: "Public safety is a priority for the City of Mount Vernon. Years of overcrowding in the Skagit County Jail have left us vulnerable to the criminal element of our society. Funding public safety needs continues to be a challenge for both cities and counties in the State of Washington. Those needs include police and fire protection, public defense, jail housing, prisoner medical expenses, equipment and personnel."

Mayor Jill Boudreau

Burlington

Burlington Mayor Steve Sexton sees the provisional agreement among local cities and Skagit County as important in two key areas: fire and police service improvements in the city, and adequate county jail inmate space and services.

Mayor Sexton

The mayor says: "The county is responsible for housing felons. When you look back 10-15 years at the people who should be going to jail and aren't because of overcrowding, they are for the most part city misdemeanants. These are the folks who are committing crimes against our residents and stealing from our businesses. We owe it to both residents and business people to make sure those criminals are serving time, and the new jail will provide the capacity we need to do so."

Sexton noted that funds from the proposed sales tax would not only support construction and operation of a new jail, but: "They would allow us to provide public safety improvements in both our fire and police departments. It is key to us that we give our businesses and residents the services they deserve – and this plan will get us to that point."

Jail chief and staff cite safety as a daily challenge for all

Given the opportunity to do so, Skagit County Chief of Corrections Charlie Wend would invite as many people as possible to tour the 30-year-old downtown Mount Vernon facility. To see the jail firsthand, says the career corrections professional, is to recognize the need for a new jail at another location.

Wend is proud of a corrections staff working under increasingly challenging circumstances, but on a tour of the jail he delivers a powerful mix of statistics and visible evidence leading to the same conclusion: this facility suffers from space and design limitations that cannot be solved at the current location.

Jail Chief Charlie Wend

Wend, who worked 30 years in the state prison system, came to Skagit County in 2011. He has been Skagit County Jail Chief for two and a half years, during which time increased inmate population levels and an aging facility have combined to create a law enforcement crisis that impacts every community in Skagit County.

The Skagit County Sheriff's Office Corrections Division is responsible for detaining pretrial defendants, convicted offenders waiting for transport to a state prison, and for incarcerating inmates sentenced to serve less than one year (or more than one year in the case of consecutive sentences).

Wend points out that while inmates are in custody, the Sheriff and his corrections staff are responsible for their supervision, safety, health and well being. Staff is called to ensure that inmates appear in court when needed – and are transported to other jurisdictions when necessary.

The existing jail, built in 1984 to hold 83 inmates (11 females and 72 males), is consistently overcrowded despite past efforts to accommodate a larger population. Since 1989 the number of beds has been increased by converting most individual cells to two- and three-person cells. Recreation areas have been converted to dorm-like housing spaces, bringing the total number of beds to 180.

In the meantime, the "core" of the jail -- laundry, medical, food service, recreation areas and the like -- are still in the same space designed to serve 83. There is only one multi-purpose space for programming, and this space is also utilized for other important jail activities.

Additional staff challenges, said Wend, include sharing break room space with work stations, making it impossible to separate from the pressures of the jail environment even for brief periods of time. The booking area designed to process a handful of inmates each day often sees 15-20 bookings daily. With already incarcerated inmates moving in and out of the space on the way to court appearances, attorney sessions and the like, the booking area becomes a significant "choke point."

Because of inadequate space, the jail has only one multi-purpose space which serves as library, chapel, and the jail's program space. Programming – which can lead to a positive future for inmates with root issues like substance abuse, becomes difficult to impose upon all of the inmates who need it.

"Often criminal behavior is tied to an addiction," said Wend, "so if you treat the addiction you can get a handle on the criminal behavior. That's a positive outcome for everyone."

In the jail's "north end," inmates are only allowed out of their cramped cells for very limited periods of time. Because of overcrowding, Wend said, an individual arrested for Driving Under the Influence (DUI) might find himself housed with someone with a history of violent offenses.

"It becomes a real challenge," he said. "Often we find high risk offenders mixed in just because we don't have space elsewhere. We also have no way to safely segregate inmates, to pull someone out into a more isolated or secure setting. That can be dangerous."

