

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**FRANK M. ABART  
Director**



**ADMINISTRATION**  
322 N. Commercial Street, Suite 210  
Bellingham, WA 98225  
Telephone: (360) 676-6692  
FAX: (360) 738-4561  
[www.whatcomcounty.us](http://www.whatcomcounty.us)

**MEMORANDUM**

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

**FROM:** Chris C. Brueske, P.E., Assistant Public Works Director

**DATE:** January 14, 2013

**RE:** January 2013 Council Surface Water Work Session

Please refer to the proposed agenda below for the next work session on January 22, 2013 from 10:30 a.m. to 12:00p.m. The agenda will have three informational items for Council discussion. Supporting documents are attached.

**AGENDA**

<b>Date:</b>	Tuesday, January 22, 2013	
<b>Time:</b>	10:30 a.m. to 12:00 p.m.	
<b>Place:</b>	Courthouse Conference Room No. 513	
10:30 a.m. –12:00 p.m.	(1) Update on EDI Grant to Public Utility District No. 1 related to water supply planning.	
	(2) System Wide Improvement Framework Letter of Intent related to the U.S. Army Corps of Engineers levee program.	

If you have questions, please feel free to call me at (360) 676-6692, extension 50693.

cc: Frank Abart  
Mike McFarlane  
Peter Gill  
Remy McConnell

Joe Rutan  
Jeff Hegedus  
Josh Fleischmann  
Kirk Christensen  
Roland Middleton  
Sue Blake

Paula Cooper  
Craig MacConnell  
John Thompson  
Karen Frakes  
Dana Brown-Davis  
Lonni Cummings  
George Boggs

John Wolpers  
Kraig Olason  
Martha Blakely  
Jennifer Paulson  
Atina Casas

Mike Donahue  
Erika Stroebel  
Chip Anderson  
Jill Nixon  
Cathy Craver

Frank M. Abart  
Director



Chris C. Brueske, P. E.  
Assistant Director  
322 N. Commercial Street, Ste 210  
Bellingham, WA 98225-4042  
Phone: (360) 676-6692  
Fax: (360) 738-4561

## MEMORANDUM

**To:** Honorable Members of the Whatcom County Council, and  
The Honorable Jack Louws, Whatcom County Executive

**Through:** Frank M. Abart, Director

**From:** Chris Brueske, P.E., Assistant Director

**Date:** January 11, 2013

**Re:** Interlocal Grant Agreement between Whatcom County and  
Public Utility District No. 1 related to water supply planning

---

Enclosed for your review and signature are two (2) originals of the Interlocal Grant Agreement between Whatcom County and Public Utility District No. 1 of Whatcom County (PUD) related to water supply planning.

### Requested Action

Public Works respectfully requests that the County Council authorize the County Executive to sign the attached Interlocal Agreements.

### Background and Purpose

On September 13, 2011 the Whatcom County Council approved an allocation of Economic Development Investment (EDI) funds in the amount of \$367,500 toward water supply planning in Whatcom County. Specific tasks included updating the Coordinated Water System Plan related to domestic water use, developing a Water Supply Plan focused on agriculture and industry, convening a Water Users Group to advise the process, and conducting public outreach.

The attached Interlocal Agreements include a Scope of Work which delineates responsibility for the specific tasks to be completed with the EDI funds. The PUD was the applicant for the EDI funds, and during the subsequent development of the scope of work it became apparent that Task 3, Update of the Coordinated Water System Plan, falls under the authority of the State Department of Health and by extension, the Whatcom County Health Department. Therefore, the proposed scope of work specifies Whatcom County as the lead for Task 3.

### Funding Amount and Source

The EDI grant approved by the Whatcom County Council totals \$367,500. Of this amount, the proposed scope of work allocates \$197,500 to the PUD to complete Tasks 1, 2, 4, 5, and 6, and \$170,000 to the Whatcom County Health Department to complete Task 3.

Please contact Chris Brueske at extension 50693 if you have any questions or concerns regarding this agreement.

