



# Whatcom County

COUNTY COURTHOUSE  
311 Grand Avenue, Ste #105  
Bellingham, WA 98225-4038  
(360) 778-5010

## Agenda Bill Master Report

File Number: AB2021-296

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<b>File ID:</b>	AB2021-296	<b>Version:</b>	1	<b>Status:</b>	Adopted
<b>File Created:</b>	05/13/2021	<b>Entered by:</b>	RSnijder@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>	06/29/2021		
<b>Agenda Date:</b>	06/29/2021	<b>Enactment #:</b>	ORD 2021-037		

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Primary Contact Email: rsnijder@whatcomcounty.us

### TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Purchase of Development Rights Program

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance to amend Whatcom County Code 3.25A and PDR Program Guidelines. The proposed amendments would change the program's name, update the site selection criteria, and improve program administration.

### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
06/01/2021	Council	INTRODUCED	Council Committee of the Whole
		Aye: 6 Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey	
		Nay: 0	
		Absent: 1 Kershner	
06/15/2021	Council Committee of the Whole	DISCUSSED	
06/29/2021	Council	ADOPTED	
		Aye: 5 Browne, Buchanan, Donovan, Frazey, and Kershner	
		Nay: 2 Byrd, and Elenbaas	
		Absent: 0	

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**Attachments:** Staff Memo, Proposed Ordinance, Proposed Ordinance Exhibit A, Proposed Ordinance Exhibit B-Changes, Proposed Ordinance Exhibit B- Clean

**ORDINANCE NO. 2021-037**

**ADOPTING AMENDMENTS TO THE  
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

**WHEREAS**, Whatcom County government recognizes agriculture and forestry as major contributors to the local economy and a high quality of life for Whatcom County citizens; and

**WHEREAS**, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural and forestry lands of long term commercial significance and encourage the use of innovative techniques to do so; and

**WHEREAS**, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring "open space land, farm and agricultural land, and timber land, and a significant Conservation Futures fund balance is available for additional farm land protection efforts"; and

**WHEREAS**, Ordinance #2002-054 adopted Whatcom County Code Title 3.25A that authorized the creation of a Purchase of Development Rights (PDR) Program that offers voluntary farm agreements that include the purchase of agricultural conservation easements on farmable land within Whatcom County; and

**WHEREAS**, Ordinance #2002-054 and WCC 3.25A established a Purchase of Development Rights Oversight Committee to provide review and assistance to the PDR Program Administrator; and

**WHEREAS**, The Whatcom County Council adopted the PDR Guidelines Document through Resolution #2002-040 which includes specific direction for program administration and conservation easement acquisitions; and

**WHEREAS**, Ordinance #2018-065 amended Whatcom County Code 3.25A to direct the PDR Program to also offer voluntary agreements to purchase forestry and ecological conservations easements on working forestlands and important ecosystem areas within Whatcom County; and

**WHEREAS**, The PDR Program messaging was evaluated in 2019 and the Purchase of Development Rights Oversight Committee recommended changing the program's name to the Whatcom County Conservation Easement Program, and

**WHEREAS**, The Purchase of Development Rights Oversight Committee has updated the program guidelines so as to better identify properties with high conservation value, and

**WHEREAS**, The Purchase of Development Rights Oversight Committee voted unanimously on April 23, 2021 to recommend approval of the proposed program name change, updated guidelines, and updates to Whatcom County Code 3.25A.

1           **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that  
2 Whatcom County Code 3.25A is hereby amended as outlined in Exhibit A to this ordinance.

3  
4           **BE IT ALSO ORDAINED** by the Whatcom County Council that the PDR Program  
5 Guidelines are also amended as outlined in Exhibit B to this ordinance.

6  
7           **ADOPTED** this 29th day of June \_\_\_\_\_, 2021.

8  
9  
10  
11 ATTEST:

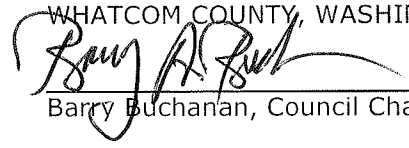
12   
13 \_\_\_\_\_  
14 Dana Brown-Davis, Clerk of the Council

15  
16  
17  
18 APPROVED AS TO FORM:


19  
20 Approved by email/C Quinn/B Snijder

21  
22 Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

23   
24 \_\_\_\_\_  
25 Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

26   
\_\_\_\_\_  
Satpal Sidhu, County Executive

) Approved            ( ) Denied

Date Signed: 9/2/21

# Exhibit A

## Changes

1 Chapter 3.25A

2 ~~AGRICULTURAL, FORESTRY, AND ECOLOGICAL PURCHASE OF DEVELOPMENT RIGHTS~~  
3 ~~PROGRAM~~ WHATCOM COUNTY CONSERVATION EASEMENT PROGRAM

4  
5 Sections:

6 **3.25A.010 Short title.**

7 **3.25A.020 Purpose.**

8 **3.25A.030 Applicability.**

9 **3.25A.040 Definitions.**

10 **3.25A.050 Designation of program administrator – Powers and duties.**

11 **3.25A.060 ~~Purchase of development rights~~ Conservation easement program oversight committee**  
12 **established – Powers and duties.**

13 **3.25A.070 Eligibility criteria.**

14 **3.25A.080 Ranking system.**

15 **3.25A.090 Conservation easement terms and conditions.**

16 **3.25A.100 Application and evaluation procedure.**

17 **3.25A.110 Purchase of ~~development rights~~ conservation easements procedure.**

18 **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**

19 **3.25A.130 Authorization.**

20  
21 **3.25A.010 Short title.**

22 This chapter shall be known and may be cited as the “~~Agricultural, Forestry, and Ecological Purchase of~~  
23 ~~Development Rights Program~~ Whatcom County Conservation Easement Program.” For the purpose of  
24 this chapter this program shall be known as the “PDRCEP” ~~program~~. (Ord. 2018-065 Exh. A; Ord. 2013-  
25 015 Exh. A; Ord. 2002-054 § 1).

26  
27 **3.25A.020 Purpose.**

28 To establish a voluntary agricultural, forestry, and ecological ~~purchase of development~~  
29 ~~rights~~ conservation easement program for Whatcom County which will enhance the protection of the  
30 county’s farmland, forestland, and important ecosystem areas, enhance the long-term viability of the  
31 agricultural and forestry enterprises within the county and provide public benefit by retaining properties  
32 in permanent resource use, in addition to the protection of ecosystem functions and values. (Ord. 2018-  
33 065 Exh. A; Ord. 2002-054 § 1).

34  
35 **3.25A.030 Applicability.**

36 The ~~PDR program~~ CEP shall be available for all qualifying lands, as identified in the ~~PDR program~~ CEP  
37 guidelines, except those lands under the ownership or control of the United States of America, the state  
38 of Washington or an agency or instrumentality thereof. Any conservation easement acquired pursuant  
39 to this chapter shall be voluntarily offered by the owner. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

40  
41 **3.25A.040 Definitions.**

42 The following definitions shall apply in the interpretation and implementation of this chapter:

43  
44 “Administrator” is that person placed in a managerial position over the daily operations of the ~~PDR~~  
45 ~~program~~ CEP. The administrator shall serve as a direct liaison to the program.

46  
47 “Conservation easement” means a nonpossessory interest in one or more parcels by one or more  
48 qualified easement holders under WCC 3.25A.090(B) acquired under RCW 64.04.130, whether the

**Comment [BSvW1]:** Name changed to highlight the end goal (conservation easement protecting the land) rather than the method (purchasing development rights)

49 easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or  
50 donation pursuant to the PDR program CEP guidelines, imposing limitations or affirmative obligations for  
51 the purpose of retaining or protecting agricultural, forestry, and ecosystem values of the parcel or  
52 parcels.

53  
54 “Development rights” means an interest in and the right to use and subdivide land for any and all  
55 residential, commercial and industrial purposes and activities which are not incident to agricultural,  
56 forestry, and/or ecosystem uses.

57  
58 “Owner” means the owner or owners of the fee simple interest of the parcel.

59  
60 “Parcel” means a legal lot of record, lawfully recorded in the Whatcom County auditor’s office. A  
61 conservation easement may contain one or more parcels; for purposes of this chapter the term “parcel”  
62 shall include all parcels covered by, or proposed to be covered by, the conservation easement.

63  
64 The “PDR program CEP guidelines” shall be adopted by county council and contain the rules and  
65 regulations under which the PDR program CEP operates. They include eligibility criteria, site selection  
66 criteria, a standard conservation easement and other procedures and information necessary to ensure  
67 fair and consistent administration of the PDR program CEP.

68  
69 “Qualifying lands” means those properties meeting the eligibility criteria established in the PDR  
70 program CEP guidelines for which development rights conservation easements may be purchased  
71 pursuant to this chapter. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

72  
73 **3.25A.050 Designation of program administrator – Powers and duties.**

74 A. Designation. The administrator shall be designated by and report to the director of planning and  
75 development services.

76  
77 B. Powers and Duties. The administrator or his or her designee shall administer the PDR program CEP  
78 and shall have powers and duties to:

- 79  
80 1. Establish reasonable and standard procedures and forms consistent with this chapter and the PDR  
81 program CEP guidelines for the administration and implementation of the program.  
82  
83 2. Promote the program in cooperation with the PDR CEP oversight committee by providing  
84 educational materials to the public and conducting informational meetings.  
85  
86 3. Investigate and pursue, in conjunction with the county, state, federal and other programs available,  
87 to provide additional public and private resources to fund the program and to maximize private  
88 participation.  
89  
90 4. Evaluate and rank all applications to determine their eligibility and provide assistance to the PDR  
91 CEP oversight committee in ranking properties.  
92  
93 5. Coordinate the preparation of appraisals.  
94  
95 6. Negotiate conservation easement terms and value with the owner or owners.  
96

- 97 | 7. Provide staff support to the county council, the PDR-CEP oversight committee, and the county's  
98 | authorized appraiser.  
99 |  
100 | 8. For each conservation easement accepted into the program, establish baseline data, and assure  
101 | that the terms and conditions of the easement are monitored and complied with by coordinating a  
102 | monitoring program with each easement holder. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).  
103 |

104 | **3.25A.060 ~~Purchase of development rights~~Conservation easement program oversight committee**  
105 | **established – Powers and duties.**

106 | A. Establishment. The PDR-CEP oversight committee is hereby established, as follows:  
107 |

108 | 1. The committee shall consist of seven members appointed by the county executive and confirmed by  
109 | county council. Each member shall be a resident in and of Whatcom County. The committee shall be  
110 | comprised of three farmers, one individual representing farm-supporting businesses, one individual  
111 | possessing real estate experience, one citizen (nonfarmer) from the unincorporated county, and one  
112 | citizen (nonfarmer) from an incorporated city. No members may have an ownership interest in any  
113 | of the lands submitted for purchase pursuant to this chapter.  
114 |

115 | 2. The members of the committee shall serve at the pleasure of the county council. ~~The initial terms of~~  
116 | ~~the members shall be as follows: two members shall be for two years; three members shall be for~~  
117 | ~~three years; and two members shall be for four years. Each term after the initial~~Each term shall be  
118 | for four years.  
119 |

**Comment [BSvW2]:** All members serve 4 years during their first term

120 | 3. The members of the committee shall serve without pay, but the county council may, at its  
121 | discretion, reimburse members for actual and necessary expenses incurred in the performance of  
122 | their duties.  
123 |

124 | 4. The committee shall elect a chairperson, ~~and vice-chairperson and secretary~~ at its first meeting  
125 | each calendar year. ~~The secretary need not be a member of the committee.~~  
126 |

**Comment [BSvW3]:** Staff provide secretary duties

127 | 5. The administrator shall be an ex officio member of the committee.  
128 |

129 | B. Purpose. To provide oversight and evaluation for the county ~~PDR program~~CEP. The PDR-CEP oversight  
130 | committee's role is to advise the council in the selection of eligible lands offered for PDR-CEP  
131 | acquisition.  
132 |

133 | C. Powers and Duties. The PDR-CEP oversight committee shall have the powers and duties to:  
134 |

135 | 1. Promote the program, in cooperation and under the guidance of the administrator, by providing  
136 | educational materials to the public and conducting informational meetings.  
137 |

138 | 2. Review and make recommendations to the administrator and the county council as to which  
139 | conservation easements should be purchased.  
140 |

141 | 3. Annually review the ~~PDR program~~CEP guidelines and recommend to the county council any changes  
142 | needed to maintain the program's consistency with the comprehensive plan, or to improve the  
143 | administration, implementation and effectiveness of the program.  
144 |



145 4. Provide an annual report of program accomplishments to county council and county executive.

146  
147 D. Organization – Meetings. Meetings of the committee shall be open and accessible to the public and  
148 shall be subject to the Open Public Meetings Act. The committee shall determine its own meeting  
149 schedule but shall meet at least annually. A public comment period will be provided at each meeting.  
150 Written records of meetings, decisions, findings and recommendations shall be kept and such records  
151 shall be public. The committee shall adopt its own rules and procedures for the conduct of business. The  
152 committee shall elect a chairperson from among its members who shall preside at its meetings. A  
153 quorum shall consist of four members present and the committee shall operate on a “majority rule”  
154 basis.

155  
156 E. Technical Advisory Committee. A technical advisory committee, without voting privileges, may be  
157 formed to advise the PDR-CEP oversight committee on technical/scientific matters as needed.  
158 Representatives may include but not be limited to individuals from the following agencies: Cooperative  
159 Extension Service, National Resource Conservation Service and Whatcom Conservation District. (Ord.  
160 2018-065 Exh. A; Ord. 2002-054 § 1).

161  
162 **3.25A.070 Eligibility criteria.**

163 In order for a parcel to be eligible for a conservation easement, it must ~~be located outside of an~~  
164 ~~established urban growth area and within Rural 2A, Rural 5A\*, Rural 5A, Rural 10A, Residential Rural,~~  
165 ~~Rural Residential – Island, Rural Forestry, or Agriculture zoned land and meet any additional~~ eligibility  
166 criteria as defined in the PDR program CEP guidelines. (Ord. 2018-065 Exh. A; Ord. 2011-025 § 1 Exh. A;  
167 Ord. 2002-054 § 1).

**Comment [BSvW4]:** Leave criteria in guidelines and not list in code.

168  
169 ~~\*The asterisk refers to Rural 5A areas depicted on the official zoning maps with an asterisk that are~~  
170 ~~subject to WCC 20.36.252, Rural residential density overlay.~~

171  
172 **3.25A.080 Ranking system.**

173 In order to effectuate the purposes of this chapter, parcels for which conservation easement  
174 applications have been received shall be evaluated by utilizing the site selection criteria as contained in  
175 the PDR program CEP guidelines. The ranking system shall be used to prioritize the acquisition of  
176 conservation easements. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

177  
178 **3.25A.090 Conservation easement terms and conditions.**

179 Each conservation easement shall conform with the requirements of this chapter. The deed of easement  
180 shall be in a form approved by the county attorney, and shall contain, at a minimum, the provisions  
181 incorporated in the standard agricultural, forestry, or ecological conservation easement. Central to the  
182 purpose of the PDR program CEP are the following:

**Comment [BSvW5]:** Ord. 2018-065 expanded program to also include forestry and ecological conservation easements.

183  
184 A. Allowable Uses. Uses that are compatible with the long-term productivity of the soil for the pursuit of  
185 farming or forestry enterprises and/or protection of ecosystem functions and values.

186  
187 B. Designation of Easement Holders. The county shall be the easement holder, and, if designated by the  
188 county council, one or more other public bodies or qualified organizations, as defined in RCW 64.04.130.

189  
190 C. Conservation Easement Duration. A conservation easement acquired under the terms of this chapter  
191 shall be in perpetuity. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

192

193 **3.25A.100 Application and evaluation procedure.**

194 Beginning in the first year following the adoption of the ordinance codified in this chapter and  
195 continuing thereafter, the county shall conduct a voluntary property selection process generally as  
196 follows and pursuant to the ~~PDR program~~CEP guidelines:

197  
198 A. Application. Owners of qualifying lands ~~will be invited to make application for purchase of~~  
199 ~~development rights may apply to the CEP at any time by the county by giving notice in one newspaper of~~  
200 ~~general circulation~~. Application materials will be provided by the administrator and will include, at a  
201 minimum, a standard application form and information about the ~~PDR program~~CEP. Applications shall  
202 be submitted to the administrator and reviewed for completeness.

203  
204 B. Evaluation. The administrator shall review and determine eligibility and priority classification of  
205 applications. The applications ranked by the administrator shall be forwarded to the ~~PDR CEP~~ oversight  
206 committee. The committee shall review the applications and establish parcels for easement purchase  
207 based on selection criteria contained in ~~PDR program~~CEP guidelines. The committee shall then forward  
208 the parcels to the county council which shall review and prioritize parcels on which it will seek to  
209 purchase conservation easements.

210  
211 C. Appraisal. ~~Based on anticipated funding, the administrator shall estimate the number of appraisals~~  
212 ~~that can be completed during the fiscal year. For those applications that meet the requirements of~~  
213 ~~subsection B of this section, the committee shall select applications to be appraised cause an appraisal~~  
214 ~~of the applicant's development rights to be made~~ in accordance with ~~PDR program~~CEP guidelines.

215  
216 D. Requirements and Deadlines May Be Waived. Any requirement or deadline set forth in this chapter or  
217 the ~~PDR program~~CEP guidelines may be waived by the county council if, for good cause, it is shown that  
218 urgent circumstances exist that warrant consideration of an application. Under such circumstances the  
219 council may purchase a conservation easement at any time and through any process it deems necessary.

220  
221 E. Reapplication. An owner of a parcel not selected by the county council for purchase of a conservation  
222 easement may reapply in the future. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

223  
224 **3.25A.110 Purchase of ~~development rights~~conservation easements procedure.**

225 Each application for a conservation easement shall be processed and evaluated pursuant to the  
226 requirements as contained in the ~~PDR program~~CEP guidelines which will include at a minimum the  
227 following:

228  
229 A. ~~Development Rights~~Conservation Easement Sale. ~~Based on anticipated funding the administrator~~  
230 ~~shall estimate the number of development rights that can be acquired from the initial pool of parcels~~  
231 ~~identified in WCC 3.25A.100(B). The administrator shall coordinate negotiations with the property~~  
232 ~~owners. Upon completion of negotiations, the administrator shall arrange for an appraisal of the~~  
233 ~~development rights value of placing a conservation easement on the property, to be completed by an~~  
234 independent county-authorized appraiser. ~~The value of the conservation easement will include the~~  
235 ~~value from eliminating select development rights and imposing certain use restrictions in perpetuity in~~  
236 ~~order to protect the agricultural, forestry, and ecosystem values of the property.~~ The ~~PDR CEP~~ oversight  
237 committee and administrator shall review the results of the appraisal. The administrator shall, in writing,  
238 invite the property owner(s) to ~~sell grant a conservation easement~~ to the county ~~development rights~~ for  
239 the amount of the appraised value of such ~~development rights~~conservation easement, subject to the  
240 terms and conditions of a proposed deed of easement. Property owners desiring to ~~sell and/or donate~~

**Comment [BSvW6]:** When the program started, it was set up to have an application deadline, giving a pool of applicants to evaluate. This was set up with the expectation that there would be a high volume of applicants. Due to a lower volume of applicants, the program has been operating on a rolling basis.