Design and inadequate space also prevent Wend and staff from the kind of "direct supervision and interaction with inmates" that he would like to see.

"You really diminish your problems when you are able to provide that kind of direct involvement," he said, "but that is just not possible as long as we are stuck with this space."

"We're playing a shell game," said Wend. "The risk in this place, to staff and inmates, is not small. There are many issues here, from inadequate space to poor design and outdated technology. The nature of the construction makes it expensive, or impossible, to do technology upgrades or remodeling. The location of the building makes it impossible to expand on site."

"Overcrowding has a negative impact not only on those here in the jail, but in our communities as well," Wend concluded. "In one recent week (June 2-June 8), we turned away 70 bookings due to overcrowding, which means people who should have been in jail were still on the street. Clearly we need a new facility at another location," said Wend.

Superior Court Judge says new jail 'vital' to public safety

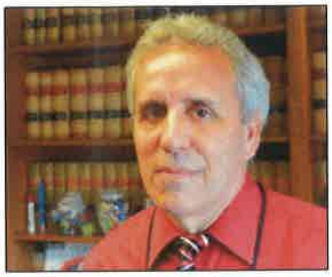
Ask Superior Court Judge Michael Rickert whether a new Skagit County Jail is necessary and he will tell you the verdict is clear: "We are at crisis level, with an inmate population that is critically over capacity."

Rickert, a Superior Court Judge for 21 years, brought his experience and courtroom perspective to the table as a member of the Skagit County Public Safety Jail Coordinating Council.

"In 1984 we opened a jail that we were told would serve us well into the future," he recalls. "Well, we didn't make it very far."

Rickert said safety issues apply not only inside the jail for inmates and law enforcement staff, but outside in Skagit County communities as well.

"Because we are over capacity we are releasing individuals who should be held, and more than ever we are making decisions not to book people because there is no place to put them."



Superior Court Judge Michael Rickert

"We are able to keep Class A felons," he continued, "but we are releasing a lot of 'frequent flyers' in the area of property crimes. Literally, some are not paying the price for committing property crimes – or they are paying the price at a reduced level."

The judge expressed support for a public process that led to the proposal to build and operate a new county jail.

"Skagit County residents should be aware of the fact that unlike Congress and many state legislatures, this council was able to come together with a solution," he said. "There was a lot of give and take in a process that ended up with the support of all mayors, council members and commissioners. People were able to put their differences on the back burner, coming together with a plan rather than kicking it down the road for a future generation."

Rickert also spoke of a common desire to reduce recidivism, a growing rate of inmates who repeatedly serve time in jail.

"The programs we have been able to run have been very successful, but there is no room for more programs or a higher rate of participation," he said. "The plan for a new jail was created with an eye to the future. We are not going to put ourselves in a position again of having no option for remodel or expansion. I have great optimism that given the space, our programs will play a much greater role in the day to day lives of our prisoners."

In regard to the suggestion that a new jail facility is a privilege criminals do not deserve, Rickert said: "The idea that jail is 'cushy' is a misnomer. I have visited many jails during my years as a judge, one of the most recent being the SCORE facility in King County. Listen, jail is jail. Once you walk inside it is stark – stainless steel with glaring light 24 hours a day. Prisoners sit on stainless steel seats, sleep on stainless steel with a two-inch mattress. Most often recreation is an indoors walk-around because of liability issues."

"Jails are a necessity, and they are expensive to operate," he concluded. "The only way to make it is to make things very spartan. That's the way our jail will be."

District Court judge notes challenges

There is a Washington statute requiring the county jail to accept and hold any person the Superior Court orders held, notes District Court Judge David Svaren.

"When the jail has inadequate capacity, District and Municipal Court bench warrants and jail commitments become a second priority," he said.

"In Skagit County," Svaren continued, "law enforcement officers routinely contact defendants with outstanding warrants and, instead of arresting them, give them a notice for a new hearing date. Some of these defendants attend court on the new date, but most don't. Even when the warrant reflects that booking the defendant into the jail is essential, sometimes there is simply no room and the defendant is turned away."

