



# Whatcom County

COUNTY COURTHOUSE  
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## Agenda Bill Master Report

File Number: AB2021-370

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### TITLE FOR AGENDA ITEM:

Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County and approving the program guidebook and related documents required to implement the program

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
06/29/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Nay: 0 Absent: 0	Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
07/13/2021	Council	ADOPTED	
		Aye: 7 Nay: 0 Absent: 0	Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Attachments:** Proposed Ordinance, Program Guide

PROPOSED BY: DONOVAN, BUCHANAN  
INTRODUCTION DATE: 6/29/2021

**ORDINANCE NO.** 2021-041

**ORDINANCE ADOPTING WHATCOM COUNTY CODE CHAPTER 16.50  
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-  
PACER) PROGRAM WITHIN WHATCOM COUNTY AND APPROVING THE  
PROGRAM GUIDEBOOK AND RELATED DOCUMENTS REQUIRED  
TO IMPLEMENT THE PROGRAM**

**WHEREAS**, commercial and multi-family buildings are major sources of energy use, and major sources of greenhouse gas emissions; and

**WHEREAS**, permanent improvements to those buildings in the form of efficiency technologies, products, or activities to reduce or support the reduction of energy consumption, or support the production of clean, renewable energy, can save building owners money, and reduce greenhouse gas emissions known to drive climate change; and

**WHEREAS**, in 2007, Whatcom County completed a Climate Protection and Energy Conservation Action Plan that laid out specific actions and targets for reducing greenhouse gas emissions and increasing energy conservation efforts in response to potential climate change; and

**WHEREAS**, Chapter 10 of the Whatcom County Comprehensive Plan recognizes that climate change is a global phenomenon that has the potential for significant local impacts to natural resources, ecosystem functions, as well as human health, infrastructure, and the economy; and

**WHEREAS**, Policy 10B-1 of the Whatcom County Comprehensive Plan is to develop environmental programs, involving non-regulatory measures that include voluntary activity, education, and incentives; and

**WHEREAS**, Policy 10D-7 of the Whatcom County Comprehensive Plan encourages sustainability by developing strategies and practices to increase the use of renewable energy; and

**WHEREAS**, Policy 7G-4 of the Whatcom County Comprehensive Plan encourages sustainability by supporting renewable energy and energy resiliency; and

**WHEREAS,** in RCW 36.165.005, the State Legislature granted county governments in Washington the authority to establish a commercial property assessed clean energy and resiliency ("C-PACER") program that jurisdictions can voluntarily implement to ensure that free and willing owners of agricultural, commercial, and industrial properties and of multifamily residential properties with five or more dwelling units can obtain low-cost, long term financing; and

**WHEREAS,** the State Legislature found that this financing can be used for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency projects; and

**WHEREAS,** the establishment and operation of a C-PACER program serves important public health and safety interests; and

**WHEREAS,** A qualified improvement as defined in RCW 36.165.010 provides benefits to the public, either in the form of energy or water resource conservation, reduced public health risk, or reduced public emergency response risk; and

**WHEREAS,** the C-PACER program authorized in chapter 36.165 RCW promotes voluntary energy efficiency programs, energy conservation, and resiliency; and

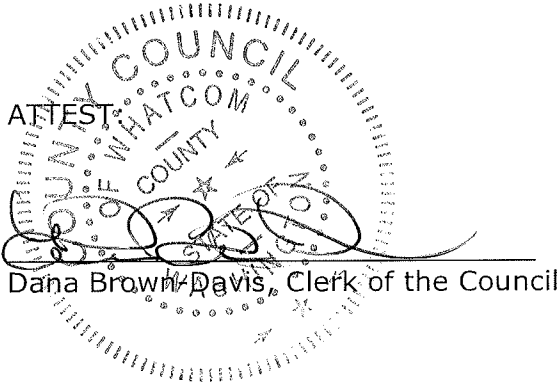
**WHEREAS,** the C-PACER program authorized in chapter 36.165 RCW is consistent with goals and policies of the Whatcom County Comprehensive Plan and the Whatcom County Climate Protection and Energy Conservation Action Plan; and

**WHEREAS,** on October 27, 2020 and November 10, 2020, Whatcom County Council discussed the C-PACER program, a proposed ordinance, program administration, and costs; and

**WHEREAS,** on June 29, 2021, Whatcom County Council introduced an ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County; and

**NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Code is hereby amended to establish chapter 16.50, Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County, as outlined in Exhibit A to this ordinance.