**Comment [BSvW7]:** Applications to be appraised will often be for projects that have already received an agreement for matching funds. This generally includes applicants who applied a previous year.

**Comment [BSvW8]:** Not necessary to budget for applications received this year, since the conservation easement sale occurs 2-3 years after application is submitted. Administrator can track funding when seeking council approval to purchase.

**Comment [BSvW9]:** Conservation easements do more than remove development rights. Some value comes from use restrictions. Examples of use restrictions in agricultural conservation easements include: limiting the amount of impervious surfaces, prohibiting uses that impair the ability to farm, limitations on separating water rights from the property, prohibiting mining and exporting material from property, prohibiting the granting of rights-of-way for power lines, among others.

Use restrictions in forestry conservation easements are similar to those in agricultural conservation easements, but with a prohibition on uses that impair the ability to forest the property.

Ecological conservation easements may include the following restrictions: prohibiting the harvest of timber, prohibiting motorized vehicles, prohibiting excavation or grading.

241 | ~~development rights~~grant a conservation easement shall submit a written acceptance of the offer to sell.  
242 | Nothing in this chapter shall compel an owner to submit an acceptance of the offer to sell.

244 | B. Acceptance. ~~An offer to sell development rights~~Requests to purchase conservation easements shall be  
245 | ~~forwarded made~~ to the county council for acceptance.

247 | C. Conservation Easement Established. A conservation easement shall be established when the owner  
248 | and an authorized representative of the holder of the easement have each signed the deed of  
249 | easement. The deed shall be recorded in the Whatcom County auditor's office.

251 | ~~D. Offers Not Made – Offers Not Accepted – Invitation to Other Owners. If an owner invited to sell elects~~  
252 | ~~not to do so, then the county administrator may send an invitation to sell to the owner(s) of the next~~  
253 | ~~highest prioritized parcel(s) remaining on the list of parcels.~~

**Comment [BSvW10]:** Applications accepted on a rolling basis, with the purchase of easements also occurring continuously. There is no wait list.

255 | E. Costs. If the county council ~~accepts an offer to sell development rights~~approves the purchase of a  
256 | conservation easement, the county may pay all other costs including environmental site assessments,  
257 | surveys, recording costs, if any, and other charges associated with closing. However, the county shall not  
258 | pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or  
259 | other advice, or expenses or fees in connection with the release and subordination of liens to the  
260 | easement purchased by the county. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

### 262 | 3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.

263 | If circumstances arise that render the purpose of this easement impossible to accomplish, the easement  
264 | can be extinguished only by judicial proceedings. In the event of such an extinguishment or the taking of  
265 | the property by the exercise of the power of eminent domain, grantors shall pay to Whatcom County an  
266 | amount determined by subtracting the fair market value of the property subject to this easement from  
267 | the fair market value of the property unrestricted by this easement, at the time of extinguishment or  
268 | condemnation, if Whatcom County is not compensated for its property interests at the time of the  
269 | extinguishment or condemnation. Other details regarding restrictions on buy-back or extinguishment as  
270 | may be deemed necessary shall be contained in the ~~PDR program~~CEP guidelines, and/or the easement  
271 | deed. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

### 273 | 3.25A.130 Authorization.

274 | A. The county is hereby authorized to acquire ~~development rights~~conservation easements from lands  
275 | described and prioritized in WCC 3.25A.080. Such acquisition may be accomplished by purchase, gift,  
276 | grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the  
277 | appraised value determined as provided in this chapter and the ~~PDR program~~CEP guidelines.

279 | B. If the owner so elects, the county is authorized to pay the purchase price in a lump-sum single  
280 | payment at time of closing, or to enter into contract for installment payments against the purchase  
281 | price. When installment purchases are made, the county is authorized to pay interest on the declining  
282 | unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the  
283 | time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

285 | ~~C. After county acquisition of development rights, the county may purchase the remaining agricultural,~~  
286 | ~~forestry, or ecosystem rights or other property interests in such land only when requested by the owner~~  
287 | ~~and when such acquisition is necessary to maintain agricultural, forestry, or ecosystem uses of the~~  
288 | ~~property. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).~~

**Comment [BSvW11]:** Amended and added to 3.25A.110.A

# Exhibit B

Changes

**Whatcom County**  
~~**Agricultural, Forestry, and Ecological**~~  
~~**Purchase of Development**~~  
~~**Rights Conservation Easement**~~  
**PROGRAM**  
**GUIDELINES**Program  
Guidelines

Revised version adopted April 9, 2013,  
Second revision adopted November 20, 2018  
Third revision adopted [DATE]

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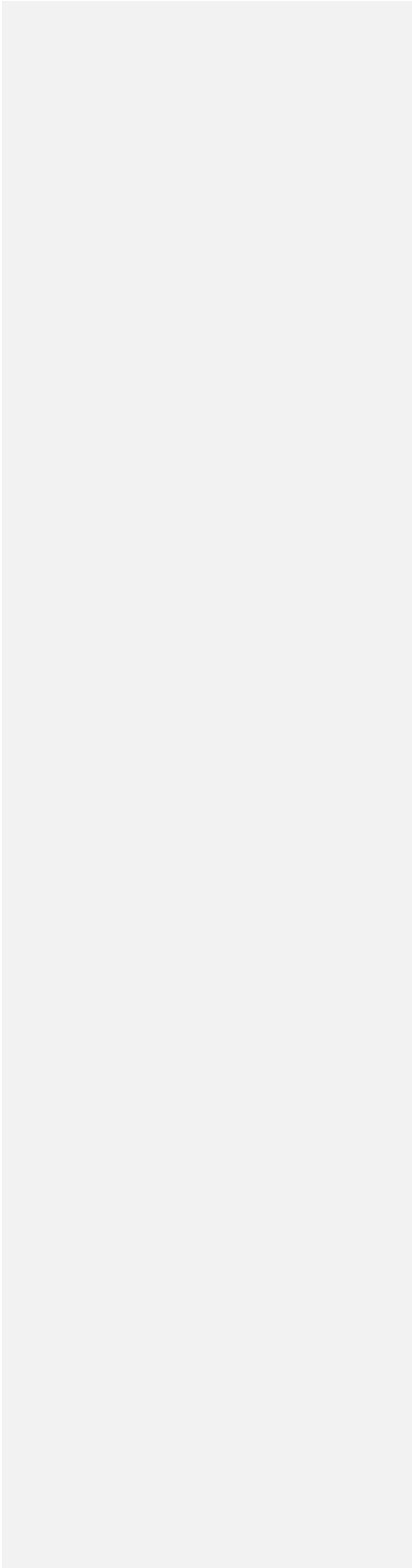
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**PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

---

## I. INTRODUCTION

---

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County ~~Agricultural, Forestry, and Ecological Purchase of Development Rights (PDR)~~Conservation Easement Program ~~(CEP)~~.

The Guidelines serve two functions:

- A. To provide an overview of the land preservation process for the property owner. Specifically, this information can be found in Section V.
- B. To establish the rules and operational procedures that the ~~PDR-CEP~~ Oversight Committee and the Administrator must follow when operating a ~~Purchase of Development Rights program~~Conservation Easement Program.

## II. ~~PDR PROGRAM~~ CEP OBJECTIVE AND PRINCIPLES

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Responding to the loss of County farmland, the Whatcom County Executive initiated the development of a Purchase of Development Rights (PDR) program in September of 2001. A PDR Advisory Committee comprised of farmers, citizens and conservation organizations was formed and tasked with assisting County staff in the development of a proposal for County Council consideration. The Purchase of Development Rights Program was enacted through Ordinance 2002-054 in September of 2002.

Since that time, Whatcom County continues to experience a rapid development rate. In ~~Response~~ ceding to the ~~continued~~ loss of ~~agricultural land and of other land types such as~~ forest resource lands and areas of ecological importance, the program expanded in 2018 to protect working forestlands and important ecosystem areas. This expansion was enacted through Ordinance 2018-065. In order to better reflect the program's purpose, the program changed names in 2021 to the Whatcom County Conservation Easement Program. This change was enacted through Ordinance 2021-XXX. These program guidelines have been updated accordingly.

Comment [BSvW1]: Update if approved.

### A. Objective

The primary objective of the Whatcom County ~~Purchase of Development Rights~~ Conservation Easement Program (CEP), in conjunction with other tools, is the protection of farmland. The secondary objective of the ~~PDR Program~~ CEP is the protection of forestland and areas of ecological importance. The Whatcom County ~~Purchase of Development Rights~~ Conservation Easement Program will help to sustain the farming and forestry enterprises as well as support healthy ecosystem function throughout Whatcom County.

### B. Principles

The ~~PDR Program~~ CEP provides a strategic tool to protect County farmland, forestland, and areas of ecological importance.

#### 1. Preserve the County's Agricultural lands, Forestlands and Areas of Ecological Importance

Encourage the protection of a critical mass of agricultural and forestry land to sustain the farm-related and forestry-related businesses and activities that are necessary to support the agricultural and forestry industries in Whatcom County. Additionally, the Program will encourage the protection of areas of ecological importance necessary to sustain ecosystem health and function.

#### The primary ~~PDR Program~~ CEP emphasis will be:

- a. Reduce conversion of land to non-agricultural uses within the Agricultural District;
- b. Provide a buffer to discourage encroachment into the Agricultural District;
- c. Consolidate and protect areas of agricultural land; and
- d. Protect agricultural lands located outside the Agricultural District that are under increased pressure of development.

**The secondary ~~PDR Program~~CEP emphases will be:**

- a. Reduce conversion of land to non-forestry uses within the Forestry Districts;
- b. Provide a buffer to encroachment of the Forestry Districts;
- c. Consolidate and protect areas of forestry land;

- d. Address commercially significant forestry lands outside the Forestry Districts that are under pressure of development.
- e. Protect areas of ecological importance and support and enhance ecosystem functions within agricultural and forestry lands;
- h. Improve and support habitat connectivity and protection of critical habitat corridors.

## 2. Offer Effective Program Design

Maintain a voluntary tool for the preservation of productive agricultural and forestry lands, as well as areas of ecological importance in the County that will:

- a. Provide farmers and foresters with the market based economic value for agricultural and forestry land without selling the land;
- b. Provide property owners with the market based economic value for areas of ecological importance without selling the land.
- c. Support and promote ongoing agricultural and forestry activities by offering an attractive option for farmers, foresters, and landowners;
- d. Support and promote ecosystem function by offering an attractive option for landowners; and
- e. Provide for ongoing monitoring and enforcement.

## 3. Leverage Program Impact and Efficiency

Enhance and support a coordinated approach to the preservation of the agricultural and forestry lands, as well as areas of ecological importance that will:

- a. Create community support for agricultural and forestry preservation initiatives;
- b. Create community support for the protection of areas of ecological importance;
- c. Complement and foster other County programs and policies to preserve farming and agricultural lands;
- d. Complement and foster other County programs and policies to preserve forestry and forestry lands;
- e. Complement and foster other County programs and policies to enhance ecosystem function and protect areas of ecological importance; and
- c. Leverage other public and private funding sources and provide or increase property owner incentives and program effectiveness.

### III. ELIGIBILITY CRITERIA

#### A. Priority Consideration

Areas around the county have been identified to receive priority consideration for ~~PDR Program~~CEP participation.

Agricultural priority areas (Appendix A) include a combination of the ~~twelve initial PDR Target Areas~~, Ten Rural Study Areas, Watershed Improvement District areas, ~~in addition to the~~ lands within the Agriculture Zone, ~~and additional areas identified in the 2019 Agricultural Landscape Analysis~~. ~~The 2019 Agricultural Landscape Analysis also highlights active crop land and contiguous blocks of agricultural lands as identified by the Washington State Department of Agriculture as well as suitable agricultural soils as identified by USDA Natural Resource Conservation Service~~. Preservation of these areas protect designated agricultural lands and can establish a perimeter of PDR farmlands to protect against development encroachment into large blocks of agricultural lands. These lands, due to their soils, land use, and proximity to core agricultural areas, are deemed priority farmlands for program participation due to their vulnerability for conversion to non- agricultural uses.

Comment [BSvW2]: Maps have been updated to include the 2019 Landscape Analysis data.

Forestry priority areas (Appendix B) include lands located within the Rural Forestry zone and areas designated by the Washington State Department of Natural Resources as being priority for protection from conversion under Washington’s Forest Action Plan. ~~The 2019 Forestry Landscape Analysis did not identify additional priority areas~~.

Ecological priority areas (Appendix C) include lands containing a mapped Habitat Conservation Area or within 165’ of habitat conservation feature, ~~such as~~ ~~This includes~~ fish bearing streams, areas identified under the Washington State Department of Fish and Wildlife’s Priority Habitats and Species, and the Chuckanut Wildlife Corridor. ~~Ecological priority areas also include~~ ~~Additionally the~~ mapped FEMA Floodplain and Flood Hazard areas, ~~the have been included in addition to a~~ 300’ buffer of the Historic Meander Zone, ~~and additional areas identified in the 2019 Ecological Landscape Analysis~~. ~~The 2019 Ecological Landscape Analysis also highlights watershed protection recommendations and freshwater habitat as identified by the Washington Department of Ecology, among other areas~~.

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#### B. ~~PDR Program~~CEP Eligibility

Two factors will be important in determining eligibility:

1. Availability of funding to expand the program and
2. Advancement of ~~PDR Program~~CEP objectives. Priority lands will continue to receive preference over other lands through weighted selection criteria.

All applicant properties for ~~PDR Program~~CEP participation must be:

1. Completely or partially within an Agriculture, Rural, Rural Residential, or Rural Forestry zoning designations. Properties located in Urban Growth

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Areas are ineligible to participate in the program, unless coordination with cities is a component of an application.

2. At least 1 acre in size.

3. Removing all development rights if the parcel is smaller than 10 acres.

~~Applications received on parcels smaller than 10 acres may not retain any development rights.~~

Comment [BSvW3]: Added to match requirements in Section VI.C.1.c.

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## IV. SITE SELECTION CRITERIA

All valid applications will be reviewed to determine if the acquisition of development rights will promote the ~~PDR program's~~ CEP's goals and priorities. Selection criteria have been developed to guide, but not control, the review and assessment of eligible properties during selection.

Valid and accepted offers on eligible properties of greater points shall be considered for purchase with available funds before properties receiving lower scores. The criteria, which will be used to evaluate the applications, are outlined below.

Rating instructions: An application will be scored under one of three types of conservation easement selection criteria: 1) Agricultural, 2) Forestry, or 3) Ecological. The agricultural selection criteria allow for a score of up to 1100, while the forestry and ecological selection criteria allow for a score of up to 100. This ensures that agricultural protection is the primary emphasis of the program, with all five criteria sections assessed. There are five to six criteria sections and each criteria section is rated and assigned a point value based on a 100 point scale. Then each section is assigned a weight factor. The five-six agricultural weight factors add up to 1.1 and the five forestry and ecological weight factors each add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the 5-section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the PDR-CEP Oversight Committee.

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Comment [BSvW4]: In 2018, the Program expanded to also include forestry and ecological conservation easements. Scoring needed to be updated to address this change, which resulted in three easement categories.

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### A. Agricultural Site Selection Criteria

#### 1. General Site Evaluation

~~The points for each criteria are based on a 100 point scale. Higher points are given to site characteristics that are more desirable, such as parcel size, characteristics that reflect a site's threat of conversion, and characteristics that make a site more desirable to farming, such as available water rights.~~

##### a. Total size of parcel(s) (nominal acres)

<del>1a. 0 – 409.99</del> .....	<del>0</del> points
<del>2b. 10 – 19.9920</del> .....	<del>15</del> points
<del>3e. 20 – 49.99</del> .....	<del>30</del> points
<del>4d. 50 – 79.99</del> .....	<del>70</del> points
<del>5e. ≥80</del> .....	100 points

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##### ~~b.a. Number of existing development rights offered under current zoning~~

<del>a. 1</del> .....	<del>20</del> points
<del>b. 3</del> .....	<del>40</del> points
<del>c. 4</del> .....	<del>60</del> points
<del>d. 5</del> .....	<del>80</del> points
<del>e. ≥6</del> .....	<del>100</del> points

##### ~~e.b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)~~

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a1.  $\geq 1$  mile.....0 points  
b2.  $0.50\frac{1}{2}$  to  $0.99\frac{1}{4}$  mile.....25  
points

e3.  $0.25\frac{1}{4}$  to  $0.49\frac{1}{2}$  mile.....50 points

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- d4. < 0.25~~1~~4 mile.....75 points
- e5. Adjacent.....100 points

~~d.a. Percent of parcel actively farmed~~

- ~~a. 0-25% ..... 25 points~~
- ~~b. 26-50% ..... 50 points~~
- ~~c. 51-75% ..... 75 points~~
- ~~d. >75% ..... 100 points~~

e-c. Number of legal lots of record

- ~~1a. 0-2.....20 points~~
- ~~2b. 3.....40 points~~
- ~~e3. 4.....60 points~~
- ~~4d. 5.....80 points~~
- ~~5e. ≥/≠ 6.....100 points~~

d. Removal of all remaining unused development rights?

- ~~1. Unused development rights remaining .....0 points~~
- ~~2. All removed.....100- points~~
- ~~2. Development rights remaining .....0 pts~~

e. Is located Number of within a priority areas parcel is located in:

- ~~1a. In priority area0.....100 points~~
- ~~2b. Not in a priority area1.....500 points~~
- ~~3. 2-3.....100 points~~

f.a. Legal water availability documentation

- ~~a. Certified Water Right/Access to public water..... 100 pts~~
- ~~b. Water Claim ..... 50 pts~~
- ~~c. No Water documentation or legal water access..... 0 pts~~

~~g.a. Proximity to major roads or road intersections~~

~~(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)~~

- ~~1. Property is at an intersection of major roads..... 100 Points~~
- ~~2.1. Property is within 1,500 feet of the intersection of two major roads..... 75 Points~~
- ~~3.1. Property fronts on a major road..... 50 Points~~
- ~~4.1. Property is within 2,500 feet of a major road..... 25 Points~~

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~~h.a. Threat of Conversion/Parcelization~~

~~Total Number of Parcels in surrounding ¼ mile~~

- ~~a) Less than 20 parcels..... 50 Points~~
- ~~b) 20 – 50 parcels..... 100 Points~~
- ~~c) 50 – 100 parcels..... 50 Points~~
- ~~d) more than 100 parcels..... 0 Points~~

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.235, but is subject to ongoing review by the Committee).*

2. Development Pressure

a. Number of existing ~~unused~~ development rights offered under current zoning

- 1a. 1-2..... 20 points
- 2b. 3..... 40 points
- 3e. 4..... 60 points
- 4d. 5..... 80 points
- 5e. >=6..... 100 points

b. Proximity to major roads or road intersections

*(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)*

- 1. Property is within 2,500 feet of a major road..... 25 points
- 2. Property fronts on a major road..... 50 points
- 3. Property is within 1,500 feet of the intersection  
of two major roads..... 75 points
- 4. Property is at an intersection of major roads..... 100 pPoints  
Property is within 1,500 feet of the intersection  
of two major roads..... 75 Points
- Property fronts on a major road..... 50 Points
- Property is within 2,500 feet of a major road..... 25 Points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

- 1. a) Less than < 20 parcels..... 50 pPoints
- 2. b) 20 – 50 parcels..... 100 pPoints
- 3. c) 50 – 100 parcels..... 50 pPoints
- 4. d) more than > 100 parcels..... 0 pPoints

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).*

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2-3. Land Soil Evaluation

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Productive farming, forestry and associated activities depend on soil capability (the suitability of soils for most types of field crops and/or timber production). Therefore, emphasis should be placed on the property’s soil characteristics. The scoring system uses the NRCS Prime Farmland classifications, LESA classifications and APO soils classifications, including classification of soils of statewide importance as well as consideration given to site index score for forest soils. Highest points are assigned to better agricultural soils and lower points to poorer agricultural soils. Forest soils also receive additional points. Points are assigned based on the productivity and/or characteristics of the soil (profile, texture, slope, other). A soils chart is included as Appendix D. If a soil has a site index rating and a prime soil rating, the rating with the highest number of points will be applied.