"This should concern the citizens of Skagit County for several reasons, the judge continued. "Sometimes the defendant in question is a serial DUI driver in an alcoholic or drug induced tailspin who is endangering anyone on our roads. At other times it may be a defendant charged with multiple counts of domestic violence crimes. In any event, the common knowledge that there is no consequence for defying a court order or refusing to come to court when summoned erodes respect for the rule of law upon which this country is based."

Mayors on Public Safety

Anacortes

Mayor Dean Maxwell

Mayor Dean Maxwell says: "There is absolutely no question that the cities and Skagit County government must partner to meet the needs of jail overcrowding in order to keep our valley safe. As a member of the Jail Coordinating Council I have worked first and foremost to help identify a solution to jail overcrowding. I am glad that we are looking to find solutions to the recidivism we see in the current system, whether it be mental health or drug related programming."

Sedro-Woolley

Sedro-Woolley residents approved a Public Safety sales tax of one-tenth of 1 percent last year, with a city pledge to commit funds to the purchase of fire and police equipment. Under terms of a provisional agreement with Skagit County, the city would commit an annual amount equal to 85 percent of the city's Public Safety sales tax for construction and operation of the County Jail. Anderson related a story that he said has become too common: a drug dealer with a record of convictions was arrested, but booked and then released due to lack of inmate space in the county jail. "It has become increasingly difficult to hold criminals accountable because you can't hold them in jail due to overcrowding," said the mayor. "The burglar who broke into your neighbor's house today will be at your house tomorrow. We can catch them, but we can't always keep them."

Mayor Mike Anderson

Proposed jail sites in Mount Vernon

Alf Christianson Seed site

Truck City site

What they are saying ...

Regarding work accomplished by the Skagit County Public Safety Jail Coordinating Council: "We ended up with a compromise that was well thought out. It would be duplicative and costly to run multiple jails. A single county-wide jail facility is the best option as it saves our police officers' time and taxpayers' money. We have a plan that will serve us for the foreseeable future."

Sedro-Woolley Supervisor Eron Berg

The case for new jail location

Project Manager Marc Estvold recalls his initial conclusion that a remodel and expansion of the existing facility was the seemingly obvious option for addressing the overcrowding crisis at the Skagit County Jail.

Closer examination of the situation, however, soon revealed that staying in the current building on the existing site was not an option.

Among the reasons a new jail site is required:

❑ Based upon Skagit County population projections, anticipated incarceration rates and local crime statistics it became overwhelmingly obvious that a new facility with an opening capacity of 400 inmate beds, and with significant future growth potential was necessary. Further study of the existing facility and site revealed that it would not be possible to meet future needs in the current location due to existing site restrictions.

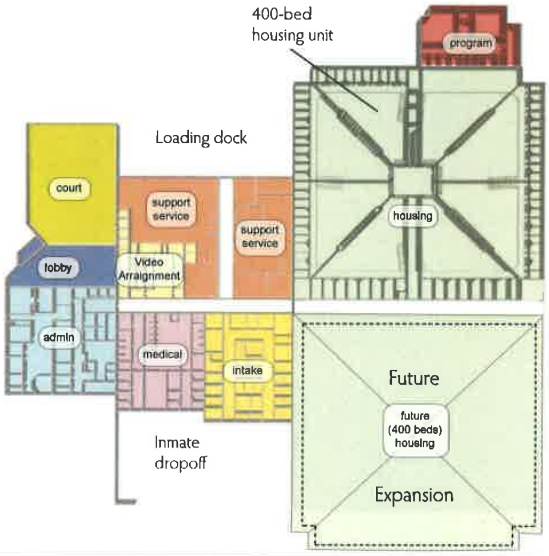
❑ The current jail site is "landlocked" in a downtown location straddled by a railroad line and high traffic city streets, plus poor soil conditions that make it impracticable to go up. Given the current highly competitive construction and real estate markets, cost studies show that it would be less expensive to purchase property and construct a new facility than it would be to renovate and add on to the existing Jail structure. New construction also allows an opportunity to design to today's standards, take advantage of today's technologies and provide for future expansion.