**ADOPTED** this 13th day of July, 2021.

ATTEST  
The seal of the Whatcom County Council is circular with a dotted border. Inside the border, the words "COUNTY COUNCIL" are at the top, "WHATCOM COUNTY" is at the bottom, and "SEPT 10 1842" is in the center. There are stars on either side of the date. A signature is written across the seal.  
Dana Brown Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

A handwritten signature in black ink, appearing to read "Barry Buchanan", is written over a horizontal line.  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

Approved ( ) Denied

/s/ Karen Frakes approved via e-mail / JL  
Civil Deputy Prosecutor

A handwritten signature in black ink, appearing to read "Satpal Sidhu", is written over a horizontal line.  
Satpal Sidhu, County Executive

Date Signed: 7/19/21

## **EXHIBIT A:**

### **Chapter 16.50**

#### **Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County**

- 16.50.010 Establishment
- 16.50.020 Definitions
- 16.40.030 Territory
- 16.50.040 Program Administration
- 16.50.050 C-PACER Financing
- 16.50.060 C-PACER Lien
- 16.50.070 Application and Review
- 16.50.080 Program Guidebook
- 16.50.090 Collection and Enforcement
- 16.50.100 Fees
- 16.50.110 Enactment
- 16.50.120 Effective Date
- 16.50.130 No Liability. No Public Funds.
- 16.50.140 Sunset clause

#### 16.50.010 Establishment

There is hereby established within the boundaries of Whatcom County (the "County") a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") program (the "Program") in accordance with chapter 36.165 RCW (the "C-PACER Act"). The County finds that it is convenient and advantageous to establish the Program, at no net cost to the County, in order to finance Qualified Projects (as hereinafter defined), repaid by a voluntary assessment on the property benefited by such Qualified Projects, and that the Program is in the public interest, providing for the safety, health, and environmental public benefits, and provides for economic development of the community. The Program shall allow financing for the full range of Qualified Improvements on all Eligible Properties, as authorized by the C-PACER Act, and shall abide by and operate according to the C-PACER Act.

#### **16.50.020 Definitions**

The definitions in this section apply throughout this Ordinance unless the context clearly requires otherwise.

1. "Application Checklist" means the list of items in a Project Application required by the C-PACER Act, this Ordinance, and the Program Guidebook, and the corresponding documentation that the County accepts in order to show the requirement has been met.
2. "Assessment" means the voluntary agreement of a Property Owner to allow the County to place an annual assessment on their property to

- repay C-PACER Financing.
3. "Assessment Agreement" means an agreement between the County and a Property Owner whereby the County agrees to place an assessment and C-PACER Lien on the property to secure the obligation to repay the financing.
  4. "Capital Provider" means any private entity, their designee, successor, and assignees that makes or funds C-PACER Financing under this Ordinance.
  5. "C-PACER Financing" means an investment from a Capital Provider to a Property Owner to finance or refinance a Qualified Project as described under this Ordinance. The proposed C-PACER Financing for a Qualified Improvement may authorize the Property Owner to
    - a. purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and
    - b. contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement.
  6. "C-PACER Lien" means the lien recorded at the County on the Eligible Property to secure the voluntary annual assessment, which remains on the property until paid in full.
  7. "Eligible Property" means privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units. Eligible Property may be owned by any type of business, corporation, individual, or nonprofit organization permitted by state law. Eligible property may include ground leases on eligible property and property financed through power purchase agreements.
  8. "Financing Agreement" means the contract under which a Property Owner agrees to repay a Capital Provider for the C-PACER Financing including, but not limited to, details of any finance charges, fees, debt servicing, accrual of interest and penalties, and any terms relating to treatment of prepayment and partial payment of the C-PACER Financing.
  9. "Program" means the C-PACER program established under this Ordinance.
  10. "Program Administrator" means the department or office designated by the County to administer the C-PACER program.
  11. "Program Guidebook" means a comprehensive document that illustrates the Program's territory, establishes appropriate guidelines, specifications, approval criteria, and the standard application forms for the Program consistent with this Ordinance and the C-PACER Act.
  12. "Project Application" means an application submitted to a program to demonstrate that a proposed project qualifies for C-PACER Financing and for a C-PACER Lien.
  13. "Property Owner" means an owner of qualifying Eligible Property who desires to install Qualified Improvements and provides free and willing consent to the assessment against the Eligible Property.
  14. "Qualified Improvement" means a permanent improvement affixed to real property and intended to: (a) decrease energy consumption or demand through the use of efficiency technologies, products, or activities

that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature; (b) decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking; or (c) increase resilience, including but not limited to seismic retrofits, fire suppression, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.