Below is a table detailing the soil point system:

LESA Rating	APO or Non-APO Prime 1	Non-APO - Prime 2-8	Soils of Statewide Importance	Site Index
1	100	90	0	0
2	95	85	0	0
3	90	80	0	0
4	85	75	0	0
No Rating	80	70	50	0
Site Index Rating				
1	0	0	0	60
2	0	0	0	50
3	0	0	0	40
4	0	0	0	30
5	0	0	0	20

Farm applications receive points for this section proportional to the percentage of each soil type that exists on the property. An example of how this would work follows: A farm under review is 40 acres, of which 29.79 acres (about 75%) is soil 179-Whatcom Silt Loam 4-9% slopes, which is classified as LESA 4, APO Prime 1; and 10.21 acres (about 25%) is soil 180-Whatcom Silt Loam 9-15% slopes, which is not classified as APO or Prime, but is a soil of Statewide Importance. This farm would score a total of 76.07 points for this Section, as shown:

A	B	C	D	E	F	G	H	I	J	K
Soil #	Area (in acres)	% (B/Total area)	APO Soil	Prime 1- 6?	LESA Rating	Prime Rating	Statewide Soil	Site Index	Points	score (J*C)
179	29.79	74.48%	Y	Y	4	1	0	2	85	63.30
180	10.21	25.53%	N	N	0	0	yes	2	50	12.76
<b>Total area</b>	<b>40</b>									<b>76.07</b>

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Land Soil Evaluation section has been 0.35, but is subject to ongoing review by the Committee).*

**4. Agriculture Evaluation**

**a. Percent of parcel property actively farmed**

- 1a. 0-25% ..... 25 points
- 2b. 26-50% ..... 50 points
- 3e. 51-75% ..... 75 points
- 4d. >75% ..... 100 points

**b. Legal water availability documentation**

- 1. No Water documentation or legal water access..... 0 points
- 2. Water Claim ..... 50 points
- 3. Certified Water Right/Access to public water..... 100 points
- b. Water Claim ..... 50 pts
- c. No Water documentation or legal water access..... 0 pts

**c. Parcel is located in Agriculture District and is less than 40 acres or parcel is located in a Rural Study Area?**

- 1. No..... 0 points
- 2. Yes..... 100 points

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### 3. ~~Ecological Evaluation~~

~~The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds:~~

- ~~a. Protection (Overall importance to Water flow processes)~~
  - ~~a. Highest protection..... 100 pts~~
  - ~~b. Protection..... 75 pts~~
- ~~e. Protection/Restoration..... 50 pts~~
- ~~d.e. Conservation (no change)..... 25 pts~~
  
- ~~b.g. Water Flow Restoration—Is property owner willing to restore ecosystem processes beyond the minimum required practices?~~
  - ~~a. Yes..... 50 pts~~
  - ~~b. Maybe/No..... 0 pts~~
  
- ~~e.g. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)~~
  - ~~a. Yes..... 50 pts~~
  - ~~b. No..... 0 pts~~

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for ~~Ecological-Agriculture~~ Evaluation section has been 0.150, but is subject to ongoing review by the Committee).*

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### 4.5. ~~Special Considerations~~

- a. Site contains heritage/historical significance, i.e. Heritage Barn Registry
  - ~~1. 1- No..... 0 points~~
  - ~~—Yes..... 1050 points~~
  - ~~2. 2- No..... 0 pts~~

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~~The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds.~~

- ~~b. Protection (Overall importance to Water flow processes):~~
  - ~~1. Conservation (no change)..... 25 points~~
  - ~~2. Protection/Restoration..... 50 points~~
  - ~~3. Protection..... 75 points~~
  - ~~4. a. Highest protection..... 100 points~~
  - ~~b. Protection..... 75 pts~~
  - ~~Protection/Restoration..... 50 pts~~
  - ~~Conservation (no change)..... 25 pts~~

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~~c. Water Flow Restoration—Is property owner willing to restore ecosystem processes beyond the minimum required practices?~~

- ~~1. a. Maybe/No..... 0 points~~

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- 2. Yes..... 1050  
points
- b. Maybe/No..... 0 pts
- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
  - 1. ~~a. No..... 0 points~~
  - 2. -Yes..... 1050  
points
  - b. No..... 0 pts
- b. Bargain Sale Opportunity below market value
  - 1. 91% Full Value..... 0 pts
  - 2. 71% -90% ..... 33 pts
  - 3. 50% -70% ..... 66 pts
  - 4. < 50% Full Value..... 100 pts
- e.a. Removal of all remaining development rights?
  - 1. All removed..... 100 pts
  - 2. Development rights remaining ..... 0 pts
- d.a. Is located within a priority area:
  - a. In priority area..... 100 pts
  - b. Not in a priority area..... 0 pts

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations ~~Points~~ section has been 0.10, but is subject to ongoing review by the Committee).

**5-6. Matching Funds Secured or Bargain Sale**

- 1. 4-0% secured..... 0 points
- 2. 25% secured..... 25 points
- 3. 50% secured..... 50 points
- 4. 75% secured..... 75 points
- 5. 100% secured..... 100 points
- 2. 75% secured..... 75 pts
- 3. 50% secured..... 50 pts
- 4. 25% secured..... 25 pts
- 5. 0% secured..... 0pts

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for **Bonus Points Matching Funds or Bargain Sale** section has been 0.10, but is subject to ongoing review by the Committee).

**B. Forestry Site Selection Criteria**

**1. General Site Evaluation**

**a. Total size of parcel(s) (nominal acres)**

- 1. 0 – 9.99.....0 points
- 2. 10 – 19.99 ..... 15 points
- 3. 20 – 49.99.....30 points
- 4. 50 – 79.99.....70 points
- 5. >80..... 100 points

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**b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)**

- 1. >1 mile..... 0 points
- 2. 0.50 to 0.99 mile.....25 points
- 3. 0.25 to 0.49 mile.....50 points
- 4. < 0.25 mile.....75 points
- 5. Adjacent.....100 points

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**c. Number of legal lots of record**

- 1. 0-2.....20 points
- 2. 3.....40 points
- 3. 4.....60 points
- 4. 5.....80 points
- 5. >6.....100 points

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**d. Removal of all unused development rights?**

- 1. Unused development rights remaining .....0 points
- 2. All removed.....100 points

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**e. Number of priority areas parcel is located in**

- 1. 0..... 0 points
- 2. 1.....50 points
- 3. 2-3.....100 points

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*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).*

## 2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
- 1. 1-2..... 20 points
  - 2. 3..... 40 points
  - 3. 4..... 60 points
  - 4. 5..... 80 points
  - 5. >6..... 100 points

- b. Proximity to major roads or road intersections  
*(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)*

- 5. Property is within 2,500 feet of a major road..... 25 points
- 6. Property fronts on a major road..... 50 points
- 7. Property is within 1,500 feet of the intersection of two major roads..... 75 points
- 8. Property is at an intersection of major roads..... 100 points

- c. Threat of Conversion/Parcelization  
Total Number of Parcels in surrounding ¼ mile

- 1. < 20 parcels..... 50 points
- 2. 20 – 50 parcels..... 100 points
- 3. 51 – 100 parcels..... 50 points
- 4. > 100 parcels..... 0 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).*

## 3. Forestry Evaluation

- a. Site index soil score, spatially weighted
- 1. 5..... 20 points
  - 2. 4..... 40 points
  - 3. 3..... 60 points
  - 4. 2..... 80 points
  - 5. 1..... 100 points

- b. Property is identified as priority forestland based on State Forest Action Plan?
- 1. No..... 0 points
  - 2. Yes..... 100 points

- c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?
- 1. No..... 0 points
  - 2. Yes..... 100 points

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- d. Proximity to existing and contiguous blocks of forestland
- 1. >0.5 mile..... 0 points
  - 2. 0.26 – 0.5 mile..... 50 points
  - 3. 0.11 – 0.25 mile ..... 75 points
  - 4. <0.1 mile..... 100 points

- e. Property is located at access to other working forestland?
- 1. No..... 0 points
  - 2. Yes..... 100 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Forestry Evaluation section has been 0.4, but is subject to ongoing review by the Committee).*

**4. Special Considerations**

- a. Site contains existing or proposed trails
- 3. No..... 0 points
  - 4. Yes..... 100 points

- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
- 5. Conservation (no change)..... 25 points
  - 6. Protection/Restoration..... 50 points
  - 7. Protection..... 75 points
  - 8. Highest protection..... 100 points

- c. Is property owner willing to implement forest management practices beyond the minimum required practices?
- 1. Maybe/No..... 0 points
  - 2. Yes..... 100 points

- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
- 1. No..... 0 points
  - 2. Yes..... 100 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).*

**5. Matching Funds or Bargain Sale**

- 1. 0% secured..... 0 points
- 2. 25% secured..... 25 points
- 3. 50% secured..... 50 points
- 4. 75% secured..... 75 points
- 5. 100% secured..... 100 points

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

**C. Ecological Site Selection Criteria**

**1. General Site Evaluation**

- a. Total size of parcel(s) (nominal acres)
  - 1. 0 – 9.99.....0 points
  - 2. 10 – 19.99 .....15 points
  - 3. 20 – 49.99.....30 points
  - 4. 50 – 79.99.....70 points
  - 5. >80..... 100 points
  
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
  - 1. ≥1 mile.....0 points
  - 2. 0.50 to 0.99 mile.....25 points
  - 3. 0.25 to 0.49 mile.....50 points
  - 4. < 0.25 mile.....75 points
  - 5. Adjacent.....100 points
  
- c. Number of legal lots of record
  - 1. 0-2.....20 points
  - 2. 3.....40 points
  - 3. 4.....60 points
  - 4. 5.....80 points
  - 5. ≥6.....100 points
  
- d. Removal of all unused development rights?
  - 1. Unused development rights remaining .....0 points
  - 2. All removed.....100 points
  
- e. Number of priority areas parcel is located in
  - 1. 0.....0 points
  - 2. 1.....50 points
  - 3. 2-3.....100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

**2. Development Pressure**

- a. Number of existing unused development rights offered under current zoning
  - 1. 1-2..... 20 points
  - 2. 3..... 40 points
  - 3. 4..... 60 points
  - 4. 5..... 80 points

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5. >6..... 100 points

**b. Proximity to major roads or road intersections**

*(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)*

- 1. Property is within 2,500 feet of a major road..... 25 points
- 2. Property fronts on a major road..... 50 points
- 3. Property is within 1,500 feet of the intersection  
of two major roads..... 75 points
- 4. Property is at an intersection of major roads..... 100 points

**c. Threat of Conversion/Parcelization**

Total Number of Parcels in surrounding ¼ mile

- 1. < 20 parcels..... 50 points
- 2. 20 – 50 parcels..... 100 points
- 3. 51 – 100 parcels..... 50 points
- 4. > 100 parcels..... 0 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).*

**3. Ecological Evaluation**

The 2019 Landscape Analysis for the program is used to answer Questions 3.a through 3.c.

**a. Protect water quality and quantity landscape analysis score, spatially weighted**

- 1. 0 ..... 0 points
- 2. 0.01 – 0.99..... 20 points
- 3. 1 – 1.99 ..... 40 points
- 4. 2 – 2.99 ..... 60 points
- 5. 3 – 3.99 ..... 80 points
- 6. 4 – 5..... 100 points

**b. Ecologically important aquatic areas landscape analysis score, spatially weighted**

- 1. 0 ..... 0 points
- 2. 0.01 – 0.99..... 20 points
- 3. 1 – 1.99 ..... 40 points
- 4. 2 – 2.99 ..... 60 points
- 5. 3 – 3.99 ..... 80 points
- 6. 4 – 5..... 100 points

**c. Ecologically important terrestrial areas landscape analysis score, spatially weighted**

- 1. 0 ..... 0 points
- 2. 0.01 – 0.99..... 20 points
- 3. 1 – 1.99 ..... 40 points
- 4. 2 – 2.99 ..... 60 points
- 5. 3 – 3.99 ..... 80 points
- 6. 4 – 5..... 100 points

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- d. Additional ecologically important areas not included in landscape analysis score?
1. No..... 0 points
  2. Yes..... 100 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Ecological Evaluation section has been 0.4, but is subject to ongoing review by the Committee).*

#### 4. Special Considerations

- a. Site contains existing or proposed trails
1. No..... 0 points
  2. Yes..... 100 points

- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

1. Conservation (no change)..... 25 points
2. Protection/Restoration..... 50 points
3. Protection..... 75 points
4. Highest protection..... 100 points

- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
2. Maybe/No..... 0 points
  2. Yes..... 100 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).*

#### 5. Matching Funds or Bargain Sale

6. 0% secured..... 0 points
7. 25% secured..... 25 points
8. 50% secured..... 50 points
9. 75% secured..... 75 points
- 10..... 100% secured..... 100 points

*Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).*

### 6. **Final Score**

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-1100). The higher the score, the more closely the property meets the

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goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation. The ~~PDR-CEP~~ Oversight Committee retains the ability to add or subtract up to 5 points on any application. A write-up of committee opinion will be included in all council proceedings.

## V. OVERVIEW OF ~~PDR PROGRAM~~ CEP PROCEDURES

### A. Outreach and Publicity

Step 1: The County shall ~~annually give notice in one newspaper of general circulation in each area where eligible lands are located which may be acquired~~ develop and distribute outreach materials for the CEP. Outreach. ~~The notice~~ shall include the properties eligible to participate, the application process and applicable timeframes and extensions.

**Comment [BSvW9]:** Applications received on a rolling basis, so an annual notice is no longer applicable.

The Administrator may identify each property with potential development rights within priority consideration areas and provide written notification to the property owners.

### B. Application and Ranking

Step 2: Voluntary pre-application screening. Interested property owners may meet with the County ~~PDR Program~~ CEP Administrator (Administrator) to review their eligibility and special circumstances, if any.

Step 3: Application. An owner of land eligible for ~~PDR Program~~ CEP participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County. ~~Lot of Record application must be submitted simultaneously unless determination has already been completed.~~

**Comment [BSvW10]:** Information on Lot of Record in Step 4 below.

Step 4: Lot of Record/Density Determination. An owner of land eligible for ~~PDR Program~~ CEP participation submits a Lot of Record application, ~~and signs a Letter of Intent that states that payment for this service must be made upon closing of the easement or should the applicant wish to withdraw their application.~~ This application determines legal status of lots being considered and determines that number of development rights remaining on said lots. ~~PDR Program application may be submitted simultaneously. The Lot of Record determination must be completed before an appraisal can occur.~~

**Comment [BSvW11]:** Payment due at submittal of application

Step 5: The Administrator reviews each application for completeness, determines if the subject property meets minimum eligibility criteria and assigns a preliminary score based upon the ~~PDR-CEP~~ site selection criteria.

Step 6: The ~~PDR-CEP~~ Oversight Committee reviews ~~PDR Program~~ CEP applications and recommends proposed development rights acquisition utilizing the selection criteria. Recommendations for development right acquisition are prepared and forwarded to County Council to approve, deny, or recommend modification.

Step 7: The Administrator estimates the number of appraisals that can be initiated based on available funds and chooses based on the top ranked parcels from the County Council's list of parcels, and the timeline of projects with secured grant funding.

**Comment [BSvW12]:** Appraisals are only valid for one year, so it is important to coordinate with grant timelines.

| ~~The property owner is notified in writing of eligibility status.~~



~~Step 8: Property owners disputing their ranking may request a reconsideration of their ranking to the PDR Oversight Committee within 14 days after receiving written notice. The Committee shall review the reconsideration request at the next regularly scheduled meeting. Special consideration will be given if applicant modifies the original offer to include a bargain sale. The PDR Oversight Committee may, at its discretion, change the site's rank, recommend the site for subsequent consideration, or deny the request.~~

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Comment [BSvW13]: Applications are received and reviewed on a rolling basis, so this no longer applies.

### C. Title

Step 9: The Administrator initiates a title search. Closing is conditioned on the resolution of all unapproved title exceptions, within the County's sole discretion, which may require the receipt of subordination agreements or payoff letter.

### D. Pricing Estimate and Appraisal

Step 10: ~~\_\_\_ The Administrator or designee provides preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s), and spells out conditions under which costs for further due diligence and the lot of record must be reimbursed to the county if the property owner chooses to withdraw from the program within a specified period of time.~~

Comment [BSvW14]: No longer applicable

Step 10: \_\_\_ The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).

Step 11: \_\_\_ Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the value of placing a conservation easement on the land that removes development rights ~~value of the land proposed for development rights sale~~. The ~~development rights~~ conservation easement value is the difference between the market value of full ownership of the land, and the agricultural or forestry value.

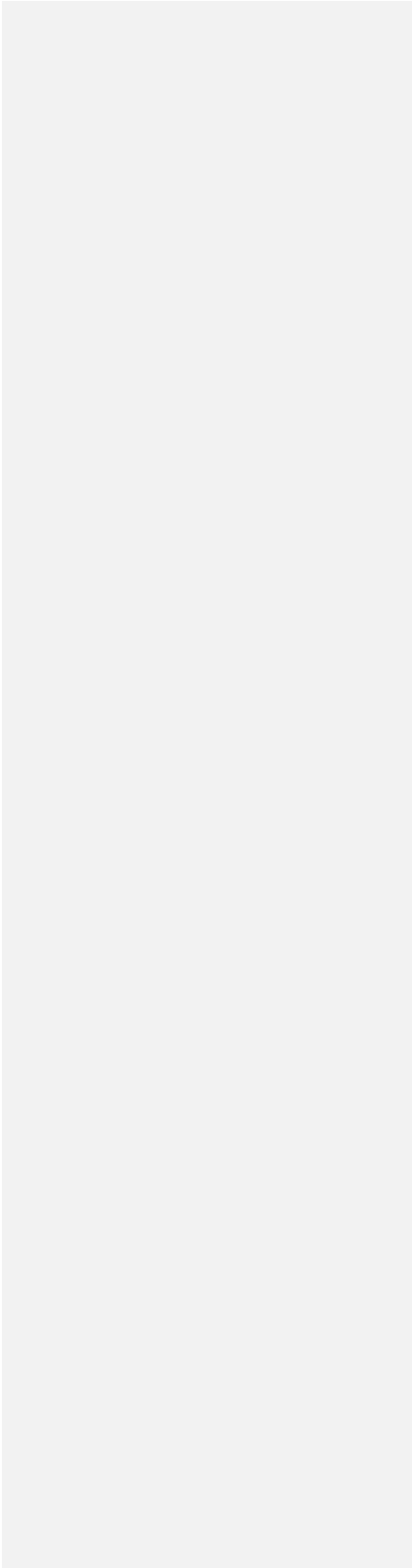
Comment [BSvW15]: Appraisals value the conservation easement. See VII.E.1.

