

## MEMORANDUM TO FILE

FROM: ANN BECK, WHATCOM COUNTY HEALTH DEPARTMENT HUMAN SERVICES MANAGER  
DATE: July 22, 2022  
RE: AMERICAN RECOVERY PLAN ACT - DETERMINATION OF ELIGIBLE USE for ACQUISITION AND DEVELOPMENT OF AFFORDABLE HOUSING

### Section 1: Eligible Use

The Department of the Treasury Final Rule implementing the Coronavirus State Fiscal Recovery Fund and the Local Fiscal Recovery Fund (SLFRF) established under the American Rescue Plan, allows funds to be for the purposes of affordable housing capital expenditures. Specifically, on page 6 of the Final Rule, it states that SLFRF “recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the supplementary information.” On page 103, the Final Rule explains “Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.”

The Legal and Finance Departments concur that this proposal is an eligible use of County ARPA grant funds. The proposed use of funds is summarized in Section 3 of this memo.

### Federal Regulations

#### ARPA

##### Federal Register Vol 87, No 18, January 27, 2022 Rules & Regulations

<https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

Under Eligible Uses on page 4365 the final rule offers guidance under section 10. *Promoting long-term housing security: affordable housing and homelessness. eligible uses for assistance to households.* In this section it states that “Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations.”

Page 4358 describes “impacted households” under the Categorical Eligibility section. In this section, the rules and regulations states that “Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs . . . Home Investment Partnerships Program (HOME) for affordable housing programs only.”

For Home Investment Partnership Program homeownership projects, household eligibility of participants is restricted to “low-income families”, which are defined in 24 CFR 92.2 as “families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under [24 CFR 5.612](#).” As it relates to rental assistance and rental units, should they be developed on the site, the following guidance from 24 CFR 92 Subpart E 216 will apply:

(a) Not less than 90 percent of:

(1) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by families having such incomes; and

(b) The remainder of:

(1) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by such households.

in 24 CFR 92.2 households in [Title 42, Chapter 130](#), Section 12745(b). Low-income households are defined by the U.S. Code (Title 42, Chapter 130, Section 12704) as households “whose incomes do not exceed 80 percent of the median income for the area”.

## **Section 2: Summary of Impacted Community**

Page 4358 of the Federal Register’s Rules and Regulations document states that “low- and moderate-income households reported being housing insecure at rates more than twice as high as higher-income households and low- and moderate-income households reported housing quality hardship at rates statistically significantly greater than the rate for higher-income households”. In practical terms, this means that low- and moderate-income households were less likely to be able to pay the full amount of their rent, mortgage, and/or utility bills and more likely to experience problems with their dwellings that may include pests/insects, leaking roof or ceiling, windows that are broken or cannot be shut, exposed electrical wires, broken plumbing, holes in walls, ceiling, or floor, or lack of appliances and/or phone of any kind.

In Whatcom County, the Northwest Multiple Listing Service reports that the 353 closed home sales in June of 2022 sold for a median price of \$610,000, and increase of 19.6% from the previous year. The dearth of affordable homeownership opportunities in Whatcom County was recognized as a public health challenge in the July 2021 [Community Health Impact Assessment](#) for Whatcom County.

### **Section 3: Summary of Proposed Uses**

This proposed use of funds will enable Kulshan Community Land Trust to purchase land in the City of Ferndale on Thornton Street for the purposes of developing long-term affordable housing opportunities for community members earning no more than 80% of the area median income. This land will be restricted by deed to ensure affordability is maintained for at least 50 years and home sale and/or rental prices will comply with Home Investment Partnership Program guidelines determined by market conditions as outlined in [U.S. Code Title 42 Chapter 130](#) Subchapter 2 Part A Section 215.B.