**INTERLOCAL GRANT AGREEMENT  
BETWEEN WHATCOM COUNTY and PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY for  
PUBLIC FACILITY PROJECT FUNDING PURSUANT TO RCW 82.14.370  
OBJECTIVE #3 – WRIA 1 JOINT BOARD  
LOWER NOOKSACK STRATEGY**

**I. PARTIES**

This Grant Agreement is made by and between **Whatcom County** (hereinafter referred to as “**the County**”), and **Public Utility District No. 1 of Whatcom County** (hereinafter referred to as “**the PUD**”).

**II. TERM**

This Grant Agreement takes effect upon execution hereof by the authorized representatives of both parties and continues in effect until all payments required under Section V. MUTUAL CONSIDERATION, Subsection B(ii), PAYOUT OF GRANT FUNDING, have been made or until terminated as provided for in Section VIII, TERMINATION AND CLOSEOUT.

**III. PURPOSE**

The purpose of this Grant Agreement is to formalize a commitment whereby the County will allocate to the PUD the sum specified herein for a project to complete and/or have completed five (5) of six (6) tasks of Objective #3 of the WRIA 1 Joint Board Five (5) Objective, five (5) year work plan as defined in the Objective #3 Scope of Work as attached (Attachment A) (hereinafter referred to as “**the Project**”) using certain County funds designated for such purposes. These funds will be used to complete the Project as outlined in the Economic Development Investment (EDI) Program Application as attached (Attachment B).

**IV. RECITALS**

The Parties make this Grant Agreement based on and in recognition of certain relevant facts and circumstances including:

- A. Sales and use taxes are collected in and for the County under authority of RCW 82.14.370 and Whatcom County Code 2.130 for the purpose of financing public facilities as defined in RCW 82.14.370, and the proceeds are deposited in the Whatcom County Public Utilities Improvement Fund.

- B. The PUD proposes to complete the Project (Tasks 1, 2, 4, 5 and 6) using **\$197,500 from the Whatcom County Public Utilities Improvement Fund, designated as a grant**, for the benefit of all Whatcom County residents.
- C. RCW 82.14.370 was adopted to serve the goals of promoting the ongoing operation of business in rural distressed areas, promoting the expansion of existing businesses in rural distressed areas, attracting and developing new businesses, and providing family wage jobs and the development of communities of excellence in such areas. The parties expect the Project to further these goals.
- D. RCW 82.14.370 defines public facilities to include bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, and City facilities in the state of Washington.
- E. The County has created the EDI Board to review applications for loans and grants from the Public Utilities Improvement Fund and to make recommendations for Public Utilities Improvement Fund Investments based on commitment of other funds, potential for resulting job creation, and other factors.
- F. The County EDI Board has reviewed and recommended this project application be approved with a recommendation of a grant in the total amount of \$197,500. A copy of the EDI application for this project is attached by reference to this Agreement.
- G. The Whatcom County Council reviewed the recommendation and approved a grant from the Public Utilities Improvement Fund in the amount of \$197,500 for this work.
- H. The Public Utilities Improvement Fund balance is sufficient to make the requested grant to the PUD to complete the Project (Tasks 1, 2, 4, 5 and 6).
- I. Pursuant to the Interlocal Cooperation Act (Chapters 39.34 RCW), the County and the PUD are authorized to exercise their powers jointly and thereby maximize their abilities to provide services and facilities from which will best fulfill common needs.

**V. MUTUAL CONSIDERATION**

The parties do not intend to create any new or separate legal or administrative entity by this Agreement but intend for this Agreement to govern the County's financial support for the Project. The terms and conditions contained herein reflect the voluntary participation of the parties.

A. PUBLIC UTILITY DISTRICT #1 of WHATCOM COUNTY RESPONSIBILITIES: The PUD hereby agrees as follows:

- i. The PUD shall be responsible for oversight of all aspects of managing Tasks 1, 2, 4, 5 and 6 as identified in Section IV above. The PUD will complete or contract with private consultants to complete all five (5) Tasks and work identified and will ensure that all contractors will comply with all applicable laws, rules and regulations relating to the design procurement and construction of those five (5) Project Tasks.
- ii. The PUD shall provide the County with periodic informational reports regarding the Project's status.
- iii. The PUD shall provide the County with written evidence of all tasks and work products completion as a condition for receiving the EDI grant funding referenced herein.