Step 12: \_\_\_ The appraiser ~~-~~ submits the completed ~~-~~ appraisal (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.

Step 13: \_\_\_ The Administrator or designee meets with ~~-the -~~ property ~~-owner -~~ to ~~-review -~~ the appraisal (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner's questions.

Step 14: \_\_\_ If the property owner believes that the land has not been adequately appraised or valued, the owner may, within the time allowed in the schedule, commission an appraisal at the owner's expense.

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#### E. Offer to Purchase Easement and Agreement

Step 15: \_\_\_ A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.

Step 16: \_\_\_ Within 30 days, the property owner accepts, rejects or makes a counter offer. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.

Step 17: \_\_\_ Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

#### F. Adjacent Property Owner Notification

Step 18: \_\_\_ Neighboring property owners are notified that adjacent land is in the process of being preserved.

#### G. Approval

Step 19: \_\_\_ Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.

Step 20: \_\_\_ Review materials are sent to other participating entities for partially or wholly funded conservation easements several days prior to any deadline.

#### I. Settlement

Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.

Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.

Step 23: \_\_\_ Checks are requested from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

#### J. Recording

Step 24: The conservation easement will be recorded at the County Auditor's office. The County or its designee will monitor the properties under easement at least annually to ensure compliance with the easement.

## VI. CONSERVATION EASEMENTS

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### A. Description

A conservation easement deed is a legally binding document, which is recorded by the County Auditor, forever restricting the property to agricultural, forestry, and/or ecological and directly associated uses, and for which compensation may be paid. As an easement in gross in perpetuity, restrictions are binding upon the owner and future owners, and run with the land.

### B. ~~PDR Program~~ Conservation Easements

At the time of acquisition of development rights from a participating property, a conservation easement is placed on the property permanently restricting development of the site and protecting/preserving the agricultural, forestry, and ecological values associated with the site. The conservation easement must be signed by both the property owner(s) and the County Executive or his/her designee and recorded with the property records for the property. A model conservation easement deed is included in these guidelines as attachment D.

#### 1. Conservation Easement Requirements

Conservation easements shall be on a form approved by the Whatcom County Prosecuting Attorney and shall meet the following basic requirements:

- a. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the area subject to the easement;
- b. Restriction is granted in favor of Whatcom County, or if designated by the organizations as defined in RCW64.04.130;
- c. Restriction is granted in perpetuity, and shall bind existing and future property owners; and
- d. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the property, and the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

#### 2. Filing

After the conservation easement is signed and notarized, it must be recorded with the Whatcom County Auditor's Office.

### C. Conservation Easement Conveyance

Conservation easements may be either donated or sold, or a combination of both.

1. Conservation Easement Donation

- a. A donation of a total parcel will not be subject to eligibility except as below in section c. Partial parcel donation shall be considered under the same rule as for development rights sales. Notwithstanding the eligibility of the property, acceptance of a fee interest or partial donation is within the discretion of the County Council.
- b. Whatcom County will accept voluntary donations or bequests of development rights as perpetual easements in gross if meeting eligibility criteria (except priority area criteria) and within the discretion of the County Council.
- c. All properties offered for development rights donation must meet the following minimum eligibility criteria:
  - 1. The ~~PDR-CEP~~ Oversight Committee will consider each offer on a case by-case basis, considering the property's consistency with current and future land uses, and
  - 2. The property must be at least 1 acre in size, and
  - 3. Be in agricultural or forestry use or contain ecological values and has not been irrevocably devoted to a use inconsistent with the above values,
  - 4. Cannot be located within an Urban Growth Area, unless coordination with the proximal small city is a component of the donation.

2. Conservation Easement Sale

- a. Whatcom County will purchase perpetual conservation easements on qualified properties in accordance with the policies and procedures of the Whatcom County ~~Agricultural, Forestry, and Ecological Purchase of Development Rights~~ Conservation Easement Program, with Federal, State, County, and/or private funds and any combination thereof.
- b. All properties offered for conservation easement sale must meet minimum eligibility criteria as contained in Section III.

## VII. OPERATIONAL PROCEDURES FOR ACQUIRING ~~PDR~~ CONSERVATION EASEMENTS

### A. Outreach and Publicity

~~Annually, notice shall be published in one newspaper of general circulation~~ Outreach shall occur to inform landowners about the program and may include advertising in newspapers or other publications, landowner mailers, and presentations. Application opening and closing dates, if any, will be determined by the ~~PDR-CEP~~ Oversight Committee. The Committee shall have the discretion to consider applications in rounds, or individually on a rolling basis. If selection deadlines are extended, the committee will provide public notice of the extension.

### B. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County. The application must be submitted to the County on the form provided by the ~~PDR Program~~ CEP, and according to the relevant public notice. Applicants are to include at a minimum:
  - a. Name(s) and address(es) of the property owner(s) of the site;
  - b. Legal description and parcel number(s);
  - c. Copy of the property deed and title;
  - d. Total acreage of farmland to be included in the ~~PDR Program~~ CEP;
  - e. Current land use and soils;
  - f. Number of dwelling units;
  - g. Description of the farming operation;
  - h. Other information necessary to evaluate property eligibility;
  - ~~i. Lot of Record/Density Determination application and payment, or Lot of Record/Density Determination application and signed Letter of Intent agreeing to terms of payment at the time of easement closing or upon withdrawal from program, or completed Lot of Record/Density Determination; and~~
  - j-i. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.
2. The Administrator shall review each application to determine completeness and eligibility.
3. Applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)
4. The ~~PDR-CEP~~ Oversight Committee shall provide the County Council with information and scoring of properties recommended for conservation easement acquisition by the committee. County Council shall approve or deny pursuit of conservation easement acquisitions on the parcels.

Comment [BSvW16]: Not needed with initial application

5. The Administrator shall then arrange appraisals (or alternate determination of value) of eligible applicant properties as determined by the County Council.
6. The ~~PDR-CEP~~ Oversight Committee and Administrator shall provide updates to the County Council discussing recommended purchases, possible program changes, and anticipated budget needs.

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### C. Appraisal

1. Appraisals for eligible properties shall be conducted to determine the value of ~~development rights a conservation easement~~ on parcels in the order of acquisition priority ~~and in accordance with grant funding timelines~~ until acquisition funds are expended.
- a. The appraisals are to be made by an independent appraiser qualified to appraise agricultural, forestry, and/or ecological land for ~~development rights conservation easement~~ purchases. An appraiser is deemed qualified if he or she possesses a State of Washington certification as a State Certified General Real appraiser, MAI designation by the Appraisal Institute (or equivalent), and at least five years agricultural lands appraisal experience. Appraisers shall supply a narrative or UAAR form report, which contains information as required by the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform ~~Appriaisal~~ Appraisal Standards of Federal Land Acquisition (UASFLA) and as specified in any contract with the County.
  - b. An appraisal report is an objective report of market facts. The appraisal report must estimate both the unrestricted fee market value of the land only, excluding the value of buildings, and the agricultural ~~or forestry~~ value of the land only, of which the difference is the ~~development rights conservation easement~~ value.
  - c. Both values shall be based primarily on an analysis of comparable sales. If comparable sales data is not available for agricultural lands, the appraiser may use local farmland rental values or capitalized production values to determine the agricultural values of the land.
  - d. A description of the buildings or other improvements shall appear in the appraisal report; however, the buildings will not be valued and therefore will not be considered in determining the development rights value.
  - e. The appraiser shall report whether the subject property has any land use restrictions, public or private and/or physical attributes, which limit the developmental capability of the land.
  - f. The appraiser shall be advised that conservation easements are perpetual. The perpetual nature of the easement shall take precedent over any agricultural zoning status.

Comment [BSvW17]: Appraisals have always been for conservation easement value. See V.I.E.1.

Comment [BSvW18]: Appraisals are only valid for one year, so it is important to coordinate with grant timelines

Comment [BSvW19]: Critical areas restrictions captured here.

- g. The appraisal shall be in writing and may be discussed with the owners prior to the submission of written offers.



- †
- h. ~~If~~ If the property owner believes the property has not been adequately appraised, the owner may, within the time allotted, request that a review appraisal be made at the owner's expense. This appraisal must be completed in accordance with the guidelines set forth herein. If the review (owner's) appraisal is not completed within the allotted time, the application will be delayed for future committee consideration. If a review appraisal is completed, the appraisals will be reviewed by the County's Appraiser. The County's Appraiser in consultation with the Program Administrator and the ~~PDR-CEP~~ Oversight Committee will accept, modify or reject the review appraisal. The determination of the County's Appraiser is final.
  - i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the ~~farm~~ land's value before and after the voluntary conservation easement.
2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

#### D. Title and Survey Issues

1. The Administrator shall request a title report confirming that applicant is the owner of the property and has unrestricted legal right to transfer the development rights (i.e. there must be clear title to transfer the property). The title report will be provided to the County Attorney for review.
2. All encumbrances (including but not limited to: liens, mortgages and judgments) against the property must be subordinated, satisfied or removed prior to development rights acquisition. Mortgage and/or lien holder subordination and releases may be required acknowledging that a conservation easement will be placed on the property and subordinating their interest in the property to the deed restriction.
3. At settlement for a County or joint development rights purchase, the ~~PDR Oversight Committee or applicant~~ Administrator shall provide a title insurance policy issued by a title insurance company authorized to conduct business in Washington State by the Washington State Office of Insurance Commissioner. The cost of such title insurance shall be a shared cost, with the county's portion considered a cost incident to the ~~development rights~~ conservation easement purchase and a reimbursable expense from the County's Conservation Futures Fund.
4. It is the property owner's responsibility to survey (or provide a legal description that meets specific standards) any exceptions from the easement and any graveyards or cellular towers that may be located on the property. It is the

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Comment [BSvW20]: Administrator initiates escrow with title company, which issues title insurance policy.

property owner's responsibility to provide a legal description for any commercial

operation on the farm that is not incidental to the overall farming operation, in order to exclude it from the easement. Surveys shall be conducted by a licensed surveyor in accordance with state and federal regulations.

E. Development Rights Value and Purchase Price

1. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Development rights may only be purchased in perpetuity.

F. Recommendation of ~~Development Rights~~Conservation Easement Purchases by the ~~PDR-CEP~~ Oversight Committee

1. The ~~PDR-CEP~~ Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
  - a. Evaluation according to the site selection criteria
  - b. Consistency with County Comprehensive Plan
  - c. Cost relative to total allocations and appropriations
  - d. Proximity to other land subject to protection easements
2. Upon receiving the recommendations of the ~~PDR-CEP~~ Oversight Committee and the Administrator, the County Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.
3. If a property is approved for ~~development rights~~conservation easement purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County's offer. A written offer will be provided to the property owner. Written notice shall also be provided to land not approved for ~~development rights~~conservation easement purchase.
4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
  - a. Accept the offer.
  - b. Reject the offer.
    1. Reject offer outright
      - a. no further action
      - b. participate in future review
    2. Submit a counter offer within 90 days of written notice of offer by the County.
  - c. Failure to notify the County within 30 days shall constitute rejection of the offer.

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- I
5. If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
    - a. Lump Sum
    - b. Installment Purchase Agreement (IPA)
    - c. Like-Kind Exchange
    - d. Or a combination of the above
  6. For ~~development rights~~conservation easement purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.
  7. All Agreements of Sale and Conservation Easements require the County Council's approval.

G. Grant of the Agricultural, Forestry, and/or Ecological Protection Conservation Easement

Before the purchase of development rights can be finalized, a conservation easement in a form approved by the County Attorney and consistent with the policies of the ~~PDR Program~~CEP Guidelines, must be placed on the property permanently restricting development of the site and preserving its agricultural, forestry and/or ecological values.

The principal interest of the County is to ensure that lands are preserved and subsequently stewarded in a manner that maintains and enhances their farmland, forestland, and/or ecological values. There may be some instances where there is a public interest in another public entity or non-profit organization to hold the conservation easement, for continued stewardship and protection of the land. The County will consider:

1. The preferences of the donor or seller;
2. Administrative, monitoring, and enforcement issues associated with the conservation easement and the resources available to address these issues;
3. Requirement of Federal, State or County funding sources utilized to purchase ~~development rights~~conservation easements.

H. ~~Development Rights~~Conservation Easement Purchase Recommendations/Submission Requirements

1. County Council: Each recommendation for ~~development rights~~conservation easement purchases with County funds, State funds, Federal funds, private donor funds or a combination of funds shall be presented to the County Council at a

regularly scheduled public meeting.

2. Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.

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## VIII. CONSERVATION FUTURES FUND

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### A. Intent

This fund was established in 1992 to be used solely to acquire right and interests in open space land, farm and agricultural land, and timber land, so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use and enjoyment.

### B. Fund Sources

This Conservation Futures Fund is funded by a real property tax applied to all real property within Whatcom County at a rate determined by the county administration and county council.

### C. Fund Source Accounts

Council shall annually consider an allocation of Conservation Futures Fund to be placed in a ~~Purchase of Development Rights~~Conservation Easement Program Account.

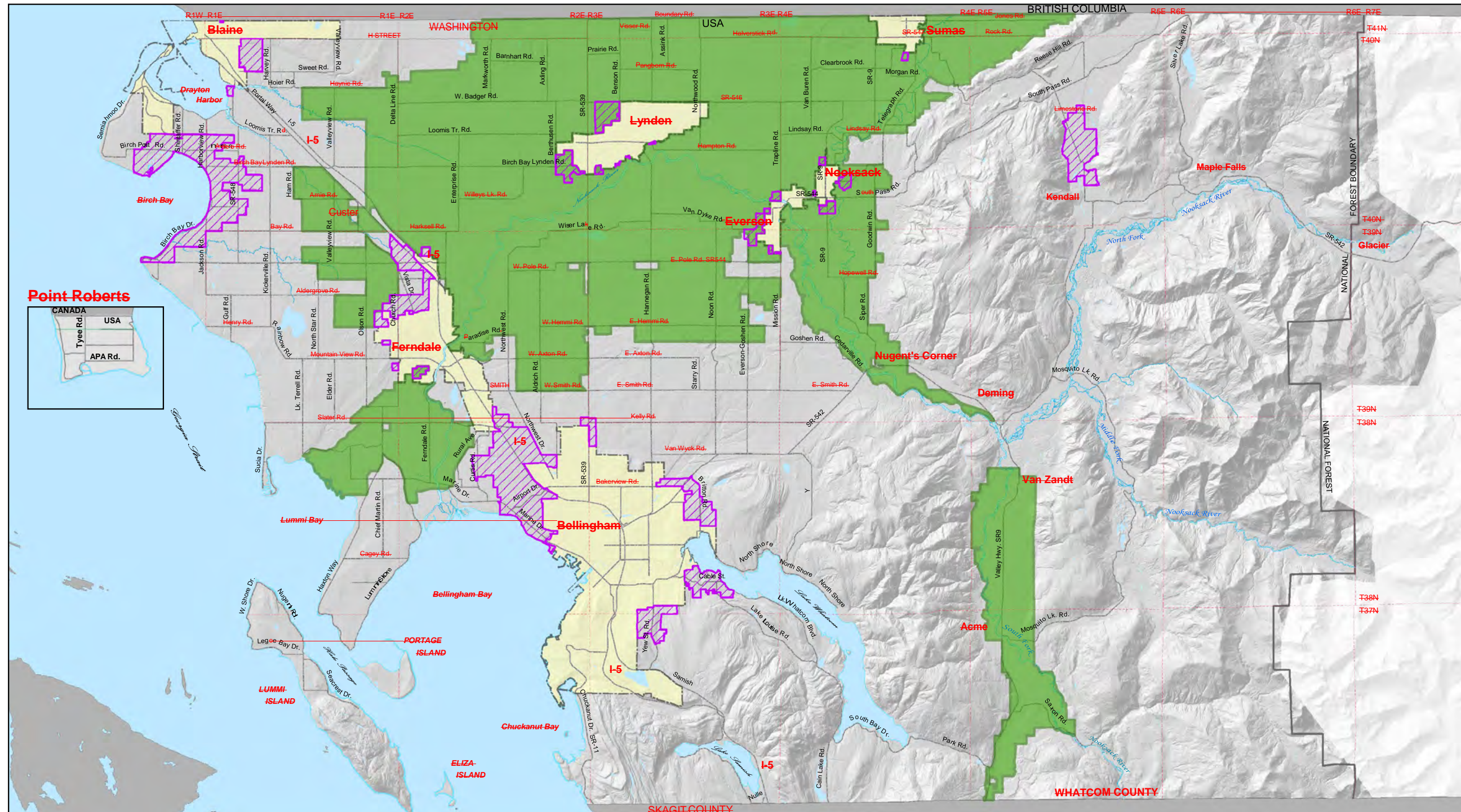
### D. Installment Payment Fund

1. The intent of installment payment funds, which are established by the County, is to encumber and invest committed funds for which recipient property owners have elected annual installment payments for a period, which may vary according to the wishes of the property owner.
2. The full consideration of any transaction for which installment payments of five years or less have been elected shall be placed in the fund, less the amount of any first installment to be paid at settlement. This amount shall be invested and annual installment payments shall include the interest accrued.
3. Annual installment payments shall be made on or before January 20<sup>th</sup> of each year.
4. A property owner may enter into an Installment Purchase Agreement for fifteen (15) to thirty (30) years at an interest rate to be negotiated between the property owner and the County. The property owner will receive semi-annual interest payments that are tax exempt. Principal will be paid in one lump sum at the end of term. The property owner will also receive a security representing the Installment Purchase Agreement. The property owner may sell or assign this Agreement.

## E. Public Expenditures

1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the ~~PDR Program~~CEP Account shall be limited to interests in qualified agricultural, forestry, and/or ecological land participating in the ~~Whatcom County's Agricultural, Forestry, and Ecological Purchase of Development Rights~~Conservation Easement Program, and other expenses necessary to the acquisition of conservation easements authorized under RCW 84.34.200-.240.
3. The annual appropriation to the ~~PDR Program~~CEP by the County Council shall be available for the calendar year in which the appropriation was made and or the subsequent calendar year.