❑ Research into the existing structure determined that required technology and infrastructure upgrades, as well as expansion of the existing 30-year-old jail building, would be cost-prohibitive. In short, investment in the existing structure and site would provide an expensive, unsatisfactory, short-term solution to this public safety challenge.

Skagit County and the City of Mount Vernon will conduct an environmental review of the site selection process, which will assure early and continuous opportunity for public involvement and comment.

Marc Estvold

Conceptual layout of new county jail



Attributes of jail design

- New facility can be constructed with no impact on current jail operations
- Single story design will substantially increase operational efficiencies
- 400-bed plan meets and exceeds current need with forethought given to future expansion
- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation
- Facility designed to meet current codes and correctional facility standards
- Building and site design to accommodate substantial future growth

Prosecuting Attorney's office struggles with jail frustrations

Skagit County Prosecuting Attorney Richard Weyrich believes the negative community impacts from an overcrowded jail call for remedy as soon as possible.

"People used to ask me if we really need a new jail," said the prosecuting attorney. "Now the question is: '**When** are we going to get a new jail'?"

"The need," said Weyich, "is overwhelming."

Elements of the challenge posed by the existing jail are many, but most are related to building size and the fact that an expansion is not possible at the present Mount Vernon site.

One of the frustrations faced by the prosecutor is the fact that because of space limitations, many people who are guilty of property crimes are booked and released because priority for incarceration goes to violent criminals and others whose jail time is mandated by law.

Prosecuting Attorney Richard Weyrich

"What happens is that too many criminals are released time and again, or not even taken in because the jail is too full with murderers, rapists and other very dangerous individuals," said Weyrich. "But tell that to the people who come home to find their house ransacked and all of their valuables gone. Tell that to the crime victim whose sense of safety in their home has been shattered. The people who do these things have no regard for anyone and deserve to be locked up, but all too often there is simply no room in the jail."

"My office is frustrated when we have to deal with victims and tell them that someone who turned their lives upside down is going to receive the proverbial slap on the wrist, not due to anyone's fault except our inability to house these dangerous people in an inadequate facility," he said.

Weyrich emphasizes that no one in local law enforcement is to blame for this situation.

"The Sheriff's Office has done an amazing job of keeping the most dangerous in custody," he said. "But until we have more capacity, the people of Skagit County will continue to be the victims of criminals not going to jail merely due to the fact that 'the inn is full.' We need to act now to build a new jail so we can all sleep a little better at night."

Another prime area of concern for the prosecuting attorney is inadequate space for jail programs.

"I don't think it is an exaggeration that 85 to 90 percent of the people in jail are there due to substance abuse, alcohol abuse or mental health issues," he said. "For many of these people the jail is merely a revolving door without opportunity for treatment that might keep them from returning to jail. It has been shown that treatment works for most of these people. They may get their families back and they may get a job. With a new jail, we will have the ability to treat the criminals while they serve out their time."

Alternatives Program tapped

In Skagit County, alternatives to confinement in jail are utilized at double the national rate. The Skagit County Jail Alternatives Program, created in 1995 as way of reducing overcrowding in the jail, includes Electronic Home Monitoring, Community Service Work Program (such as litter cleanup, washing SKAT buses), Work Release, Litter Crew and In-Custody Work.

The goal of the Jail Alternatives Program is to provide options to total incarceration, or jail time.

For instance, the Work Release program allows participants the opportunity to retain their jobs by allowing them to go to work from the jail, and return to the jail after work. This allows them to pay their financial obligations, including victim restitution and court fees and fines. Most offenders also pay a fee to participate in the program.

Individuals on the Community Work Program and Litter Crew have been involved in numerous projects, with continuing benefits for the citizens of Skagit County. These include litter removal, clean up of dump sites, maintenance of courthouse and park grounds.

There is also a one-day program based at the Skagit County Fairgrounds (quarterly).

Programs such as these give individuals the opportunity to be involved in positive community projects, while at the same time fulfilling their obligations to the judicial system.

Jail Facts

The existing Skagit County Jail is "landlocked," limiting renovation/expansion options and making future expansion impossible. Outdated technology and overdue facility improvements to the 30-year-old building are cost-prohibitive. Although the site for a new jail is still under consideration (two alternatives, see page 6), both potential sites feature space for expansion of the jail to accommodate future demand.