15. "Qualified Project" means a project approved by the Program Administrator, involving the installation or modification of a Qualified Improvement, including new construction or the adaptive reuse of Eligible Property with a Qualified Improvement. Together, Qualified Improvements, inclusive of all related and eligible costs pursuant to chapter 36.165 RCW that are to be financed as described in a Project Application and approved by the Program Administrator, are a Qualified Project.

#### **16.50.030 Territory.**

The Program shall be available to all Eligible Property within the following Region, defined by the County in accordance with chapter 36.165 RCW, within the boundaries of the County, including both incorporated and unincorporated territory. The Region is the incorporated and unincorporated areas of Whatcom County.

#### **16.50.040 Program Administration**

- A. Pursuant to the C-PACER Act, the County designates the Planning and Development Services Director or their designee as the Program Administrator. The Program Administrator shall review and approve the Project Applications submitted in accordance with the Program Guidebook, collect any fees, cause the County Executive to execute the documents required by the Program Guidebook to enable a C-PACER Financing and provide documents to the applicant or lender to record with the County Auditor.
- B. No services, including but not limited to energy audits, project development, or other activities associated or related to the development of a Project Application or installation of Qualified Improvements shall be offered through the C-PACER Program unless priced separately and open to purchase by the Property Owner from third parties.

#### **16.50.050 C-PACER FINANCING**

- A. C-PACER Financing, under chapter 36.165 RCW, is to be provided by Capital



Providers through a Financing Agreement entered into with the owner of an Eligible Property to fund a Qualified Project.

- B. The C-PACER Financing through a program established under this Ordinance may include:
- (1) The cost of materials and labor necessary for installation or modification of a Qualified Improvement;
  - (2) Permit fees;
  - (3) Inspection fees;
  - (4) Financing or origination fees;
  - (5) Program application and administrative fees;
  - (6) Project development and engineering fees;
  - (7) Third-party review fees, including verification review fees;
  - (8) Capitalized interest;
  - (9) Interest reserves;
  - (10) Escrow for prepaid property taxes and insurance; or
  - (11) Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
- C. Prior to entering into a Financing Agreement, the Capital Provider must receive written consent from every holder of a lien, mortgage, or security interest in the real property that will be subject to the Assessment and C-PACER Lien agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes. Additionally, prior to entering into a Financing Agreement on an Eligible Property that is a multifamily residential property with five or more dwelling units, the Program Administrator must also receive written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements in the real property as a condition precedent to the participation in the program by the property agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes.
- D. The proposed C-PACER Financing for a Qualified Project may authorize the Property Owner to:
- (1) Purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and
  - (2) Contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement.

#### **16.50.060 C-PACER Lien**

- A. The C-PACER Lien amount, plus any interest, penalties, and charges accrued or accruing on the C-PACER Lien: (a) takes precedence over all other liens or encumbrances except a lien for taxes imposed by the state, a local government, or a junior taxing district on real property, which liens for taxes shall have priority over such C-PACER Lien, provided existing mortgage holders, if any, have

provided written consent described in WCC 16.50.050.C. of this Ordinance; and (b) is a first and prior lien, second only to a lien for taxes imposed by the state, a local government, or a junior taxing district against the real property on which the C-PACER Lien is imposed, from the date on which the notice of the C-PACER Lien is recorded until the C-PACER Lien, interest, penalties, and charges accrued or accruing are paid.

- B. The C-PACER Lien runs with the land, and that portion of the C-PACER Lien that has not yet become due is not accelerated or eliminated by foreclosure of the C-PACER Lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the real property on which the C-PACER Lien is imposed.
- C. Delinquent installments due on a C-PACER Lien incur interest and penalties as specified in the Financing Agreement.
- D. After the C-PACER Lien is recorded as provided in this Ordinance, the voluntary assessment and the C-PACER Lien may not be contested on the basis that the improvement is not a Qualified Improvement or that the project is not a Qualified Project.