**Point Roberts**



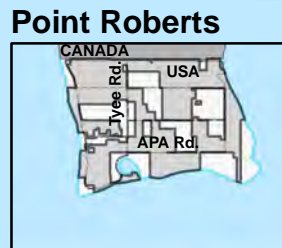
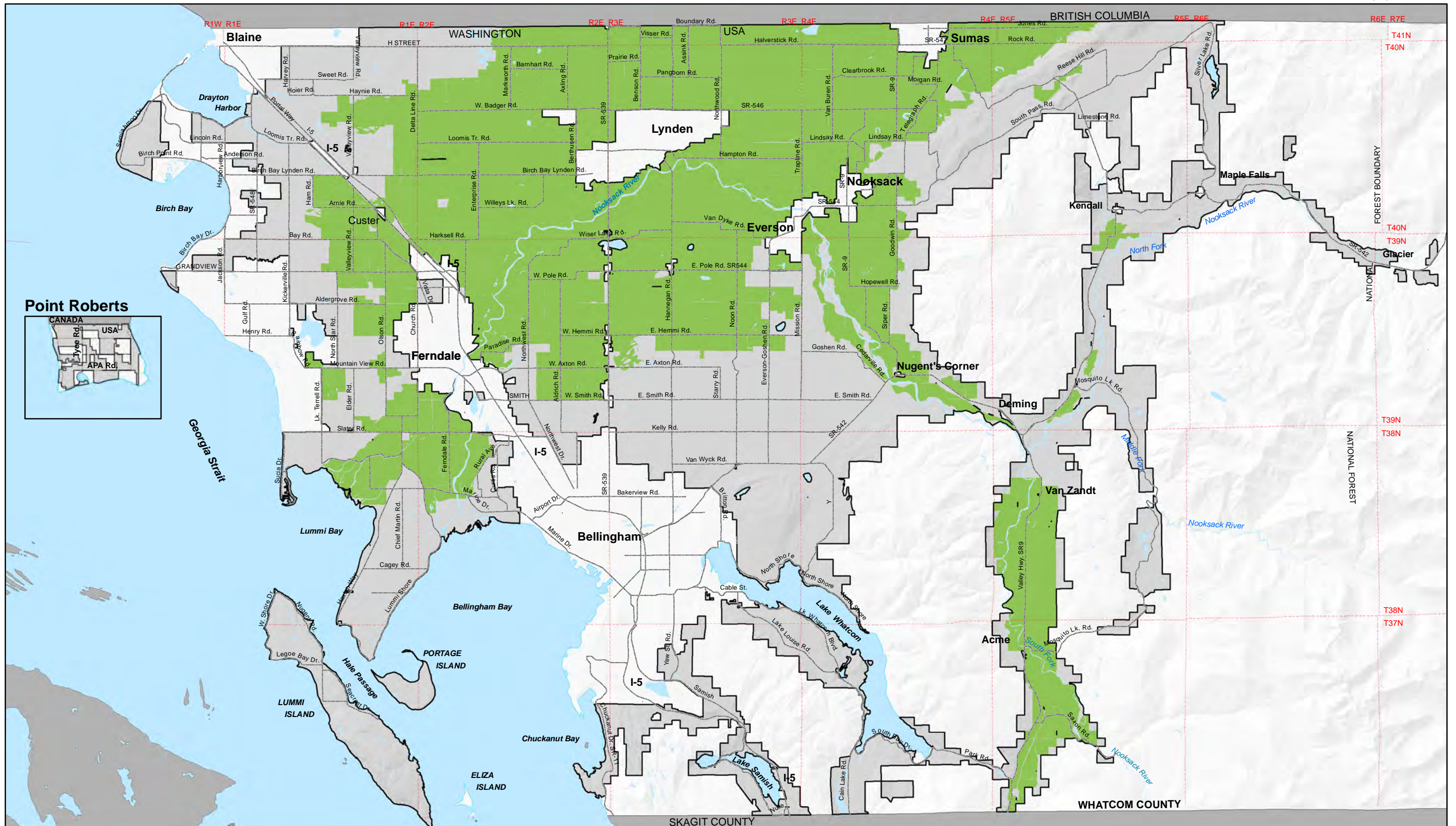
**Whatcom County Agricultural Priority Areas**  
**Agriculture Zone, Rural Study Areas,**  
**Initial PDR Target Areas, and Watershed-**  
**Improvement Districts**

-  Urban-Growth Areas
-  Ag-Zone/Rural Study Areas/PDR-Target Areas/WIDs
-  Incorporated City

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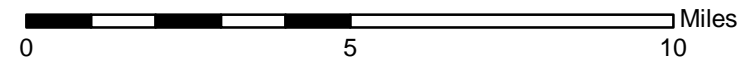




# Whatcom County Agricultural Priority Areas

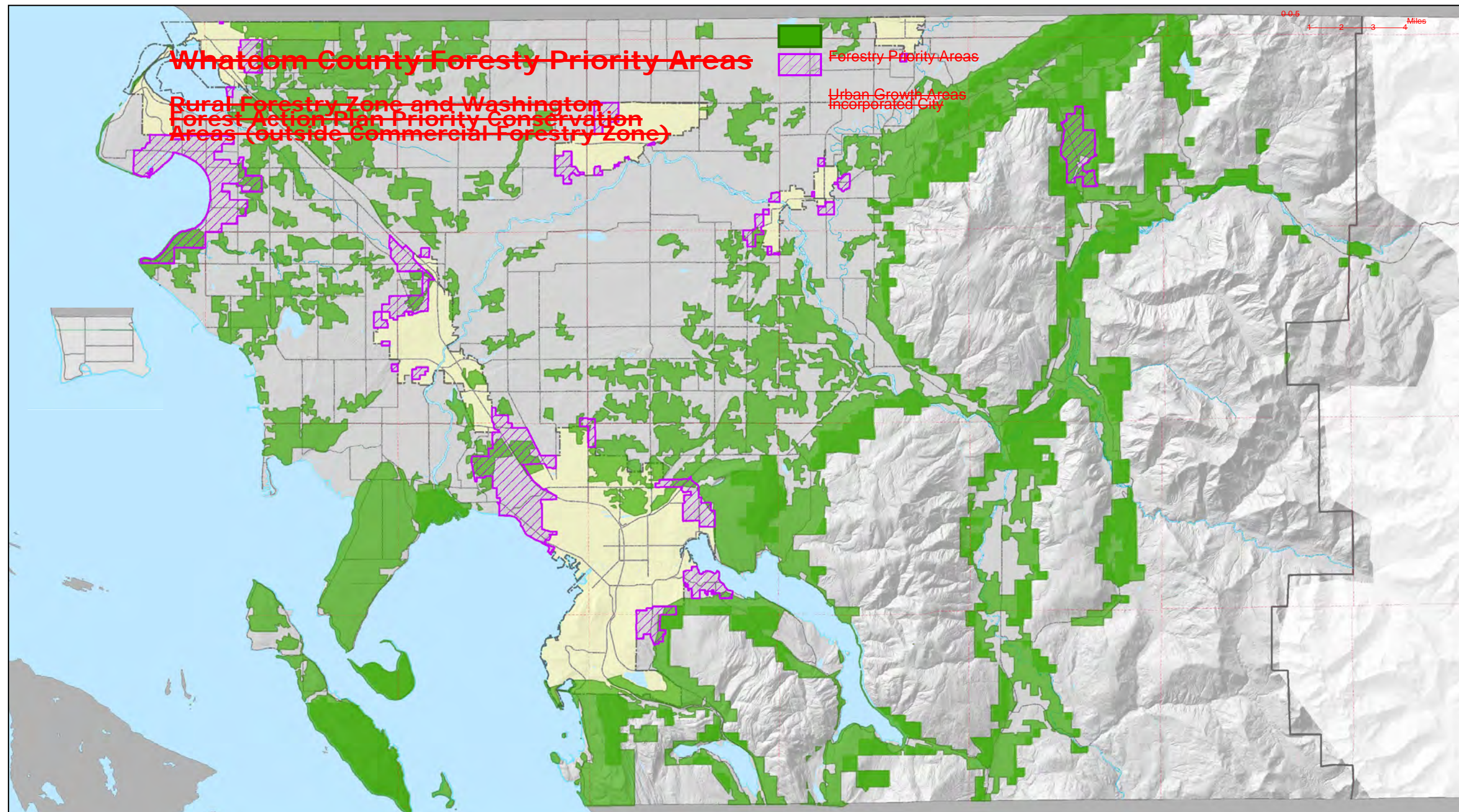
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

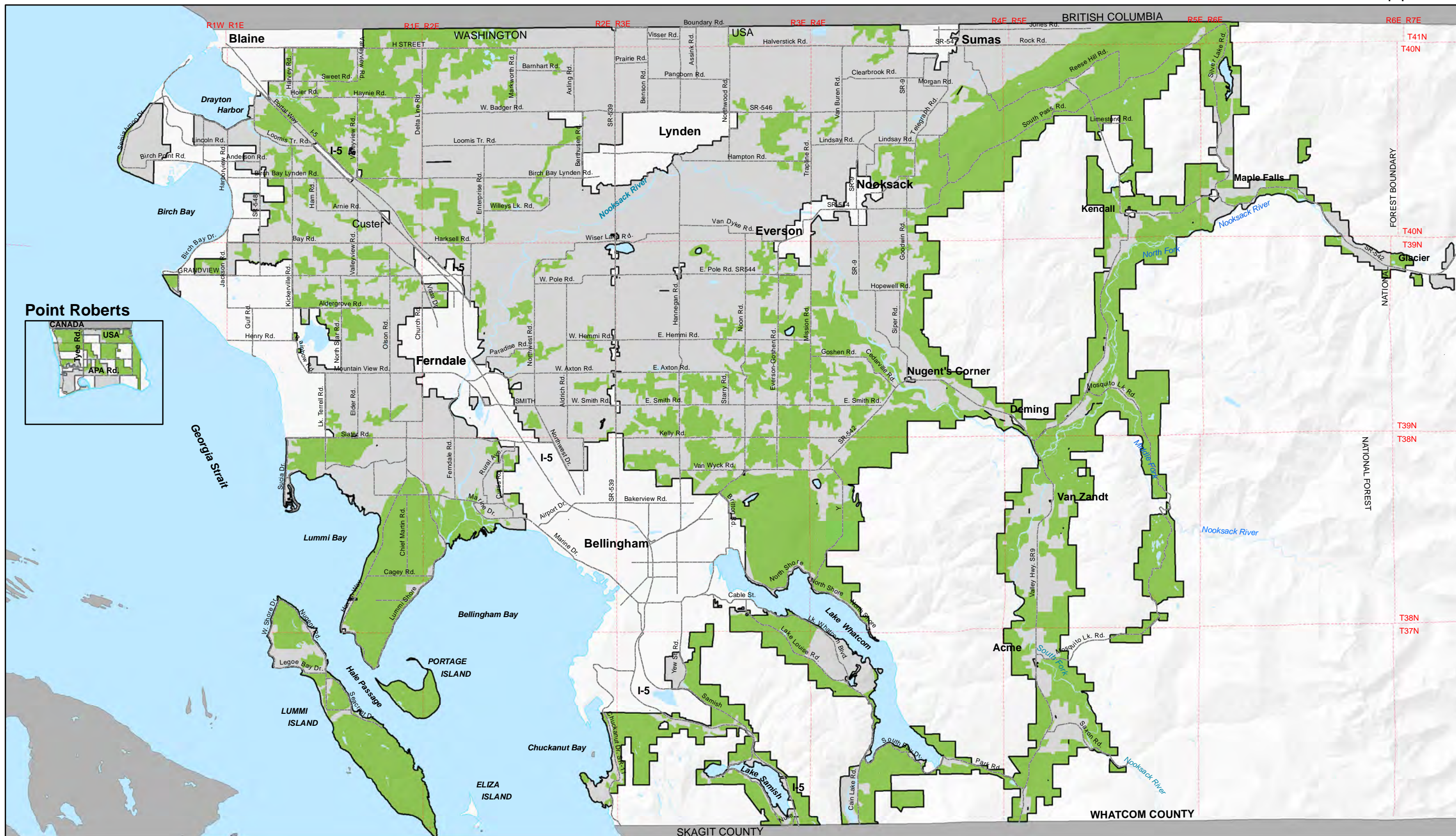
- Agricultural Priority Area
- Conservation Easement Program Area  
(Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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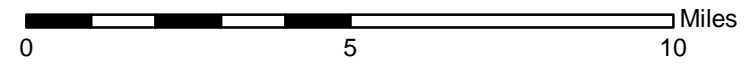




# Whatcom County Forestry Priority Areas

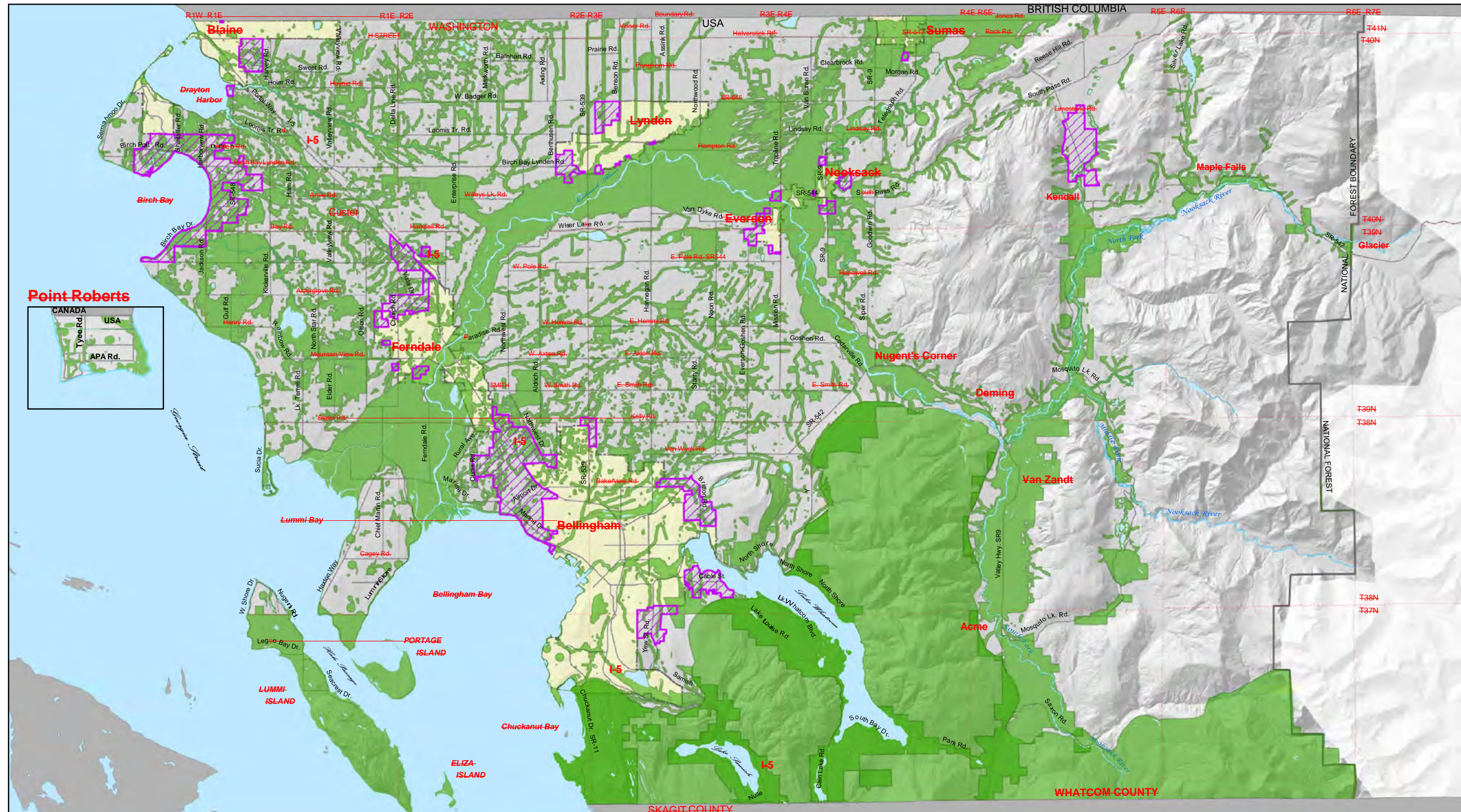
## Rural Forestry Zone and WA Forest Action Plan Priority Areas

- Forestry Priority Area
- Conservation Easement Program Area  
(Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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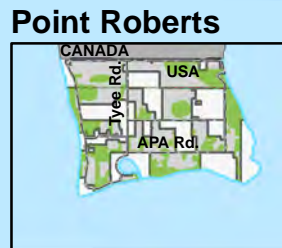
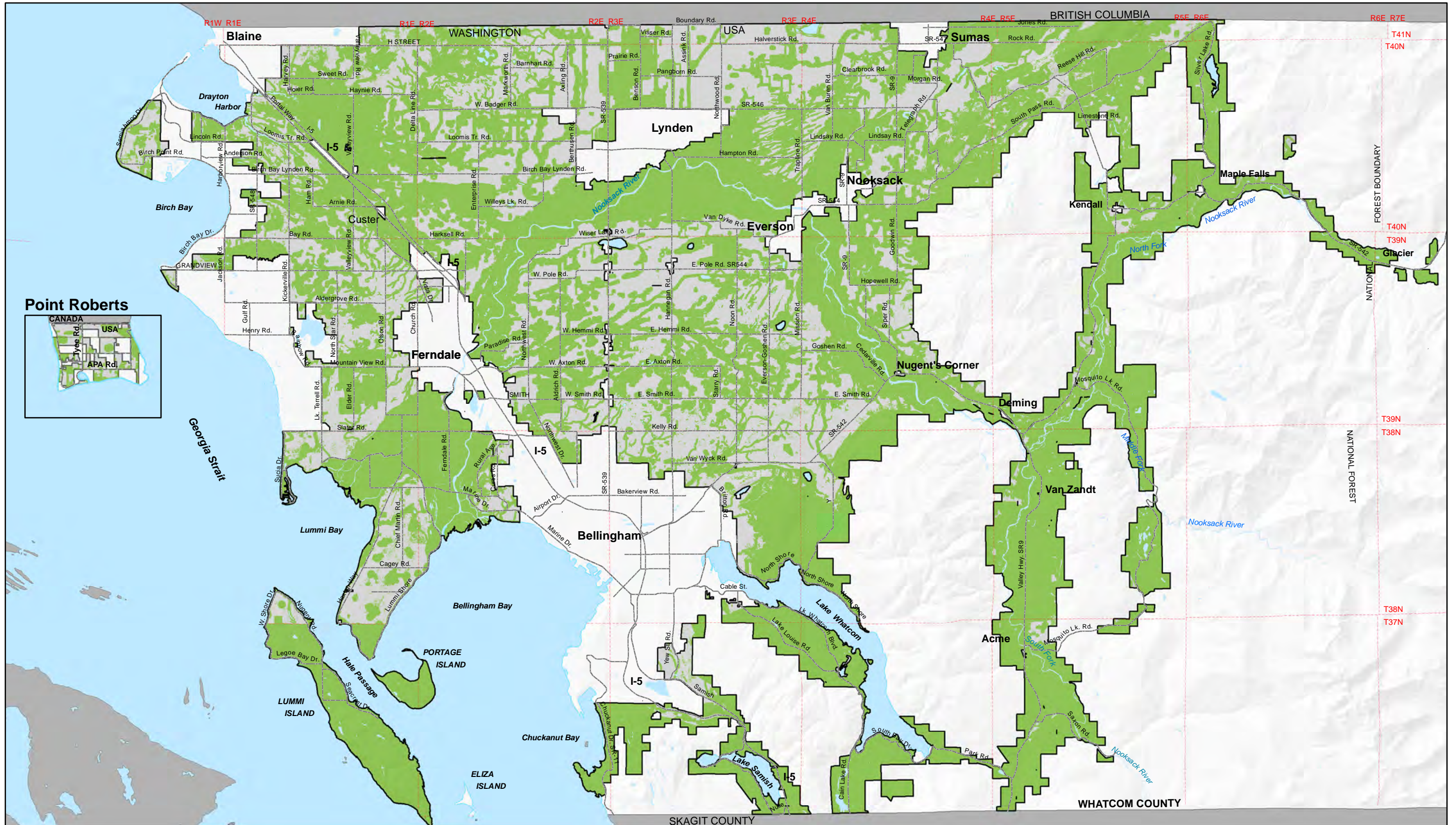
## Whatcom County Ecological Priority Areas Habitat Conservation Areas and FEMA Floodplain (outside of Commercial Forestry Zone)