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Drug and alcohol abuse, the greatest "root cause" sources of crime in Skagit County, have increased dramatically in recent years. Criminals with drug and alcohol abuse issues are the most receptive to treatment programs, but the space crisis at the Skagit County Jail prevents the opportunity for treatment programs.

❑❑❑

Technology improvements in the new Jail would include monitors for "real time" surveillance of confinement spaces with a recording option (potential source of evidence in the event of criminal activity by inmates). Video could also be provided for such activities as inmate visitations, arraignments and legal counseling.

Public monitors online Skagit 'Crime Map'

Among the most popular elements on our website (www.skagitcounty.net) is the up-to-date "Crime Map."

This detailed source of local crime data allows the user to search by address, road name or case number. Other options include selection of a region (for example, Guemes Island or Edison) or incident type (such as burglary, domestic violence, criminal homicide).

The detailed map can be viewed in small, medium or large format, with color graphics distinguishing types of incidents and the locations where they occurred.

Also available is a calendar search window that allows the user to search data within a particular period of time.

Sheriff and City Police Chiefs agree: New Skagit County jail is key to public safety

Anacortes Police Chief Bonnie Bowers

"The majority of prisoners currently housed in the Skagit County Jail are pre-sentence felons. Many have committed violent crimes, and if released would pose a safety risk to

Bonnie Bowers

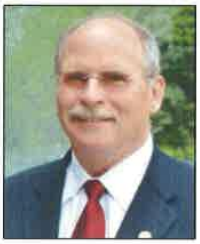
our community. Because our county jail is full of the most dangerous offenders, some less dangerous criminals walk the streets. Very few thieves are booked into jail."

"Property crimes are a serious issue in Skagit County – one of the few crime categories that has not shown a significant decrease in recent years. Because of a perceived lack of consequences for their actions, many thieves will re-offend while awaiting trial on previous offenses."

"Not every offender belongs in jail. Not every offender poses a serious risk to our county. However, it is imperative that we have a large enough facility to house the most dangerous offenders as well as those offenders who need to know that there are serious consequences for repeatedly breaking the law."

Sedro-Woolley Police Chief Doug Wood

Overcrowding in Skagit County Jail routinely forces law enforcement officers to make decisions



Doug Wood

based not on law, but on the question of whether there is space to incarcerate an individual.

"A new jail is vital to the safety of all our residents," said Sedro-Woolley Police Chief Doug Wood. "Nobody really wants to pay more to fund it, but it is necessary to have a facility to house prisoners. When all is said and done, we need a new jail."

Mount Vernon Police Chief Jerry Dodd

"The county jail is central to local public safety operations and

Jerry Dodd

criminal justice involvement. It houses the inmates involved in a wide variety of offenses (mostly felons), and is used by all of the local jurisdictions, including tribal police and in some cases even federal agencies. Inmate population will rise for years to come."

"Our citizens deserve a new jail. The jail is overcrowded, outdated and not designed to be expanded – presenting a clear threat to public safety and taxpayer liability."

"Replacing the jail is a major undertaking that cannot be avoided. We need to end streaming tax dollars from our community to other counties to outsource our inmates."

"The new jail will offer a win/win situation for the corrections officers, inmates, law enforcement agencies, courts and most important the community. I strongly suggest that if you have an opportunity to tour the jail, please do so to see for yourselves the real problems Skagit County is facing. The need exists. This is the right time to meet our public safety need."

Burlington Police Chief Bill VanWieringen

"The Skagit County Jail is an essential tool for law enforcement in protecting the public from the criminal element."

"The current jail situation, with its overcrowding and booking restrictions, at times does not allow our officers to carry out

Bill VanWieringen

their duties to the fullest. Many repeat misdemeanor offenders contacted by our officers are immediately released even when they have outstanding warrants."

"Without more jail capacity offenders are not and will not be fully held accountable for their actions."