#### **16.50.070 Application and Review**

- A. A Property Owner and Capital Provider shall complete a Project Application and submit it to the Program Administrator for review.
- B. The Project Application shall require:
  - (1) An attestation by the Property Owner that the project is a "Qualified Improvement" as defined by WCC 16.50.020 (14) of this Ordinance and the Program Guidebook.
  - (2) For an existing building seeking improvements (a) where energy or water usage improvements are proposed, a certification by a licensed professional engineer or other professional listed in the guidebook, stating that the proposed Qualified Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, the addition of renewable sources of energy or water, or the reduction of lead in potable water; or (b) where resilience improvements are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience and savings in insurance, improved property values, or other benefits sufficient to leverage financing of those improvements.
  - (3) For new construction, a certification by a licensed professional engineer or other professional listed in the Guidebook stating that the proposed Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the energy efficiency or water efficiency or renewable

energy or resilience requirements of the current building code of the County.

- C. The Program Administrator shall review the application according to the Application Checklist solely to determine whether it is complete, proposes a "Qualified Improvement," contains no errors on its face, and that all information is provided in the substance and form required by the Application Checklist. If so, the Program Administrator shall sign the checklist indicating that the Project Application is deemed approved. If a Project Application is incomplete and/or does not conform to the requirements of the Application Checklist, the Program Administrator shall inform the applicant as soon as practicable that the application is denied, the reasons for the denial, and any corrections that could make the application acceptable. If feasible, the applicant shall have an opportunity to correct the application.
- D. Upon approval of a Project Application, a Property Owner or Capital Provider shall provide the following completed forms to the Planning and Development Services Department for execution by the County Executive at least five (5) business days prior to close of the C-PACER transaction, along with a requested date for recordation of the Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessment and Assessment Agreement.
- E. The County Auditor shall record in its real property records the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of Notice of Assessment and Assessment Agreement. It is the responsibility of the applicant or lender to record the documents at the County Auditor's Office and pay any applicable recordation fees.
- F. For a Property Owner and Capital Provider whose Project Application is denied by the County's Program Administrator, either party, or both, may request an adjudicative proceeding before the County's Hearing Examiner, consistent with the County's rules and subject to the applicable provisions of Washington's Administrative Procedures Act, chapter 34.05 RCW.

#### **16.50.080 Program Guidebook.**

A. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook, adopted herein by reference and available through the Whatcom County Council Office and online at [www.whatcomcounty.us](http://www.whatcomcounty.us) through an ordinance search. The Program Guidebook shall include:

- 1. A Project Application form, to be used by the Property Owner and Capital Provider.
- 2. An Application Checklist, to be used by the Program Administrator to review and approve or disapprove an application.
- 3. A form Assessment Agreement.
- 4. A form Notice of Assessment Interest and C-PACER Lien.
- 5. A form Assignment of Notice of Assessment Interest and Assessment

- Agreement.
6. A statement that the period of the Financing Agreement will not exceed the useful life of the Qualified Project, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.
  7. A description of the application and review process established under section 16.50.070 of this Ordinance.
  8. A statement explaining the lender consent requirement under the C-PACER Act.
  9. A statement explaining the requirements for qualifying as a Capital Provider for this Program.
  10. A statement that the County has no liability as a result of the agreement and a statement that neither the County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Ordinance, especially and including all actions related to, or arising from, administering the program.
  11. A description of the marketing and participant educational services, if any, provided in support of the program.

B. The Program Guidebook and forms may be updated by the Program Administrator without approval by the Whatcom County Council, so long as it complies with this Ordinance and chapter 36.165 RCW.

#### **16.50.090 Collection and Enforcement**

- A. Collection and enforcement of delinquent C-PACER Liens or C-PACER Financing installment payments, including foreclosure, shall remain the responsibility of the Capital Provider.
- B. Pursuant to the Assessment Agreement, the C-PACER Lien shall be solely enforced by the Capital Provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by the County, by prosecution of foreclosure proceedings under chapter 84.64 RCW et seq.. This includes the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider or assignee attesting to the assessment delinquency of at least one year shall be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration shall have the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050.