- Hab. Conservation Areas/Fema Floodplain
- Urban Growth Areas
- Incorporated City

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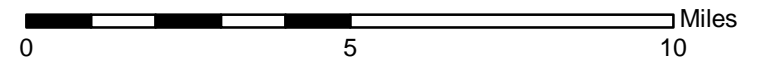




# Whatcom County Ecological Priority Areas

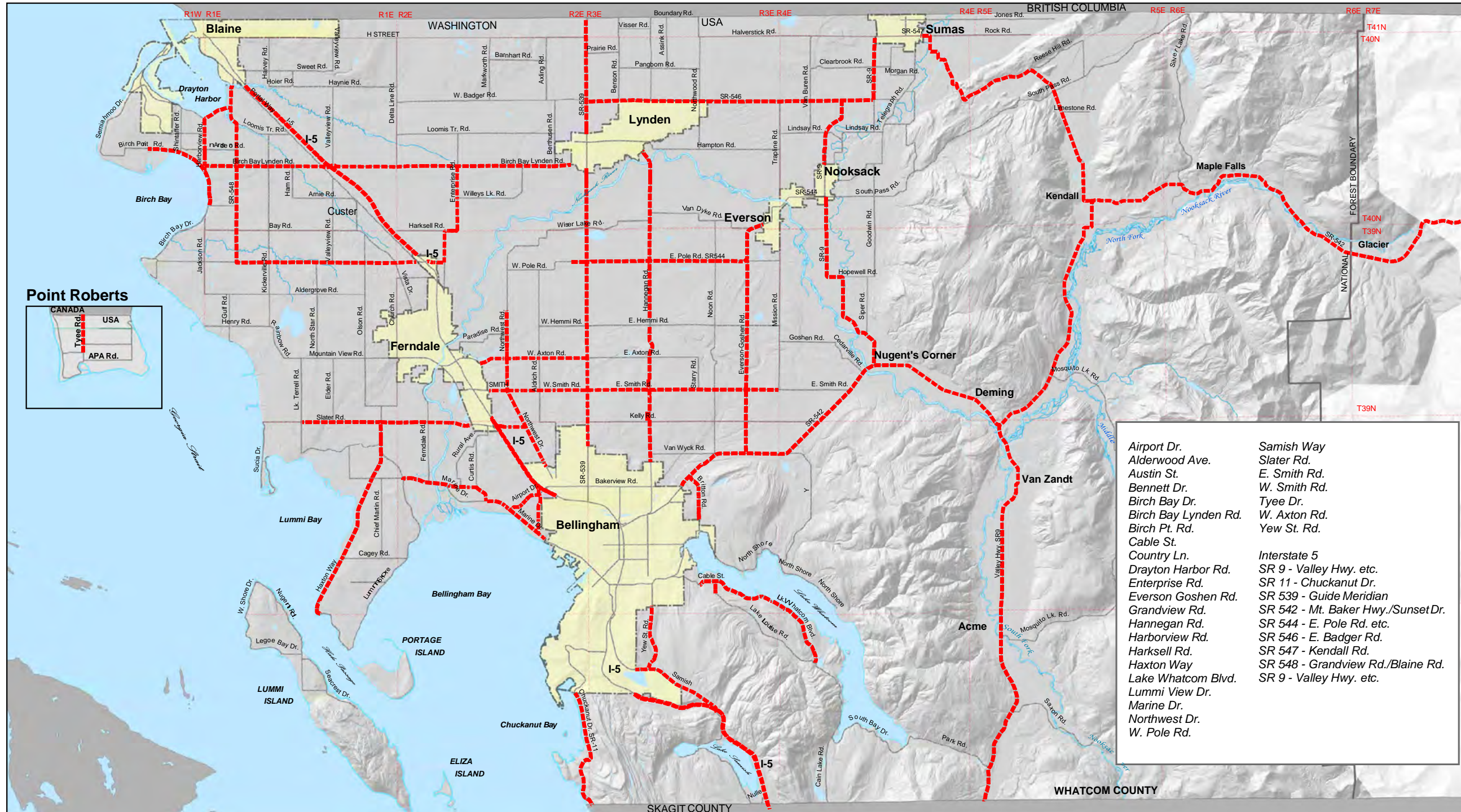
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

- Ecological Priority Area
- Conservation Easement Program Area  
(Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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- Airport Dr.
- Alderwood Ave.
- Austin St.
- Bennett Dr.
- Birch Bay Dr.
- Birch Bay Lynden Rd.
- Birch Pt. Rd.
- Cable St.
- Country Ln.
- Drayton Harbor Rd.
- Enterprise Rd.
- Everson Goshen Rd.
- Grandview Rd.
- Hannegan Rd.
- Harborview Rd.
- Harksell Rd.
- Haxton Way
- Lake Whatcom Blvd.
- Lummi View Dr.
- Marine Dr.
- Northwest Dr.
- W. Pole Rd.
- Samish Way
- Slater Rd.
- E. Smith Rd.
- W. Smith Rd.
- Tye Dr.
- W. Axton Rd.
- Yew St. Rd.
- Interstate 5
- SR 9 - Valley Hwy. etc.
- SR 11 - Chuckanut Dr.
- SR 539 - Guide Meridian
- SR 542 - Mt. Baker Hwy./Sunset Dr.
- SR 544 - E. Pole Rd. etc.
- SR 546 - E. Badger Rd.
- SR 547 - Kendall Rd.
- SR 548 - Grandview Rd./Blaine Rd.
- SR 9 - Valley Hwy. etc.



# Whatcom County

## Major Roads - >3,000 Average Daily Trips

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APPENDIX E

Soils List

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Soil #	Soil Name	APO y/n	LESA Group	PRIME	STATEWIDE IMPORTANCE	Site Index
1	ANDIC CRYOCHREPTS - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
2	ANDIC CRYOCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
3	ANDIC XEROCHREPTS - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
4	ANDIC XEROCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
5	ANDIC XEROCHREPTS-COOL ROCK OUTCROP COMPLEX-60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
6	BARNESTON GRAVELLY LOAM - 0 TO 8% SLOPES	<del>NN</del>	<u>30</u>	<u>40</u>		2
7	BARNESTON VERY GRAVELLY LOAM - 8 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>40</u>		2
8	BARNESTON VERY GRAVELLY LOAM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
9	BARNESTON VERY GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
10	BARNHARDT GRAVELLY LOAM - 0 TO 5% SLOPES	<del>NN</del>	<u>14</u>	<u>14</u>		3
11	BELLINGHAM SILTY CLAY LOAM - 0 TO 2% SLOPES	<del>NN</del>	<u>00</u>	<u>22</u>		
12	BIRCHBAY SILT LOAM - 0 TO 3% SLOPES	<del>YY</del>	<u>1+</u>	<u>1+</u>		3
13	BIRCHBAY SILT LOAM - 3 TO 8% SLOPES	<del>YY</del>	<u>0+</u>	<u>0+</u>	yes	3
14	BIRCHBAY SILT LOAM - 8 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	3
15	BLAINEGATE SILTY CLAY - 0 TO 1% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	
16	BLAINEGATE-URBAN LAND COMPLEX - 0 TO 1% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
17	BLETHEN GRAVELLY LOAM - 5 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	3
18	BLETHEN GRAVELLY LOAM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	3
19	BLETHEN GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
20	BLETHEN VERY BOULDERY LOAM - 5 TO 40% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
21	BOROSAPRISTS - 0 TO 2% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
22	BRISCOT SILT LOAM DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>25</u>		
23	BRISCOT ORIDIA AND SUMAS SOILS - 0 TO 2% SLOPES	<del>NN</del>	<u>00</u>	<u>55</u>		
24	CHUCKANUT LOAM - 3 TO 8% SLOPES	<del>NN</del>	<u>00</u>	<u>0+</u>	yes	
25	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 5 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
26	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
27	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
28	CHUCKANUT-SHALCAR COMPLEX - 0 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
29	CHUCKANUT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
30	CLENDENEN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
31	CLIPPER SILT LOAM-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>22</u>	<u>22</u>		
32	COMAR SILT LOAM - 5 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
33	COMAR SILT LOAM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
34	COMAR SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
35	CRINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
36	CUPPLES GRAVELLY LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
37	CUPPLES GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
38	DEKAPEN LOAM - 8 TO 25% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	3
39	DEMING GRAVELLY SILT LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
40	DEMING GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		

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41	DIOBSUD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<del>00</del>	<del>00</del>		
42	EDFRO VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	<del>NN</del>	<del>00</del>	<del>00</del>		
43	EDFRO VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<del>00</del>	<del>00</del>		

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94	LABOUNTY SILT LOAM-DRAINED - 0 TO 2% SLOPES	<del>NN</del>	<u>00</u>	<u>22</u>		
95	LARUSH SILT LOAM - 0 TO 3% SLOPES	<del>YY</del>	<u>33</u>	<u>13</u>		2
96	LAXTON LOAM - 0 TO 30% SLOPES	<del>YY</del>	<u>1+</u>	<u>1+</u>		2
97	LAXTON LOAM - 3 TO 8% SLOPES	<del>YY</del>	<u>1+</u>	<u>1+</u>		2
98	LAXTON LOAM - 8 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
99	LYNDEN SANDY LOAM	<del>YY</del>	<u>1+</u>	<u>14</u>		3
100	LYNDEN SANDY LOAM - 3 TO 7% SLOPES	<del>YY</del>	<u>1+</u>	<u>14</u>		3
101	LYNDEN-URBAN LAND COMPLEX - 0 TO 5% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
102	LYNNWOOD SANDY LOAM - 0 TO 5% SLOPES	<del>NN</del>	<u>00</u>	<u>40</u>		3
103	LYNNWOOD SANDY LOAM - 5 TO 20% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	3
104	MONTBORNE GRAVELLY LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
105	MONTBORNE GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
106	MONTBORNE-RINKER COMPLEX - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
107	MT. VERNON FINE SANDY LOAM - 0 TO 2% SLOPES	<del>YY</del>	<u>22</u>	<u>13</u>		2
108	NATI LOAM - 5 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
109	NATO LOAM = 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
110	NATI LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
111	NEPTUNE VERY GRAVELLY SANDY LOAM- 0 TO 3% SLOPES	<del>NN</del>	<u>00</u>	<u>40</u>		3
112	OAKES VERY GRAVELLY LOAM - 8 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
113	OAKES VERY GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
114	OAKES VERY GRAVELLY LOAM - 60 TO 80% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
115	ORIDIA SILT LOAM-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>25</u>		
116	PANGBORN MUCK-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>22</u>		
117	PICKETT-ROCK OUTCROP COMPLEX - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
118	PICKETT-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
119	PILCHUCK LOAMY FINE SAND - 0 TO 3% SLOPES	<del>NN</del>	<u>00</u>	<u>70</u>		3
120	PITS	<del>NN</del>	<u>00</u>	<u>00</u>		
121	POTCHUB LOAM - 8 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
122	POTCHUB LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
123	PUGET SILT LOAM-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>25</u>		
124	PUYALLUP FINE SANDY LOAM - 0 TO 2% SLOPES	<del>YY</del>	<u>22</u>	<u>43</u>		2
125	REVEL LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
126	REVEL LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
127	REVEL-WELCOME-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		4
128	RINKER VERY CHANNERY SILT LOAM - 8 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	3
129	RINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
130	RIVERWASH	<del>NN</del>	<u>00</u>	<u>00</u>		
131	ROCK OUTCROP	<del>NN</del>	<u>00</u>	<u>00</u>		
132	ROCK OUTCROP-KULSHAN COMPLEX - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
133	RUBBLE LAND	<del>NN</del>	<u>00</u>	<u>00</u>		
134	SAAR GRAVELLY SILT LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
135	SAAR GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
136	SAAR-HARTNIT COMPLEX - 5 TO 40% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
137	SANDUN VERY GRAVELLY SANDY LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
138	SANDUN VERY GRAVELLY SANDY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
139	SEHOME LOAM - 2 TO 8% SLOPES	<del>YY</del>	<u>00</u>	<u>1+</u>		2
140	SEHOME LOAM - 8 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
141	SEHOME GRAVELLY LOAM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2

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					yes	
142	SEHOME GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<del>00</del>	<del>00</del>		2
143	SHALCAR MUCK-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<del>33</del>	<del>22</del>		

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144	SHALCAR AND FISHTRAP SOILS - 0 TO 2% SLOPES	<del>NN</del>	<u>00</u>	<u>22</u>		
145	SHUKSAN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
146	SHUKSAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	
147	SHUKSAN-KULSHAN-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
148	SKIPOPA SILT LOAM - 0 TO 8% SLOPES	<del>YY</del>	<u>00</u>	<u>21</u>		3
149	SKIPOPA-BLAINEGATE COMPLEX - 0 TO 8% SLOPES	<del>NN</del>	<u>00</u>	<u>20</u>	yes	3
150	SKYKOMISH VERY GRAVELLY LOAM - 3 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
151	SNOHOMISH SILT LOAM-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>25</u>		
152	SNOQUALMIE GRAVELLY LOAMY SAND - 0 TO 3% SLOPES	<del>NN</del>	<u>00</u>	<u>40</u>	yes	3
153	SORENSEN VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2
154	SORENSEN VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
155	SPRINGSTEEN VERY GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
156	SQUALICUM GRAVELLY LOAM - 5 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes yes	2
157	SQUALICUM GRAVELLY LOAM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2
158	SQUALICUM GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
159	SQUALICUM-URBAN LAND COMPLEX - 5 ATO 20% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
160	SQUIRES VERY CHANNERY LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
161	SQUIRES VERY CHANNERY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
162	SUMAS SILT LOAM-DRAINED - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>25</u>		
163	TACOMA SILT LOAM - 0 TO 1% SLOPES	<del>NN</del>	<u>00</u>	<u>50</u>		
164	TACOMA SILT LOAM-DRAINED - 0 TO 1% SLOPES	<del>NN</del>	<u>00</u>	<u>50</u>		
165	TROMP LOAM - 0 TO 2% SLOPES	<del>YY</del>	<u>11</u>	<u>11</u>		3
166	TWINSI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
167	TWINSI VERY STONY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
168	TYPIC CRYORTHODS - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
169	TYPIC CRYORTHODS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
170	TYPIC PSAMMAQUENTS-TIDAL - 0 TO 1% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	
171	URBAN LAND	<del>NN</del>	<u>00</u>	<u>00</u>		
172	URBAN LAND-WHATCOM-LABOUNTY COMPLEX - 0 TO 8% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2
173	VANZANDT VERY GRAVELLY LOAM - 5 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
174	VANZANDT VERY GRAVELLY LOAM - 15 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
175	VANZANDT VERY GRAVELLY LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
176	WELCOME LOAM - 5 TO 30% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	3
177	WELCOME LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		3
178	WHATCOM SILT LOAM - 0 TO 3% SLOPES	<del>YY</del>	<u>22</u>	<u>11</u>		2
179	WHATCOM SILT LOAM - 3 TO 8% SLOPES	<del>YY</del>	<u>44</u>	<u>11</u>		2
180	WHATCOM SILT LOAM - 8 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2
181	WHATCOM SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2
182	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 8% SLOPES	<del>NN</del>	<u>44</u>	<u>22</u>		2
183	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>20</u>	yes	2
184	WHITEHORN WILT LOAM - 0 TO 2% SLOPES	<del>YY</del>	<u>33</u>	<u>22</u>		
185	WICKERSHAM CHANNERY SILT LOAM - 0 TO 8% SLOPES	<del>NN</del>	<u>44</u>	<u>14</u>		2
186	WINSTON SILT LOAM - 0 TO 3% SLOPES	<del>YY</del>	<u>00</u>	<u>11</u>		2
187	WINSTON LOAM - 3 TO 15% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2
188	WINSTON LOAM - 15 TO 40% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>	yes	2
189	WISEMAN VERY CHANNERY SAND LOAM - 0 TO 8% SLOPES	<del>NN</del>	<u>00</u>	<u>40</u>		3
190	WOLLARD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		
191	YELM LOAM - 3 TO 8% SLOPES	<del>YY</del>	<u>11</u>	<u>11</u>	yes	2
192	YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES	<del>NN</del>	<u>00</u>	<u>00</u>		2

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APPENDIX F

Model Conservation Easement Deed

A sample Conservation Easement Deed based on the assumption of matching funds from the USDA-NRCS Agricultural Conservation Easement Program, is included in the following pages.