B. WHATCOM COUNTY'S RESPONSIBILITIES: The County hereby agrees as follows:

- i. COUNTY GRANT – The County shall issue a *grant* to the PUD for one hundred ninety seven thousand five hundred dollars and no cents (\$197,500.00) for the Project described herein. This grant shall be by County warrant drawn on the Public Utilities Investment Fund and payable to the PUD following the approval of this agreement by Whatcom County and the PUD, and pursuant to the terms contained in (ii), Payout of Grant Funding (below).
- ii. PAYOUT OF GRANT FUNDING – The County shall payout the grant funding to the PUD in amount totaling a maximum of one hundred ninety seven thousand five hundred dollars and no cents (\$197,500.00). This amount shall be paid in accordance with Attachment A hereto upon receipt by the County of Evidence for completion of work products, identified for tasks 1, 2, 4, 5 and 6 in this Objective 3. Unless the parties to this agreement mutually agree in writing to modify the consideration, this is the maximum amount the County is obligated to pay towards this project. The PUD agrees to protect the County from, and indemnify it for, any charges that may be levied in excess of the agreed amount.

**VI. RECORDS, REPORTS AND AUDITS**

The PUD agrees to maintain such records, makes such reports and follow such procedures pertaining to this Grant Agreement as may be reasonably required by the County and as are typically maintained and made by the PUD in the undertaking of a project of this nature. All the PUD records pertaining to this Grant Agreement and the Project work shall be retain by the PUD for a period of three (3) years after final audit unless a longer period is required to resolve audit findings or litigation. Upon reasonable notice to the PUD, the County and other authorized representatives of the State government shall have access to any books, documents, papers, and records of the PUD which pertain to this Grant Agreement or the Project work for the purpose of making audit, examination, excerpts, and transcriptions.

**VII. RELATIONSHIP OF PARTIES AND AGENTS**

Neither the PUD nor the County shall have authority to execute contracts or to make commitments on behalf of the other, and nothing contained herein shall be deemed to create the relationship of the employer and employee or principal and agent between the County and the PUD. This agreement does not create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided herein.

The PUD represents that it has or will secure at its own expense all personnel, contractors, and/or subcontractors required in order to perform the Project work. Such personnel shall not be employees of the County. All such personnel, contractors, and/or subcontractors shall be fully qualified (as determined by the PUD in its sole discretion) and authorized/permitted under State and/or local law to perform such services.

**VIII. TERMINATION AND CLOSEOUT**

If the PUD fails to comply with the terms and conditions of this Contract, the County may pursue such remedies as are legally available, including, but not limited to, the termination or closeout of this Contract in the manner specified herein:

- A. **TERMINATION FOR CAUSE** – If the PUD fails to comply with the terms and conditions of this Grant Agreement, the County will give notice to the PUD in writing of its failure to comply. The PUD will be given thirty (30) days from date of notice to comply with the terms of the Grant Agreement or submit a plan acceptable to the County to bring the PUD into compliance with the Grant Agreement within a time period reasonably acceptable to the County. Failure to comply with the terms and conditions of this Grant Agreement by either party shall constitute an event of default. In the event of default, the PUD and a failure by the PUD to cure as provided for herein, the County may take such remedial actions under the law as are available to cure the default, including the imposition of the reasonable costs

of collection. In the event of default by the County, the PUD may take such remedial actions under the law as are available to cure the default, including specific performance.

**B. TERMINATION FOR OTHER GROUNDS** – This Grant Agreement may be terminated in whole or in part by mutual consent and written agreement between the parties, duly authorized and executed, setting for the conditions of termination, including effective date, and, in case of termination in part, that Portion to be terminated.

**IX. COMPLIANCE WITH LAWS**

The County and the PUD shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments with regard to the performance of this Grant Agreement.

**X. 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 PUD 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 PUD is governed by such laws and to the extent required by such laws, the PUD shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, 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 PUD shall state that all qualified applicants will receive consideration for employment without regards to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**XI. INTEREST OF MEMBERS OF THE COUNTY AND THE PUD**

No members of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carryout of the Project shall have any personal financial interest, direct or indirect, with this Grant Agreement.