Proposed Jail Project Timeline

✔ Determine Funding Source	Spring 2013
✔ Interlocal Agreement with Users	Spring 2013
Proposal to Voters	August 2013
Complete Facility Design	Summer 2015
Start Facility Construction	Fall 2015
Construction Complete	Fall 2017

Skagit County Government

1800 Continental Place, Suite 100
Mount Vernon, WA 98273
Questions or comments? Contact information below:
Telephone: (360) 336-9300 Email: commissioners@co.skagit.

Ken Dahlstedt

Sharon Dillon

Ron Wesen

The Board of Commissioners generally meets each Monday and Tuesday for regularly scheduled agenda items. Agendas are available on the website in the "Agenda" section, or you can listen to a recorded agenda for the upcoming week by calling (360) 419-7600.

www.skagitcounty.net

EXHIBIT I

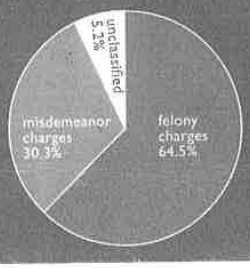
The County cannot continue to operate the facility into the future at current population levels.

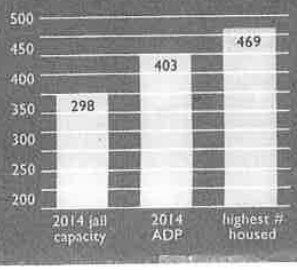
Existing Whatcom County Jail has limited renovation and no expansion options.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.

The current jailwas built in 1984 to house 148 inmates, remodeled to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison.

Our jail population is at 137% percent of capacity, 4th highest in the state.





WHATCOM COUNTY
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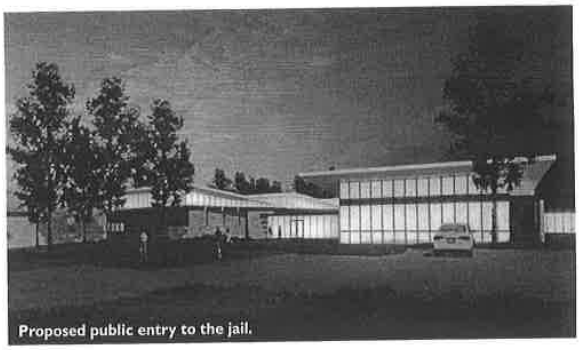
Whatcom County Community Report

WHATCOM COUNTY JAIL

Existing Jail - Overcrowded and Unsafe

Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

Whatcom County's Commitment to Behavioral Health Services

Executive Jack Louws

Whatcom County spends $11.5 million annually on a wide and varied behavioral health continuum of care services for citizens designed to make it possible for people to stay out of jail, or to re-enter society after jail with the tools needed for success. This financial commitment to programming is very close to equaling the amount we spend to operate the jail annually. Whatcom County Council has established a task force to target enhanced alternatives to corrections, that would reduce or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personal;
- School and community programs focused on prevention, treatment, intervention and family support programs;
- Juvenile court/detention behavioral health services;
- Community mental health and substance use treatment and opiate outreach;
- Drug, family treatment and mental health courts;
- Homeless housing services;
- District court probation specialized behavioral health unit;
- Intensive case management, supportive housing, and the Rainbow Recovery Center;
- Veterans' relief services;
- Crisis triage center;
- Jail behavioral health services;
- Jail alternative programs, including electronic home detention, work release, and jail work crews.

Budgeted-for Alternatives

Prevention, Alternative and Diversion Programs
$ 11,500,000

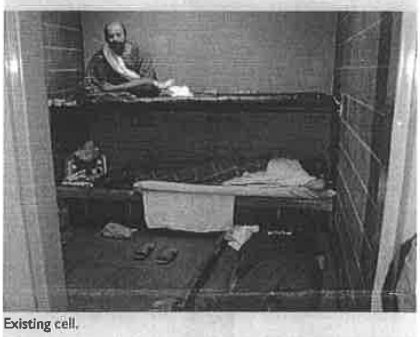
Jail Operations net programs
$ 12,300,000

David S. McEachran
Prosecuting Attorney

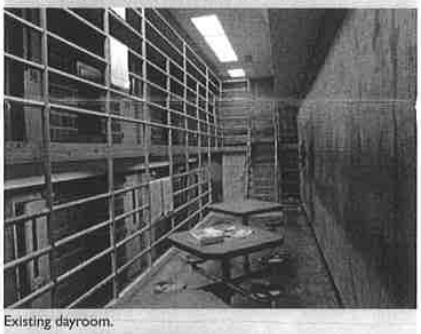
"One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.