Chapter 36.165 RCW provides that "collection and enforcement of delinquent C-PACER liens or C-PACER financing installment payments, including foreclosure, shall remain the responsibility of the capital provider" and that "the capital provider or their assignee shall have and possess the same powers and rights at law or in equity to enforce the C-PACER lien" in the "same manner that the collection of delinquent real property taxes is enforced by the county under chapter 84.64 RCW." As such, the County shall have no obligation to prosecute the foreclosure of a C-PACER Lien on behalf of the Capital Provider, and the Capital Provider, by accepting an assignment of a

C-PACER Lien pursuant to an Assignment of Notice of Assessment and Assessment Agreement, shall assume under applicable law, the obligations, responsibilities, and duties of the County in respect of the enforcement and foreclosure of a C-PACER Lien under chapter 84.64 RCW. Any duties by the County deemed non-delegable by the County shall be performed, on a reimbursable basis, by the County on behalf of the Capital Provider.

**16.50.100 Fees.**

An application fee as provided in the Unified Fee Schedule shall be paid to the County when the Project Application is submitted.

Upon approval of an application by Property Owner and a Capital Provider, and prior to recordation of documents for a C-PACER transaction, the parties shall pay a program fee as provided in the Unified Fee Schedule, as a good faith estimate of the costs of establishing and implementing the Program, to the County to make the costs of the C-PACER program cost-neutral.

**16.50.110 Enactment.**

The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All Ordinances, orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed upon the effectiveness of this Ordinance. No provision of the Whatcom County Code or violation of any provision of the Whatcom County Code shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Whatcom County Code. In the event and to the extent of a conflict between this Ordinance and chapter 36.165 RCW, chapter 36.165 RCW shall govern.

**16.50.120 Effective Date.**

This Ordinance shall take effect ten days after enactment. The County Planning and Development Services Department shall begin accepting applications for review no later than ninety (90) days after the effective date.

**16.50.130 No Liability. No Public Funds.**

- A. This Ordinance does not confer any right of action nor property interest upon any party to a C-PACER transaction against the County, and the County shall incur no liability for enacting this Program, nor shall the County be liable or members of its governing body, executives, or employees be personally liable as a result of exercising any rights or responsibilities granted under this

Ordinance.

- B. The County shall not enforce any privately financed debt under this Ordinance. The County shall not use public funds to fund or repay any loan between a Capital Provider and Property Owner. No section under this Ordinance shall be interpreted to pledge, offer, or encumber the full faith and credit of the County, nor shall the County or any local government within the County pledge, offer, or encumber its full faith and credit for any lien amount through a program.

**16.50.140 Sunset clause**

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program shall be dissolved twenty-four (24) months after the effective date of this ordinance, unless specifically extended by ordinance. The County Council shall review the need to continue the C-PACER program four months prior to the sunset date.

# PROGRAM GUIDEBOOK:

## Commercial Property Assessed Clean Energy + Resilience (C-PACER) Program

Whatcom County, Washington



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## I. Introduction

### CLIMATE PROTECTION AND ENERGY CONSERVATION ACTION PLAN

The 2007 Whatcom County Climate Protection and Energy Conservation Action Plan aims to reduce the County's greenhouse gas (GHG) emissions. Strategies such as energy efficiency improvements in homes and businesses are noted in the plan as the easiest and most cost-effective methods.

In 2016, the Whatcom County Council added Policy 10D-6 to the Comprehensive Plan calling for the creation of a Climate Impact Advisory Committee to, in part, review the implementation of the 2007 Climate Action Plan. The County Council established the Whatcom County Climate Impact Advisory Committee in December 2017 (Ordinance 2017-080) to review and provide recommendations to the County Council and Executive on issues related to the preparation and adaptation for, and the prevention and mitigation of, impacts of climate change (WCC 2.126).

In 2019, the Community Research Project was launched to collect information from local stakeholders on strategies to reduce or mitigate GHG emissions and support climate resiliency and adaptation. A set of actions were developed for consideration in a revised Climate Action Plan, including strategies to increase energy efficiency and conservation in buildings and support for a Property Assessed Clean Energy program to subsidize energy conservation and renewable energy improvements to buildings.

In 2021, the Climate Impact Advisory Committee began working to update the Climate Action Plan using information collected in recent years such as a GHG inventory, vulnerability assessments, and other sources. The focus of the plan is addressing human-built infrastructure, including buildings as well as land use, to reduce GHGs.