**XII. HOLD HARMLESS AND INDEMNITY**

To the extent permitted by law, the PUD shall indemnify and hold harmless the County, its officers, agents, and employees from all liability, loss or damage, including costs of defense they may suffer as a result of claims, demands, actions, costs or judgments which result from the activities to be performed by the PUD, its agents, employees, or subcontractors pursuant to this Grant Agreement.

**XIII. ASSIGNABILITY**

The PUD shall not assign any interest in this Grant Agreement and shall not transfer any interest in this Grant Agreement (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the PUD from the County under this Grant Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the PUD.

**XIV. NON-WAIVER**

The failure of either party to insist upon strict performance of any provision of this Grant Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Grant Agreement.

**XV. CONTRACT MODIFICATIONS**

No modification or waiver of any clause or condition of this Grant Agreement shall be binding upon either party unless such modification or waiver is in writing and duly authorized and executed by the County and the PUD.

**XVI. SEVERABILITY**

If any Portion of this Grant Agreement is changed per mutual agreement or any Portion is held invalid, the remainder of this Grant Agreement shall remain in full force and effect.



**XVII. NOTICES**

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

**TO THE PUD:** Mr. Stephan Jilk, General Manager  
PUD #1 of Whatcom County  
1705 Trigg Road  
Ferndale, WA 98248

**TO COUNTY:** Mr. Brad Bennett, Finance Manager  
c/o Whatcom County Executive's Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

**XVIII. INTEGRATION**

This Grant Agreement contains all terms and conditions agreed to by the County and the PUD, and this Grant Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. There are no other oral or written agreements between the PUD and the County as to the subjects contained herein. No changes or additions to this Grant Agreement shall be valid or binding upon either party unless such change or addition is in writing, duly authorized and executed by both parties.

**XIX. GOVERNING LAW AND VENUE**

All questions of the validity, construction, and application of this Grant Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Whatcom County, Washington.

**XX. RECORDING**

Upon execution of this agreement by the parties hereto, the County shall cause it to be recorded with the Whatcom County Auditor pursuant to the recording requirement contained within RCW 39.34.040.



STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared to Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledges to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**Interlocal Grant Agreement  
Objective No. 3 WRIA 1 Joint Board  
Scope of Work – Payout Schedule  
Attachment A**

**Lower Nooksack Strategy  
Objective No. 3  
Scope of Work**

**Purpose: Update the Whatcom County Coordinated Water System Plan and Develop Water Supply Plan for Lower Nooksack Basin.**

**Needs:** Accurate and reliable quantification of current and future out-of-stream water needs is necessary to understand when and where future water demand is greater than available supplies and what type of solutions should be targeted to meet those needs. Incorporating this information into relevant land and water use planning documents will inform future development opportunities in the lower Nooksack River sub-basin and help secure water resources for economic and environmental uses, including agriculture and recovery of endangered salmon.

Outcomes of Objective No. 3 include:

1. Update of Whatcom County's Coordinated Water System Plan (WCCWSP);
2. Developing a "water supply plan" for public water purveyors based on WCCWSP outcomes;
3. Recommend ways to integrate WCCWSP and "water supply plan" into cities and county comprehensive plans as they are developed and to support future investments in agriculture, industrial and domestic water infrastructure.

**Leads:** An Interlocal Agreement between Whatcom County and Public Utility District No. 1 of Whatcom County will detail the terms and conditions for reimbursement of expenditures made in prosecuting portions of this work as identified by task.

Total Budget Year 1 to Year 5: \$367,500 based on calendar year with estimated start of project February 1, 2013 and estimated to end July 30, 2017. Of the total \$367,500 budgeted for Objective No. 3 work \$170,000 (Task 3) will be allocated to Whatcom County to complete Task 3 and \$197,500 will be allocated to the PUD for completion of Tasks 1, 2, 4, 5 and 6.

## Work Plan

**Task 1** **Coordinate Whatcom County “Water Users Group”** to serve as an advisory work group to inform work projects in Tasks 2, 3, 4 and 6. Working group should include representatives from all Whatcom County cities, water and sewer districts, water associations, agriculture, large water consuming industries, Whatcom PUD and Port of Bellingham. Provide support to the represented groups as needed to engage the process.