There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space limits the care the jail can provide which often exacerbates mental health conditions. Mental health and chemical dependency issues are a significant issue for law and justice and the community as a whole. The new jail facility is designed with dedicated programming space. This space will allow for treatment opportunities for those offenders receptive to programs that give them the best chance of staying out of jail."

Existing Jail Conditions


Existing cell.

Existing shower room converted to cell.


Existing dayroom.

Existing inmate programs space.

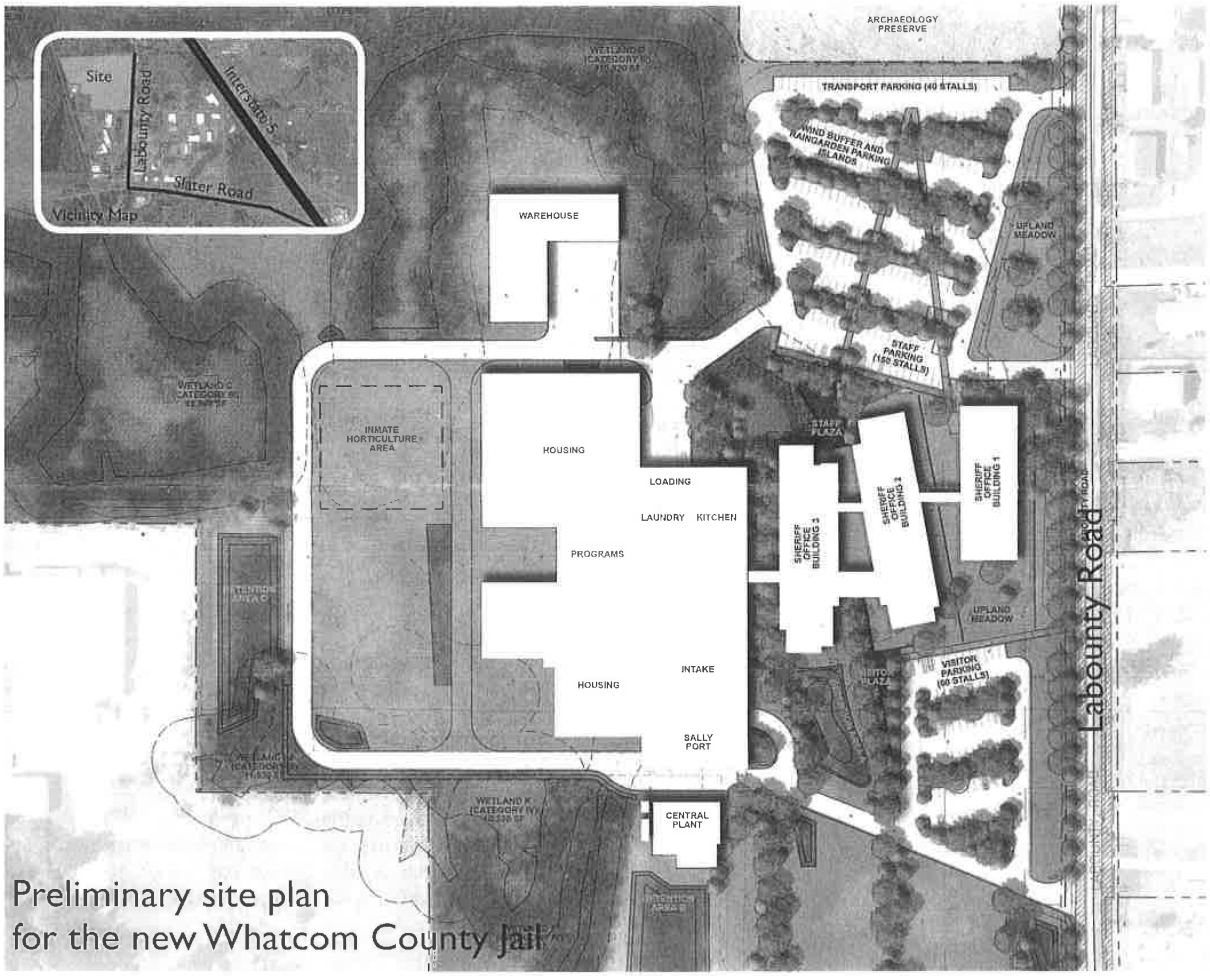
Existing central control room.