\_\_\_\_\_  
After Recording Return To:  
\_\_\_\_\_  
Whatcom County  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225-4082  
\_\_\_\_\_

\_\_\_\_\_  
~~DOCUMENT TITLE: AGRICULTURAL CONSERVATION EASEMENT~~  
\_\_\_\_\_

\_\_\_\_\_  
~~GRANTOR: OWNERS~~  
\_\_\_\_\_

\_\_\_\_\_  
~~GRANTEES: WHATCOM LAND TRUST AND WHATCOM COUNTY~~  
\_\_\_\_\_

\_\_\_\_\_  
~~ABBR. LEGAL DESCRIPTION: Parcel # XXXXXXXXXXXX 0000~~  
\_\_\_\_\_

\_\_\_\_\_  
~~AGRICULTURAL CONSERVATION EASEMENT DEED~~  
\_\_\_\_\_

\_\_\_\_\_  
~~This Agricultural Conservation Easement Deed ("Deed") is made and entered into this \_\_\_ day of 20\_ by OWNERS ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("Grantees"), and the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. Further, the State of Washington, by and through the Washington State Recreation and Conservation Office (RCO) is a third party beneficiary and has certain rights herein, including third party right of enforcement.~~  
\_\_\_\_\_

\_\_\_\_\_  
~~RECITALS:~~  
\_\_\_\_\_

\_\_\_\_\_  
~~The following recitals are a material part of this Easement.~~  
\_\_\_\_\_

\_\_\_\_\_  
~~Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit B is the legal~~

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~~description and Exhibit C is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.~~

~~Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture's Natural Resources Conservation Service (herein the "United States") has provided on behalf of the Commodity Credit Corporation \$XX,XXX (XX thousand and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.~~

~~While "Grantees" include the Whatcom Land Trust and Whatcom County, use of the term "Grantees" does not imply that joint approval is required to exercise Grantees' rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.~~

~~The Protected Property is approximately XX acres and is currently farmed.~~

~~The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Exhibit E.~~

~~Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit D, to preserve land for agricultural purposes and has substantial public benefits.~~

~~As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.~~

~~This Easement is acquired in part with a grant from RCO pursuant to that certain grant agreement (#XX) between RCO and Grantee, signed by RCO on date and by Grantee on date ("RCO Grant Agreement"). RCO is a third party beneficiary of certain rights under this easement, including those identified in Exhibit H (State of Washington Recreation and Conservation Office Third Party Rights and Requirements), which is attached hereto and incorporated herein by reference and will run with the land in perpetuity.~~

~~CONVEYANCE AND CONSIDERATION.~~

~~For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$XX,XXX by Whatcom County, RCO and the United States to Grantor, Grantor~~

~~\_\_\_\_\_ hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.~~

~~\_\_\_\_\_ This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.~~

~~\_\_\_\_\_ Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's, successors and assigns in perpetuity.~~

~~\_\_\_\_\_ PURPOSE.~~

~~\_\_\_\_\_ The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.~~

~~\_\_\_\_\_ RELATIONSHIP OF PARTIES.~~

~~\_\_\_\_\_ Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.~~

~~\_\_\_\_\_ The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section III. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.~~



~~The above Section IV.A. does not pertain to monitoring and enforcement of a conservation plan, the responsibility for which rests with the Natural Resource Conservation Service and Whatcom County as described in Section VIII A below.~~

~~RIGHT OF ENFORCEMENT.~~

~~Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.~~

~~The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.~~

~~Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with Agricultural Conservation Easement Program requirements.~~

~~PERMITTED USES AND ACTIVITIES. Grantor may:~~

~~Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section VII below.~~

~~Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.~~

~~Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section XII of this Easement, and shown on Exhibit E, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section VII~~

~~Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.~~

~~On the "Farmstead", as defined in Section XII of this Easement, and shown in Exhibit D, engage in any uses or activities, including removal, replacement, maintenance, and remodeling of a single family residence, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section VII below. The construction and maintenance of an Accessory Dwelling Unit (ADU) is allowed within the "Farmstead" so long as it is allowed through Whatcom County Planning and Development Services.~~

~~Plant or maintain trees on the Agricultural Land, as defined in Section XII of this Easement only as follows:~~

~~Maintain a woodlot for the production of firewood to be used on the Protected Property;~~

~~Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.~~

~~Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.~~

~~Install a small scale wind power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small scale wind power generator prior to installation.~~

~~Grantor has the right to conduct non farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the~~

~~Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.~~

~~PROHIBITED USES AND ACTIVITIES.~~

~~Unless specifically permitted by Section VI above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:~~

~~Use or activities inconsistent with the purpose of this Easement.~~

~~Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.~~

~~Cover more than two percent (2%) of the area (approximately XX,XXX square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.~~

~~Construct non-agricultural structures or facilities.~~

~~Conduct any use or activity that removes or damages the long term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.~~

~~Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section VII, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.~~

~~Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres. Land subject to such alteration shall be returned to pre-activity conditions in accordance with baseline data set forth in Exhibit E.~~

~~Use off road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.~~

~~Grant easements or rights of way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.~~

~~Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.~~

~~The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.~~

#### ~~WATER RIGHTS.~~

~~The Parties agree that the Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.~~

~~Grantee Trust will include reference, in Baseline Report, to water rights associated with the Protected Property. The documentation of the water rights are attached to this Easement in Exhibit F. In its monitoring visits, Grantee Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Grantee Trust believes that Grantor is not sufficiently informed about protecting Grantor's water rights, Grantee Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.~~

~~Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section IV. RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections XIII and XIV of this Easement or may itself take appropriate action to protect the water rights.~~

~~If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture,~~

~~Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.~~

~~CONSERVATION PLAN:~~

~~As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.~~

~~In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.~~

~~If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.~~

~~For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement~~

~~\_\_\_\_\_ is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whateom County.~~

~~\_\_\_\_\_ RIGHTS CONVEYED TO GRANTEES.~~

~~\_\_\_\_\_ To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:~~

~~\_\_\_\_\_ To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.~~

~~\_\_\_\_\_ (1) To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement;~~

~~\_\_\_\_\_ (2) To enter the land at such other times as necessary if the Trust has reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.~~

~~\_\_\_\_\_ In the event of uses or activities inconsistent with the purpose and provisions of this Easement, The Trust may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.~~

~~\_\_\_\_\_ Forbearance by The Trust to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.~~

~~\_\_\_\_\_ NO PUBLIC ACCESS.~~

~~\_\_\_\_\_ This Easement provides no right of access to the general public.~~

~~\_\_\_\_\_ BASELINE DATA.~~

~~\_\_\_\_\_ To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare baseline data sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The baseline data may consist of reports, maps, photographs, and other documentation. Grantor and Grantee will execute a statement verifying that the baseline data accurately represents the condition of the Protected Property as of this time. Baseline data is contained in Exhibit E. The baseline data will delineate the Farmstead and Agricultural Land as defined below.~~

~~\_\_\_\_\_ The baseline data will specifically establish the extent of the Farmstead, which includes that portion of the Protected Property used for agricultural buildings, structures and improvements~~

~~and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.~~

~~The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas such as critical areas and woodlands as well as cropland or grazing land.~~

#### ~~INFORMAL DISPUTE RESOLUTION.~~

~~Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.~~

#### ~~GRANTEES' REMEDIES.~~

~~If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.~~

~~If Grantor does not take immediate action to cure the violation and restore the Protected Property, Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity.~~

~~In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.~~

~~If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement,~~

~~Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in paragraph A.~~

~~Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.~~

~~RESPONSIBILITY FOR COST AND LIABILITIES.~~

~~Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States and RCO, and hold Grantees and the United States and RCO harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section XIX, L. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.~~

~~EXTINGUISHMENT AND TRANSFER.~~

~~The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whateom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whateom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.~~

~~Grantor agrees to:~~

~~Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or~~



~~intends to divest itself, of any permanent or temporary interest in the Protected Property.~~

~~Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.~~

~~Whateom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by United States and Whateom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.~~

~~AMENDMENT:~~

~~Upon approval of the United States, Grantor and all Grantees may agree to amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose and that the result of the amendment is to strengthen the effectiveness of the Easement.~~

~~SUBORDINATION:~~

~~Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit G.~~

~~GENERAL PROVISIONS~~

~~Notices:~~

~~Any notice under this Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:~~

~~Grantor: Owners  
Address  
Bellingham, WA 98226~~

~~Grantee, Trust: Whateom Land Trust PO Box 6131  
Bellingham, WA 98227~~

~~Grantee, County: Whateom County  
Attn: Agricultural PDR Administrator 5280 Northwest Drive  
Bellingham, WA 98226~~

~~NRCS: USDA NRCS  
316 West Boone Avenue, Suite 450  
Spokane, WA 99201~~

~~RCO: Recreation and Conservation Office PO Box 40917  
Olympia WA 98504 0917~~

~~Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.~~

~~Controlling Law:~~

~~The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whateom County Superior Court.~~

~~Liberal Construction:~~

~~Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whateom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.~~

~~Severability:~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Entire Agreement.

~~\_\_\_\_\_~~ This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ No Forfeiture.

~~\_\_\_\_\_~~ Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Warranty of Good Title.

~~\_\_\_\_\_~~ Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Grantor Grantees.

~~\_\_\_\_\_~~ The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above named Grantees, their successors and assigns.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Successors and Assigns.

~~\_\_\_\_\_~~ The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Federal Enforcement.

~~\_\_\_\_\_~~ In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.



~~“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.~~

~~**Merger**~~

~~The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this conservation easement deed are set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the protected property by or to the Grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of “Merger” or any other legal doctrine.~~

~~In the event that either Grantee takes legal title to Grantor’s interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 107(b)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.~~

~~This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT A is attached hereto and incorporated herein by reference and will run with the land in perpetuity [or for the maximum duration allowed under applicable State laws]. As required by 16~~

~~U.S.C. Section 3865 et seq. and 7 CFR Part 1468 et seq. and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT B is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT A that is appended to and made a part of this easement deed.~~

~~SCHEDULE OF EXHIBITS.~~

- ~~Minimum Terms for Agricultural Land Easements~~
- ~~Legal Description of Property Subject to Easement~~
- ~~Site Map~~
- ~~Ordinance # 2002-054~~
- ~~Baseline Data~~
- ~~Water Rights~~
- ~~Subordination Agreement example~~

\_\_\_\_\_  
\_\_\_\_\_~~State of Washington Recreation and Conservation Office Third Party Rights and Requirements~~  
\_\_\_\_\_

\_\_\_\_\_~~TO HAVE AND TO HOLD unto Grantees and the United States of America, and their successors, and assigns forever.~~  
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\_\_\_\_\_  
The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above-  
Agricultural Conservation Easement Deed.

\_\_\_\_\_  
Dated: \_\_

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
STATE OF WASHINGTON \_\_\_\_\_)

\_\_\_\_\_  
) ss.

\_\_\_\_\_  
COUNTY OF WHATCOM \_\_\_\_\_)

\_\_\_\_\_  
I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and  
said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized  
to execute the instrument and acknowledged it as the

\_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_ voluntary act of such party for the uses and purposes mentioned in the \_\_\_\_\_ to be the free and  
instrument.

\_\_\_\_\_  
Dated: \_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_

My commission expires \_\_\_\_\_

\_\_\_\_\_  
(Use this space for notarial stamp/seal)

\_\_\_\_\_  
THE STATE OF WASHINGTON, BY AND THROUGH THE WASHINGTON STATE  
RECREATION AND CONSERVATION OFFICE, Third Party Beneficiary, does hereby accept the above-  
Grant Deed of Agricultural Conservation Easement.

\_\_\_\_\_  
Dated: \_\_

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
STATE OF WASHINGTON \_\_\_\_\_)

\_\_\_\_\_  
) ss:

\_\_\_\_\_  
COUNTY OF THURSTON \_\_\_\_\_)

\_\_\_\_\_  
I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and  
said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized  
to execute the instrument and acknowledged it as the

\_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_ voluntary act of such party for the uses and purposes mentioned in the \_\_\_\_\_ to be the free and  
instrument.

\_\_\_\_\_  
Dated: \_\_

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Notary Public  
Print Name \_\_\_\_\_  
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\_\_\_\_\_ My commission expires \_\_\_\_\_

~~EXHIBIT A~~

~~MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS~~

~~The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit B, hereafter referred to as "the Protected Property", for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Protected Property.~~

~~The OWNERS (collectively Grantor), WHATCOM COUNTY AND WHATCOM LAND TRUST (collectively Grantee), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Grantee to protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is appended to this easement deed. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control. If other sections of the ALE have terms and conditions that are consistent with, but more restrictive than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive than Section I Paragraph 4 and Section II then Section I Paragraph 4 and Section II will control.~~

~~SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS~~

~~Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.~~

~~The Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:~~

~~**Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use~~

~~of the property will be subject to the ALE Plan on the Protected Property.~~

~~The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.~~

~~The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.~~

~~**Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 4% of the Protected Property, excluding NRCS approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.~~

~~**Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. The following activities are inconsistent with the purposes of ALE and specifically prohibited, subject to the qualifications stated below:~~

~~*Subdivision*~~

~~Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited, except where State or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.~~

~~*Industrial or Commercial Uses* Industrial or commercial activities on the Protected Property are prohibited except for the following:~~

~~agricultural production and related uses conducted as described in the ALE Plan;~~

~~the sale of excess power generated in the operation of alternative energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ purposes of this Easement;

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries; and

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ *Construction on the Protected Property*—All new structures and improvements must be located within the Building Envelopes, containing approximately XX acres and described in EXHIBIT E which is appended to and made a part of the ALE.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the agricultural use and future viability, and related conservation values of the Protected Property.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural structures are consistent with the ALE Plan described Section I, Paragraph I.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ New roads may be constructed if they are within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property.

~~Granting of easements for utilities and roads~~—The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the agricultural use and future viability, and related conservation values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

~~Surface Alteration~~—Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

~~dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an ALE Plan;~~

~~erosion and sediment control pursuant to a plan approved by the Grantee;~~

~~as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or~~

~~Agricultural activities conducted in accordance with the ALE Plan.~~

~~Oil, Gas, or Mineral Exploration and Extraction~~—Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited, except for limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property. Extraction of materials used for agricultural operations must be limited to a small, defined area or acreage identified in EXHIBIT E and must not harm the conservation values or the agricultural uses of the Protected Property.

~~Impervious surfaces as defined in Section I, Paragraph (2) of this Easement will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses permitted by this paragraph.~~

~~If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).~~

~~Preserving Agricultural Uses. The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the ALE Plan and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the ALE's protection for the agricultural use and future viability, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i) - (vii) and the following activities, subject to the qualifications stated below:~~

~~Agricultural Production—The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph I.~~

~~Forest Management and Timber Harvest—Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.~~

~~On Farm Energy Production—Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.~~

~~Grassland Uses of the Protected Property—Grantors are allowed to graze, hay, harvest for hay and nonerop seed production, mow, construct fire breaks, conduct fire presuppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct~~

~~livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantee or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to the Grantors, or set forth within the ALE Plan for the Protected Property.~~

## ~~SECTION II PROTECTION OF THE UNITED STATES' INTERESTS~~

~~**United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.~~

~~In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.~~

~~The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.~~

~~In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.~~

~~**General Disclaimer.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims,~~



~~demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.~~

~~**Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.~~

~~Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.~~

~~"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.~~

~~"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.~~

~~**Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United~~

~~States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.~~

~~With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is 35 percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.~~

~~If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.~~

~~The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.~~

~~**Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.~~

1 EXHIBIT B  
2  
3 Legal Description  
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5  
6 DESCRIPTIO  
7 N 6  
8 SITUATE IN WHATCOM COUNTY, WASHINGTON 8  
9 SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS,  
10 RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE 11  
12 APN/Parcel ID: XXXXXXXXXXXXX 0000

—  
— 1 Exhibit C Site Map  
— 2

**SPONSORED BY:** Planning

**PROPOSED BY:** Planning

**INTRODUCTION DATE:** 8/13/02

**ORDINANCE NO.** 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM AND OVERSIGHT COMMITTEE**

**WHEREAS**, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

**WHEREAS**, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

**WHEREAS**, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land, and timber land; and

**WHEREAS**, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

**WHEREAS**, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

**WHEREAS**, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

**WHEREAS**, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

**WHEREAS**, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that :

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 10 day of September, 2002.

ATTEST:



Dana Brown-Davis,  
Clerk of the Council

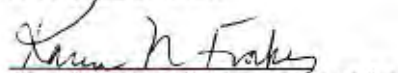
**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**



Ward Nelson, Council Chair

APPROVED as to form

Approved  Denied

  
Karen N. Frakes, Civil Deputy Prosecutor  
Pete Kremen, Executive

~~EXHIBIT E – Baseline Documentation~~

~~The Baseline Data Inventory for the Agricultural Conservation Easement Deed is maintained by the  
Whateom Land Trust. The remainder of this page is intentionally blank.~~

1	EXHIBIT F - Water Rights Documentation
2	
3	



~~EXHIBIT G – Subordination Agreement~~

~~When recorded return to:~~

~~Grantor; Grantee: \_\_\_\_\_~~

~~Legal Description~~

~~Abbreviated form: \_\_\_\_\_ Additional legal at Exhibit A.~~

~~Assessor's Tax Parcel Number: \_\_\_\_\_~~

~~Reference number(s) of related/assigned/released documents: \_\_\_\_\_ Reference(s) to document(s) appears on page(s) \_\_\_\_\_~~

~~SUBORDINATION AGREEMENT~~

~~NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.~~

~~The undersigned subordinator agrees as follows:~~

~~\_\_\_\_\_ ("Subordinator") is the owner and holder of a mortgage dated \_\_\_\_\_, which was recorded under Auditor's File No. \_\_\_\_\_, records of \_\_\_\_\_ County;~~

~~\_\_\_\_\_ ("Easement Holder") is the holder of a conservation easement dated \_\_\_\_\_, 20\_\_\_\_, executed by [{"Owner"} or {"Owners"}] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;~~

~~\_\_\_\_\_, [husband and wife,] [{"Owner"} or {"Owners"}] [is the owner or are the owners] of all the real property described in the conservation easement identified above in Paragraph 2.~~

~~In consideration of benefits to Subordinator from [("Owner") or ("Owners")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.~~

~~This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.~~

~~The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.~~

~~Executed this \_\_\_ day of \_\_, 20\_\_.~~

~~SUBORDINATOR SUBORDINATOR~~

~~(Name) (Name)~~

~~STATE OF WASHINGTON )~~

~~) ss.~~

~~COUNTY OF \_\_ )~~

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

~~Dated: \_~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Public \_\_\_\_\_  
Print Name \_\_\_\_\_ My commission expires \_\_\_\_\_  
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(Use this space for notarial stamp/seal)

~~EXHIBIT H~~

~~State of Washington Recreation and Conservation Office Third Party Rights and Requirements~~

~~GENERAL~~

~~As indicated on page 1, Washington State Recreation and Conservation Office ("RCO") is a third party beneficiary to this Easement, which was acquired in part with a grant from RCO pursuant to grant agreement #XX between RCO and Whatcom County.~~

~~Permanent protection of the Protected Property will further the purposes of the Washington State Farmlands Preservation Account (FPA) established under RCW 79A.15.130(1), which provides that moneys appropriated to the FPA "must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands." The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that "it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens."~~

~~RCO PROHIBITED USES~~

~~**Commercial feedlots.** The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used to receive livestock that are confined solely for the purpose of growing or finishing. However, seasonal confinement of animals raised on the Protected Property and year round confinement for the commercial production of dairy products on the Protected Property are expressly permitted. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.~~

~~**No aquaculture.** Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Protected Property.~~

~~**No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property ("Compensatory Mitigation") is prohibited on the~~

~~Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.~~

#### ~~RCO THIRD PARTY RIGHT OF ENFORCEMENT~~

~~RCO is hereby granted third party right of enforcement of this Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. RCO and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that RCO and Grantee do not agree as to whether the Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Easement, it shall first follow the dispute resolution process and remedies described in Sections XIII and XIV of the easement; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.~~

~~This third party right of enforcement does not extend to any other third party except as described within the terms of this easement and exhibits and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring agricultural lands in the event RCO is dissolved or reorganized.~~

~~In the event that the Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section II (5) and distributed as further provided in Section II (5); or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.~~

~~In the event that the Protected Property is used by Grantor in a manner that is not consistent with the Purpose of this Easement or the terms of the RCO Grant Agreement, RCO shall have the right, in addition to any other remedies described in this Easement, to require that Grantor pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section II (5) and distributed as further provided in Section II (5); or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time. Any costs, fees or damages paid by Grantor for enforcement of this Easement or restoration of the Conservation Values pursuant to Exhibit E shall be deducted from this amount. RCO agrees that it will follow the dispute~~

~~resolution process and remedies described in Sections XIII and XIV before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing RCO under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by RCO. Upon Grantor's repayment of such amount to RCO, Grantee and RCO agree to prepare and record, a deed amendment to release Grantor from any further obligations to RCO or Grantee under this Easement.~~