Lead: Whatcom PUD

Timeline: 60 months from beginning of process to completion of Objective No. 3

Budget: \$17,500 per year @ 5 years = \$87,500 total

Work Product(s): Meeting materials including summaries, agendas, supporting documents. Using written, digital, and web-based communication methods to gather, maintain and distribute input, comments, etc.

**Task 2** **Coordinate with Whatcom County Staff to obtain and integrate data** on current and projected water availability and use for the lower Mainstream Nooksack sub-basin. Data will be developed as an addendum to Water Budget Project (Objective No. 2 – Lower Nooksack Strategy) being completed by Whatcom County.

Lead: Whatcom PUD

Timeline: Completed in 18 months from beginning of process.

Budget: Year 1 and Year 2 @ \$10,000 each, Year 3 to Year 5 @ \$2,500 each = \$25,000 total

**Task 3** **Update the Whatcom County Coordinated Water System Plan (WCCWSP)** in accordance with Washington Department of Health requirements, to be used as the basis for establishing future domestic/potable water needs and planning for secure supply and is consistent with and integrated into 2016 Comprehensive Plan updates. Technical support may be provided to small cities, water districts and Group A and Group B water systems that are updating their water systems plans to integrate into and conform with the WCCWSP update.

Lead: Whatcom County

Timeline: Completed in 18 months from beginning of process.

Whatcom County Coordinated Water System Budget:

Year 1 @ \$70,000, Year 2 @ \$50,000 = \$120,000 total. Allocate a portion of \$50,000 for small cities to integrate into comprehensive plan updates.

Water System Plan Assistance/Integration Budget:

Year 1 @ \$10,000, Year 2 @ \$10,000, Year 3 @ \$30,000 = \$50,000 total

Total Budget for Task 3: \$170,000

Work Product(s): 1) Whatcom County Coordinated Water System Plan Update submitted for approval. 2) Integration of individual water system plans into WCCWSP.

**Task 4** **Develop work plan, process timeline and milestones** for integrating the Coordinated Water System Plan with other out-of-stream water needs in a manner that supports, informs and links to other tasks in this Lower Nooksack Strategy. The work plan will be developed concurrently with initiating the process to update the WCCWSP.

Lead: Whatcom PUD

Timeline: Completed in 6 months from beginning of process.

Budget: \$2,500

Work Product(s): 1) Work plan for preparing Nooksack Basin Water Supply Plan; 2) Project Management Timeline and Milestones.

**Task 5** **Identify resources and plan to support outreach and public/stakeholders participation** in water supply planning and related implementation actions.

Lead: Whatcom PUD

Timeline: Completed in 3 months from beginning of process.

Budget: \$2,500

Work Product(s): 1) Outreach plan for government and non-government water purveyors and the best method to provide engagement in a planning process for traditional and non-traditional water purveyors (i.e. agricultural, large industries) and various water user sectors.

**Task 6** Complete “water supply plan” with implementation strategy that will establish the local framework needed to address water supply needs extending beyond the WADOH regulatory framework including but not limited to investments in public facilities to convey, interconnect or more efficiently deliver water that is needed and available.

Lead: Whatcom PUD

Timeline: Starting 6 months after beginning of process to completion of Object No. 3.

Budget: Year 1 @ \$5,000, Year 2 at \$30,000, Year 3 @ \$35,000, Year 4 @ \$10,000 = \$80,000 total

Work Product(s): 1) Strategy and recommendations for actions that integrate out of stream water needs, land use, and economic needs in context with instream flows for a sustainable harvestable surplus of salmon and shellfish.

**Objective No. 3 Budget by Task**

TASK	YEAR					Total Task	Cumulative Total
	July 1, 2012*	1	2	3	4		
Task 1	\$17,500	\$17,500	\$17,500	\$17,500	\$17,500	\$87,500	\$87,500
Task 2	\$10,000	\$10,000	\$2,500	\$2,500	\$2,500	\$25,000	\$112,500
Task 3 CWSP	\$70,000	\$50,000	\$120,000	\$0	\$0	\$120,000	\$232,500
Systems WSP Assistance	\$10,000	\$10,000	\$20,000	\$30,000	\$0	\$50,000	\$282,500
Task 4	\$2,500	\$0	\$2,500	\$0	\$0	\$2,500	\$285,000
Task 5	\$2,500	\$0	\$2,500	\$0	\$0	\$2,500	\$287,500
Task 6	\$5,000	\$30,000	\$35,000	\$35,000	\$10,000	\$80,000	\$367,500
<b>Total</b>	\$117,500	\$117,500	\$235,000	\$85,000	\$30,000	\$367,500	\$367,500
		\$235,000	\$320,000	\$367,500			