PROPOSED DESIGN
Modern Jail Features

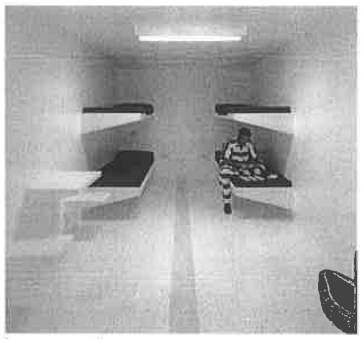
Dayroom with inmate video visiting

Central control room.

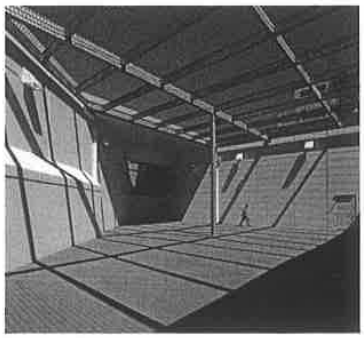
- New facility can be constructed with no impact on current jail operations.
- Single story design will substantially increase operational efficiencies.
- New bed count meets and exceeds current need with forethought given to future expansion.
- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation.
- Facility designed to meet current codes and correctional facility standards.
- Building site design to accommodate substantial future growth.



Preliminary site plan
for the new Whatcom County Jail



Four person cell.



Secure outdoor recreation area.

Medical clinic and infirmary for observation.

Timeline for New Facility

- ✓ April 2015 - Authorizing Permit Issued by City of Ferndale
- ✓ July 2015 - County Council Authorizes Sales Tax Ballot Measure
- ✓ August 2015 - Cities and County Agree to Construct and Operate Jail
- **November 2015 - Public Vote for Sales Tax**
- **Winter 2015-2016 - Following vote approval, final Design Work**
- **Spring 2017 - Start Jail Facility Construction**
- **Spring 2019 - Occupy Jail**

Citizens and Experts Develop Plan for the New Whatcom County Jail

In 2011, the County Council tasked a 13-member Jail Planning Task Force (JPTF) to recommend size, location and programming to replace the main jail and conducted 16 public meetings soliciting community input and comments from citizens and stakeholders. In 2013, the JPTF presented unanimous findings to reporting, "Due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail." It described the need as "critical" echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

County Executive Jack Louws developed a proposal to replace the jail and implement the JPTF recommendations. The County Council approved the purchase of the Labounty Road Property in 2013, a centrally located site near I-5, reasonably close to the courthouse and sufficiently sized to accommodate long-term growth if needed. The site selection was unanimously endorsed by the County Police Chiefs' Association.

Modern design features will maximize operational efficiencies and help control expenses and provide needed areas for behavioral and other health issues. Additional medical, counseling and classroom space will facilitate education, literacy, substance abuse, life-skills and other training and treatment programs.

The Ballot Measure

WHATCOM COUNTY,
WASHINGTON PROPOSITION NUMBER 1
JAIL FACILITIES SALES AND USE TAX

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every $100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every $100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

Should this proposition be:

Approved _____

Rejected _____

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

❑ ❑ ❑

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

❑ ❑ ❑

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas.

Current Sales Tax Rates from Puget Sound Region

Unincorp. Whatcom County	.085
Bellingham	.087
Blaine	.085
Everson	.085
Ferndale	.087
Lynden	.087
Nooksack	.085
Sumas	.085
Burlington	.085
Mount Vernon	.085
Everett	.092
Bellevue	.095
Seattle	.096
Tacoma	.095