#### ~~SUBSEQUENT TRANSFER OR EXTINGUISHMENT~~

~~**Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.~~

~~The amount of the proceeds to which Grantee and any Beneficiary to this Easement shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XVI. Grantee may use all such proceeds for the acquisition of property interests that are substantially equivalent to those conveyed by this Easement. Grantee shall consult with and receive the approval of RCO in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO the same or substantially equivalent rights as provided for in this Easement.~~

~~In granting this Easement, Grantor has considered the fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement. Grantor's inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.~~

~~**Valuation.** This Easement constitutes a real property interest immediately vested in Grantee. For purposes of this Section, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the then fair market value of the Protected Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Protected Property), at the time of termination or extinguishment, as determined by an appraisal that meets RCO requirements for appraisals, by (b) the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, unencumbered by the Easement, at the time of this grant.~~

~~For purposes of this Section, the Parties agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement is 35% and shall remain constant.~~

~~**Distribution of Proceeds.** In the event of extinguishment of this Easement pursuant to Section XVI, condemnation of this Easement pursuant to Exhibit A, or damages received by Grantor in an amount equal to the fair market value of this Easement pursuant to Section XIV, any proceeds attributable to the value of the Easement RCO is entitled to 45.75% of any such proceeds.~~

~~**Subsequent Transfers.** Grantor agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section 5.4 shall not impair the validity of this Easement or limit its enforceability in any way.~~

#### ~~AMENDMENT:~~

~~**Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantee under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.~~

#### ~~ASSIGNMENT~~

~~**Assignment.** Grantee's Interest. Grantee's interest in this Easement is transferable with prior written notice to and consent of RCO, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended, and a qualified recipient of grant funds from the farmlands preservation account under RCW 79A.15.139. Grantee shall not assign this Easement without notice to and consent of Grantor and RCO, which consent shall not be unreasonably withheld. As conditions of such transfer, Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of the RCO Grant Agreement, as described in Section 1.1 of this exhibit. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice.~~

~~provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.~~

~~**Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then Grantee's rights and duties hereunder shall become vested and fall upon RCO, who may then assign Grantee's rights and duties hereunder to an organization with a similar mission to that of Grantee.~~

~~**NO MERGER.**~~

~~**No Merger.** In the event that Grantee acquires all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section XIX-M.~~

~~**COSTS OF ENFORCEMENT.**~~

~~**1.1. Costs of Enforcement.** In the event the RCO exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the RCO exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.~~

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## **PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

After Recording Return To:

Whatcom County  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

DOCUMENT TITLE: **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: \_\_\_\_\_

GRANTEES: **WHATCOM LAND TRUST AND WHATCOM COUNTY**

ABBR. LEGAL DESCRIPTION:

\_\_\_\_\_  
Full Legal Description in Exhibit A

TAX PARCEL # \_\_\_\_\_

**AGRICULTURAL CONSERVATION EASEMENT DEED**

This Conservation Easement Deed (“Deed”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ (“Grantor”), the WHATCOM LAND TRUST

(“Trust”), and WHATCOM COUNTY, WASHINGTON (“County”) (“collectively, Grantees”), and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

## **1. RECITALS**

- 1.1. Grantor is fee simple owner of real property (the “Protected Property”) in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.
- 1.2. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.
- 1.3. The Protected Property is approximately \_\_\_\_\_ acres and is currently farmed.
- 1.4. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Baseline Documentation (Exhibit D). It is the intent of all parties that the agricultural values described in the baseline shall remain for the life of this easement and shall be used along with annual monitoring to identify future changes on the easement area.
- 1.5. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, which establishes the Purchase of Development Rights Program to preserve land for agricultural purposes and has substantial public benefits.
- 1.6. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.
- 1.7. Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (herein “NRCS”) has provided on behalf of the Commodity Credit Corporation \$ \_\_\_\_\_ ( \_\_\_\_\_ and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.

## **2. CONVEYANCE AND CONSIDERATION**

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2.1. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$ \_\_\_\_\_ by the Whatcom County and the NRCS to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

2.2. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

2.3. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's, successors and assigns in perpetuity.

### **3. PURPOSE**

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The granting of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

### **4. RELATIONSHIP OF PARTIES**

4.1. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

4.2. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section 3. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

4.3. The above Section 4.1. does not pertain to monitoring and enforcement of a conservation farm plan, the responsibility for which rests with NRCS and Whatcom County as described in Section 9.

## **5. RIGHT OF ENFORCEMENT**

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with the Agricultural Conservation Easement Program requirements.

## **6. PERMITTED USES AND ACTIVITIES**

Grantor may:

6.1. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section 7 below.

6.2. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.

6.3. Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section 12 of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section 7.4. Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property,

temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.

- 6.4. Remove, Maintain, Expand, or Replace temporary hoop houses and temporary greenhouses with no foundation outside of the Farmstead area so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.5. On the "Farmstead", as defined in Section 12 of this Easement, and shown in Exhibit B, engage in any uses or activities, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section 7 below.
- 6.6. Plant or maintain trees on the Agricultural Land, as defined in Section 12 of this Easement only as follows:
  - 6.6.1. Maintain a woodlot for the production of firewood to be used on the Protected Property.
  - 6.6.2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.
  - 6.6.3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.
  - 6.6.4. Plant and maintain trees to provide shading for grazing livestock.
  - 6.6.5. Plant and maintain trees used in fruit or nut production.
- 6.7. Install a small-scale wind and solar power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind and solar power generator prior to installation.
- 6.8. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

## 7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Unless specifically permitted by Section 6 above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

- 7.1. Use or activities inconsistent with the purpose of this Easement.
- 7.2. Legal or "de facto" division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement.
- 7.3. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.
- 7.4. Cover more than two percent (2%) of the area (approximately \_\_\_\_\_ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.
- 7.5. Construct non-agricultural structures or facilities.
- 7.6. Conduct any use or activity that removes or damages the long-term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.
- 7.7. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section 8, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.
- 7.8. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres.
- 7.9. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law

enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.

7.10. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.

7.11. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.

7.12. The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.

## **8. WATER RIGHTS**

8.1. The Parties agree that any Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.

8.2. Trust will include reference, in Baseline Documentation (Exhibit D), to any water rights associated with the Protected Property. In its monitoring visits, Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Trust believe that Grantor is not sufficiently informed about protecting Grantor's water rights, Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.

8.3. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section 4 RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections 13 and 14 of this Easement or may itself take appropriate action to protect the water rights.

8.4. If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.

## **9. CONSERVATION PLAN**

9.1. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the Whatcom Conservation District and approved by NRCS. This conservation plan shall be developed

using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.

9.2. In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

9.3. If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.

9.4. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

## **10. RIGHTS CONVEYED TO GRANTEES**

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

10.1. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.

10.2. To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement.

10.3. To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or



terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.

10.4. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, the Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

10.5. Forbearance by the Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

### **11. NO PUBLIC ACCESS**

This Easement provides no right of access to the general public.

### **12. BASELINE DOCUMENTATION**

12.1. To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare Baseline Documentation sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The Baseline Documentation may consist of reports, maps, photographs, and other documentation. Grantor and Grantees will execute a statement verifying that the Baseline Documentation accurately represents the condition of the Protected Property as of this time. Baseline Documentation is contained in Exhibit D. The Baseline Documentation will delineate the Farmstead and Agricultural Land as defined below.

12.2. The Baseline Documentation will specifically establish the area and extent of the Farmstead, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, as well as that portion used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.

12.3. The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas, such as woodlands, as well as cropland or grazing land.

### **13. INFORMAL DISPUTE RESOLUTION**

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will

be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

#### **14. GRANTEES' REMEDIES**

14.1. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.

14.2. Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity if Grantor:

14.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees;

14.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period;  
or

14.2.3. Fails to continue diligently to cure such violation until finally cured.

14.3. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.

14.4. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in Section 14.1.

14.5. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

#### **15. RESPONSIBILITY FOR COST AND LIABILITIES**

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section 19.12. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

## **16. EXTINGUISHMENT AND TRANSFER**

16.1. The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.

16.2. Grantor agrees to:

16.2.1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.

16.2.2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

16.3. Whatcom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by the United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to

give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

**17. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantees under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.

**18. SUBORDINATION**

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit E.

**19. GENERAL PROVISIONS**

19.1. Effective Date. The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

19.2. Notices. Any notice under this Agricultural Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Grantor:  
\_\_\_\_\_  
\_\_\_\_\_

Grantee, Trust:                      Whatcom Land Trust  
\_\_\_\_\_  
   PO Box 6131  
\_\_\_\_\_  
   Bellingham, WA 98227

Grantee, County:                      Whatcom County PDS  
\_\_\_\_\_  
   Attn: PDR Program Administrator  
\_\_\_\_\_  
   5280 Northwest Drive  
\_\_\_\_\_  
   Bellingham, WA 98226

Third Party Grantee, NRCS: USDA-NRCS  
\_\_\_\_\_  
   Attn: Easement Programs

11707 E. Sprague Ave, Suite 301  
Spokane Valley, WA 99206

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

19.3. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

19.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

19.5. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

19.6. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

19.7. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.

19.8. Warranty of Good Title. Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.

19.9. Grantor-Grantees. The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.

19.10. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

19.11. Federal Enforcement. In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of

Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.

19.12. General Indemnification. Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

19.13. Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

19.13.1. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

19.13.2. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar

environmental health, safety, building and land use as may now or at any time hereafter be in effect.

19.13.3. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

19.14. Recordation. Grantees shall record this instrument in a timely fashion in the official records of Whatcom County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

19.15. No Merger. In the event that Grantees acquire all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantees, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantees covenant to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party.

19.15.1. In the event that either Grantee takes legal title to Grantor's interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 170 (h)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.

## **20. RCPP MINIMUM DEED TERMS**

This Conservation Easement is acquired with funds provided, in part, under the Regional Conservation Partnership Program (RCPP) (16 U.S.C. Section 3871 et seq. and 7 CFR part 1464). The Exhibit F is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by the RCPP, and as a condition of receiving RCPP funds, all present and future use of the Protected Property identified in Exhibit A (legal description) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled RCPP Minimum Deed Terms in Exhibit F that is appended to and made a part of this easement deed. The rights of the United States acquired under this Conservation Easement shall be unaffected by any subsequent amendments or repeal of the RCPP.

## **21. SCHEDULE OF EXHIBITS**

21.1. Exhibit A. Legal Description

21.2. Exhibit B. Site Map

21.3. Exhibit C. Ordinance

21.4. Exhibit D. Baseline Documentation

21.5. Exhibit E. Subordination Agreement Example

21.6. Exhibit F. RCPP Minimum Deed Terms

TO HAVE AND TO HOLD unto Grantees and the State of Washington, and their successors, and assigns forever.

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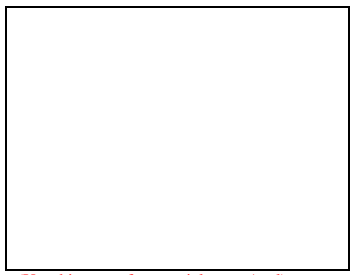
IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Grantor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that \_\_\_\_\_, is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public  
Print Name  
My commission expires \_\_\_\_\_

(Use this space for notarial stamp/seal)

WHATCOM COUNTY does hereby accept the above Agricultural Conservation Easement Deed.

Dated: \_\_\_\_\_  
\_\_\_\_\_ Grantee

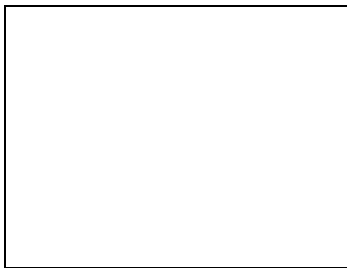
By \_\_\_\_\_  
Satpal Sidhu, County Executive

Approved as to Legal Form: \_\_\_\_\_  
By \_\_\_\_\_  
Senior Civil Deputy Prosecuting Attny

STATE OF WASHINGTON \_\_\_\_\_ )  
\_\_\_\_\_ ) ss.  
COUNTY OF WHATCOM \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public  
Print Name  
My commission expires

(Use this space for notarial stamp/seal)

The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above Agricultural Conservation Easement Deed.

Dated: \_\_\_\_\_

\_\_\_\_\_ By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF WASHINGTON )  
\_\_\_\_\_) ss.  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



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\_\_\_\_\_  
Notary Public  
Print Name  
My commission expires \_\_\_\_\_

THE UNITED STATES OF AMERICA, BY AND THROUGH THE NATURAL RESOURCES CONSERVATION SERVICE, Third Party Beneficiary, does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: \_\_\_\_\_

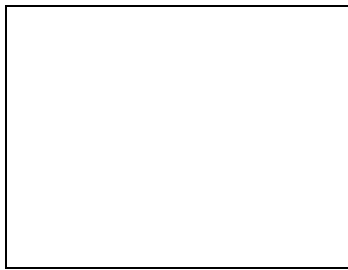
\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

STATE OF WASHINGTON )  
\_\_\_\_\_) ss.  
COUNTY OF THURSTON )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public  
Print Name  
My commission expires \_\_\_\_\_

(Use this space for notarial stamp/seal)

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**EXHIBIT A**  
**Legal Description**

APN/Parcel ID: \_\_\_\_\_

Exhibit B  
Site Map

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**EXHIBIT C**  
**Ordinance**

**SPONSORED BY:** Planning  
**PROPOSED BY:** Planning  
**INTRODUCTION DATE:** 8/13/02

**ORDINANCE NO.** 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM AND OVERSIGHT COMMITTEE**

**WHEREAS,** Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

**WHEREAS,** The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

**WHEREAS,** Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land , and timber land; and

**WHEREAS,** Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

**WHEREAS,** Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

**WHEREAS,** The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

**WHEREAS,** Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

**WHEREAS,** Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that :

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

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2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 10 day of September, 2002.

**ATTEST:**



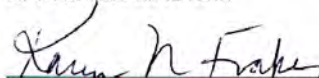
Dana Brown-Davis,  
Clerk of the Council

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**



Ward Nelson, Council Chair

**APPROVED** as to form

  
Karen N. Frakes, Civil Deputy Prosecutor

Approved  Denied

  
Pete Kremen, Executive

Date: \_\_\_\_\_



**EXHIBIT D**  
**Baseline Documentation**

The Baseline Documentation for the \_\_\_\_\_ Agricultural Conservation Easement is kept by the Whatcom Land Trust at 412 N Commercial, Bellingham WA 98225. The remainder of this page is intentionally blank.

**EXHIBIT E**  
**Subordination Agreement Example**

When recorded return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantor: \_\_\_\_\_

Grantee: \_\_\_\_\_

Legal Description

Abbreviated form: \_\_\_\_\_

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: \_\_\_\_\_

Reference number(s) of related/assigned/released documents: \_\_\_\_\_

Reference(s) to document(s) appears on page(s) \_\_\_\_\_

**SUBORDINATION AGREEMENT**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.**

The undersigned subordinator agrees as follows:

1. \_\_\_\_\_ ("Subordinator") is the owner and holder of a mortgage dated \_\_\_\_\_, which was recorded under Auditor's File No. \_\_\_\_\_, records of \_\_\_\_\_ County;
2. \_\_\_\_\_ ("Easement Holder") is the holder of a conservation easement dated \_\_\_\_\_, 20\_\_\_\_, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;



SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

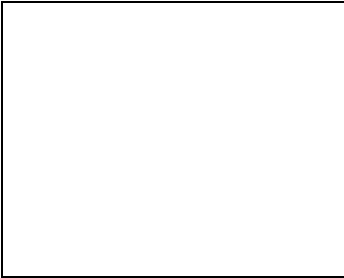
STATE OF WASHINGTON )

) ss.

COUNTY OF )

I certify that I know or have satisfactory evidence that  
is the person who appeared before me, and said person acknowledged that they signed this instrument, on  
oath stated that they were authorized to execute the instrument and acknowledged it as the  
\_\_\_\_\_ of \_\_\_\_\_ to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



Notary Public  
Print Name  
My commission expires

(Use this space for notarial stamp/seal)

**EXHIBIT F**  
**RCPP Minimum Deed Terms**

The Regional Conservation Partnership Program (16 U.S.C. Section 3871 et seq.), facilitated and provided funding for the purchase of a Conservation Easement (“Conservation Easement”) on real property described in Exhibit A, hereafter referred to as the “Protected Property,” to further the restoration, protection, enhancement, management, maintenance, and monitoring of agricultural values on the Protected Property (the “Conservation Values”).

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The \_\_\_\_\_ (collectively “Grantor”), the **Whatcom Land Trust** (“Trust”), and **Whatcom County, Washington** (“County”) (“collectively, Grantees”), and the **United States of America** (the “United States”) and its assigns, acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”) (jointly referred to as the “Parties”) acknowledge that the Conservation Easement is acquired by the Grantee for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values (the “purposes of the Conservation Easement”). Decision making on behalf of NRCS is delegated to the Chief of NRCS or authorized designee (hereafter referred to as “Chief of NRCS”). Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Trust.

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In order to ensure compliance with the Regional Conservation Partnership Program, 16 U.S.C. Section 3871 et. seq. and 7 CFR part 1464, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the Conservation Easement. Notwithstanding any other provision of the Conservation Easement, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other sections of the Conservation Easement, Sections I and II will control; however, if other sections of the Conservation Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other sections of the Conservation Easement are more restrictive to the rights of the Grantor than Section I, Paragraph 3 and Section II, then Section I, Paragraph 3 and Section II will control.

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**SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of the Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.

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The terms and conditions of the Conservation Easement run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

**1. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Conservation Easement.

**2. Limitations on Uses.** Any uses or activities that are inconsistent with the purposes of the Conservation Easement are prohibited. The following activities are inconsistent with the purposes of the Conservation Easement and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Uses consistent with the purposes of the Conservation Easement;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purposes of the Conservation Easement;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Conservation Values;

(iv) Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.; and

(v) Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), containing approximately \_\_\_\_\_ total acres and described or shown in Exhibit B, which is appended to and made a part of this Conservation Easement.

The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Conservation Values. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section I, Paragraph 2(B)(ii) and in this Section I, Paragraph 2(C), that neither individually nor collectively have an adverse impact on the Conservation Values, may be located outside of the Building Envelope(s) with prior written approval of the Grantee.

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New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the purposes of the Conservation Easement.

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(D) Granting of Easements for Utilities and Roads – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Conservation Values as determined by the Grantee in consultation with the Chief of NRCS.

(E) Surface Alteration – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purposes of the Conservation Easement; and

(iv) Agricultural activities and related conservation activities conducted in accordance with this Conservation Easement and the RCPP Easement Plan as described in Section I, paragraph 4.

(F) Surface and Subsurface Mineral Exploration and Extraction –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Paragraph (F).

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

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of impacts to the Conservation Values.

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All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

**3. Allowed Uses.** The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) Agricultural Production – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) On-Farm Energy Production – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

**4. RCPP Easement Plan.** The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

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**SECTION II – PROTECTION OF THE UNITED STATES’ INTERESTS AND EASEMENT ENFORCEMENT**

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**1. General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

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Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

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**2. Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

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Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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▲ "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

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▲ "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

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▲ **3. Extinguishment, Termination, and Condemnation.** The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

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▲ If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

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The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

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**4. Amendment.** This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

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**5. United States Right of Enforcement.** In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

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In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Conservation Easement.

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The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

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the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

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In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.

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