**\*Note:** Task completion timelines are in terms of years (12 months) from the date(s) work is commenced. This timeline can be used as a general expected work completion and funds expenditure timeline. Dates of issuance of contracts and notice to proceed on these tasks will impact final completion dates.





control program, bank erosion, and depressions or rutting within the levee prism. Deficiencies that affected five or fewer levees include issues with sod cover, slope stability, settlement, culverts, and riprap revetments. Attachment A includes a summary of the types of deficiencies identified for each levee segment.

In addition, 26 items on 6 levees were not rated, primarily due to vegetation growth inhibiting the inspectors' ability to see the levee prism. We understand that additional deficiencies may be brought to our attention once the levees are brushed, and these may also need to be addressed through the SWIF process.

The SWIF process would provide a mechanism to address the highest risk problems first and over time resolve the deficiencies preventing an "acceptable" rating within the PL 84-99 program. Many of the deficiencies are relatively straightforward to resolve, but the sheer number of them requires a systematic approach given the staffing resources available to coordinate the effort. Unwanted vegetation growth is likely the most complicated issue to resolve and will require considerable coordination with resource protection agencies and probably significant mitigation. Integrating the SWIF process with our ongoing efforts to implement the FCZD's adopted Lower Nooksack Comprehensive Flood Hazard Management Plan (CFHMP) will provide for more efficient use of the limited resources and ensure efforts to address system deficiencies are consistent with the future direction of the FCZD's flood hazard reduction program.

#### **Progress Addressing Deficiencies**

The levees with deficiencies are located within six different special districts, a County park and a private development. Significant outreach is required to develop a coordinated response to the recent inspections; this has been initiated and is ongoing.

Progress in addressing the deficiencies varies by district and the nature of the issue. A summary of deficiencies identified for each levee and the status of corrective measures is included as Attachment B. Two of the more significant efforts that address deficiencies include:

- The downstream end of the Rainbow Slough levee south of Marine Drive was realigned along Marine Drive by elevating a portion of the roadway between the levee and high ground to the west. This project was identified in the CFHMP and was completed instead of repairing the three breaches south of Marine Drive.
- The upstream tie-in of the Guide-Meridian levee was realigned to tie into the road fill associated with the State Route 539 highway. During widening of the state highway, the upstream tie-in for the levee had been modified.

In addition, several encroachments have been removed, culverts have been videotaped, and brushing of invasive species has been performed in several districts, though removal of trees has been complicated by permitting issues. County staff has been coordinating with the various permitting agencies on vegetation removal to try to define what exactly is needed to obtain permits. None of these permits ensure compliance with the Endangered Species Act. Vegetation management strategies are being discussed with the permitting agencies and special districts involved in maintaining the levees.

### **Deficiencies to be Addressed in the SWIF**

While the SWIF process is intended to address all of the unacceptable items identified in the 2012 inspection reports, the levee vegetation issue is one of the primary drivers for the FCZD's intent to pursue a SWIF. The SWIF process may include an interim vegetation standard and/or a future vegetation variance request.

A systematic process to integrate addressing the deficiencies with the FCZD's adopted plan (CFHMP) will ensure consistency and reduce the potential to waste limited staff and financial resources in correcting deficiencies that may be irrelevant when the plan is implemented.

### **Funding**

The FCZD is a quasi-municipal corporation of the State of Washington, which is distinct from Whatcom County and has the ability to levy taxes to design and construct flood control improvements. Currently the FCZD tax revenue is approximately \$3 million; historically it has ranged from \$1.5 to over \$4 million depending on the need for water resources programs within the County. In addition the FCZD has been successful in leveraging tax revenue to bring in additional grant revenues for project implementation.

The diking districts and subzones also generate assessments to implement projects within their districts. While these assessments generate much smaller funding amounts, they provide revenue for a local cost-share under the FCZD construction cost-share program and enable the local districts to fund much of the regular maintenance and small repair work.

### **Interim Risk Reduction Measures**

During flood events, the FCZD utilizes County staff to monitor the levee system and report field conditions to the flood response management team. If needed, the FCZD has access to approximately 97,500 sandbags stored at the County's maintenance facility and approximately 10,000 cubic yards of sand at a County pit located in the center of the lower Nooksack River valley. Smaller stockpiles of sand and sandbags are pre-deployed at 14 locations throughout the County, typically at local fire district facilities and other locations within the diking districts and subzones. In addition, the FCZD has a list of contractors able to supply heavy equipment if emergency construction measures are needed to address a problem with a levee or other public infrastructure.

Prior to flood season, County staff inspect the levees from a boat on the river and inspect for failing rock, hazard trees and other potential problem areas. While system-wide vegetation removal requires a significant permitting process, removal of a limited number of hazard trees can be accomplished more easily with appropriate mitigation. "Hot spots" with an elevated potential for problems during a flood are communicated to the staff that monitor the river during flood events.

The FCZD has an existing Advisory Committee, composed of citizens representing special districts, impacted cities, as well as other geographic areas within the County. The committee has regular monthly meetings, which provides a forum for discussion of the deficiencies identified during the 2010 inspections with the floodplain community and general public. Since

the 2010 inspections, the FCZD Advisory Committee has discussed topics related to the identified deficiencies, levee vegetation management, the draft Policy Guidance Letter and the SWIF process at twelve different meetings. This public process will continue throughout the development of the SWIF.

The 2010 inspection reports and a list summarizing the deficiencies have been provided to the diking district commissioners and subzone advisory committee members. County staff met with representatives from each of the districts to coordinate local actions to start to address some of the deficiencies and gain support for participating in the SWIF process.

### **Interagency Coordination**

An interagency coordination team will be established at the beginning of the SWIF process. Representatives from the following agencies will be asked to commit to participating throughout the entire SWIF development process:

Lummi Nation  
National Oceanic and Atmospheric Administration (NOAA – Fisheries)  
Nooksack Tribe  
Special district representatives (diking districts and subzones)  
US Army Corps of Engineers (USACE)  
US Fish and Wildlife Service (USFW)  
Washington Department of Ecology (DOE)  
Washington Department of Fish and Wildlife (WDFW)  
Whatcom County Flood Control Zone District Advisory Committee (FCZDAC)  
Whatcom County Planning and Development Services (WCPDS)  
Whatcom County Public Works (WCPW)

### **Permits**

While most of the specific projects resulting from the SWIF process have not been identified at this time, it is likely that at least some of the projects will involve in-stream construction and impacts to riparian habitat. Permits that are likely to be required to fully implement the SWIF include:

- Section 10 and/or Section 404 Permit through USACE, which includes federal consultation with National Oceanic and Atmospheric Administration NOAA and US Fish and Wildlife
- Section 401 Water Quality Certification through the Washington Department of Ecology
- Hydraulic Project Approval through Washington Department of Fish and Wildlife
- State Environmental Policy Act (SEPA) approval through Whatcom County
- Substantial Development Permit or Exemption from a Substantial Development Permit under the Whatcom County Shoreline Management Program
- Critical Areas Ordinance approval through Whatcom County (no separate permit issued; conditions placed through SEPA and/or Shoreline permit process)

- Floodplain Development Permit through Whatcom County (approval is typically through conditions placed on other County permits)

We appreciate the USACE's developing the SWIF process as one avenue to maintain eligibility in the PL 84-99 Program. We are also intrigued by the Puget Sound Partnership's efforts to support SWIF pilot projects in two river basins and hope you will consider the Nooksack River basin as a possible candidate. Our rural setting with a system of levees amidst land uses that are primarily agricultural presents a stark contrast to the highly developed basins like the Green River. We look forward to working with your agency to reduce flood risks within Whatcom County through development and implementation of a SWIF for the Lower Nooksack River.

Sincerely,

Jack Louws  
Whatcom County Executive

Chair, Whatcom County Flood Control  
Zone District Board of Supervisors

Enclosures  
Cc:

DRAFT