### ABOUT C-PACER

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program is voluntary and allows owners of eligible properties to seek long-term financing from private capital providers for qualified improvements including energy efficiency, renewable energy, water conservation, and resiliency investments. Capital providers offer financing and the property owner repays the loan to the capital provider over time, such as the case with a traditional loan. However, with C-PACER financing, the loan is assigned to the property as an assessment and remains with the property until it is repaid, regardless of any transfers of property ownership. Collection of the assessment is assigned by the County to the capital provider, and the property owner pays the assessment directly to the capital provider.

Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whoever owns the property at the time. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, solar installations, or seismic upgrades – over the useful life of the measures. The period of the financing agreement will not exceed the useful life of the qualified project or weighted useful life if more than one qualified improvement is included.

Enforcement of the C-PACER lien is the responsibility of the capital provider. In the event of default, only the payments in arrears are due.

## LEGAL AUTHORITY

In 2020, the Washington State legislature passed C-PACER enabling legislation, HB 2405, which allows counties to establish C-PACER programs. The legislation specified that the efficiency and resiliency of buildings is essential for ensuring the health and safety of residents, employees, and tenants. Whatcom County (the "County") administers a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") financing program (the "C-PACER Program" or the "Program") under chapter 36.165 of the Revised Code of Washington (RCW) (the "C-PACER Act").

The responsibility of the County is limited to a) an ordinance and guidelines that govern how its C-PACER program works and b) review of the lien application for compliance with the C-PACER state law, and then recording a unique agreement that includes the acknowledgement of a special property assessment by the County. The repayment of the C-PACER financing is between a private lender and a property owner, when the lender's lien against the property is filed, with no obligation on the part of the County.

## WHATCOM COUNTY C-PACER PROGRAM GUIDEBOOK

This Program Guidebook aims to assist eligible property owners to understand the provisions of Whatcom County's C-PACER program and navigate the application process.

In this document you can find information about the eligibility requirements for C-PACER properties and projects in Whatcom County and the process for applying for C-PACER project approval.

## II. Whatcom County C-PACER Guidelines

The C-PACER Program enables financing for eligible property owners (“Property Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in this Guidebook. The purpose of this Program Guidebook is to provide clarity on the guidelines of the Whatcom County C-PACER program, in compliance with the state enabling legislation.

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of Whatcom County, and is approved in connection with, and as an attachment to, the enabling ordinance (Ord. 2021-041) for this program (the “C-PACER Ordinance”) dated July 13, 2021. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance and the C-PACER Act.

The Guidebook provides information on guidelines, eligibility, approval criteria, and the application form and checklist for the administration of the C-PACER Program for Whatcom County.

Qualified Improvements, including all eligible costs that are to be financed as permitted by the C-PACER Act and described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Property Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Property Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Washington State, and
- The appropriate steps and forms needed for a C-PACER application to Whatcom County.

### 1. C-PACER Program Boundaries

Whatcom County Council adopted Ordinance number 2021- 041 on July 13, 2021, establishing the C-PACER Program for all eligible properties within the boundaries of the County, including both incorporated and unincorporated areas (the “Region”). The Region is illustrated in Map 1.

### 2. Administration of Program; Authorized Officials

The Planning and Development Services Director or their designee (the “Director”) is designated and authorized to review each Project Application to confirm that it is complete. The Director will then obtain signatures from the County Executive to execute the Assessment Agreement and C-PACER Lien documents on behalf of the County and release the documents for the applicant or capital provider to record with the real property records via the County Auditor.

As part of Program operation, the Director will:

- Accept the Project Applications and Checklist (see Exhibit 1) from applicant (Property Owners and/or Capital Provider) for prospective C-PACER projects;
- Review the Project Application and Checklist to determine completion;

- Approve, conditionally approve, or disapprove the Project Application and communicate to applicant;
- Request the County Executive’s signature on the Assessment Agreement (Exhibit 2), Notice of Assessment Interest and C-PACER Lien (“Notice of Assessment Interest”) (Exhibit 3) and Assignment of Notice of Assessment Interest and Assessment Agreement (“Assignment”) (Exhibit 4); and
- Release documents for the applicant or capital provider to record with the County Auditor.

### 3. Eligibility Requirements

Eligible Property means any privately-owned commercial, agricultural, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region. Eligible properties include those owned by a not-for-profit organization.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Property Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of qualifying eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvement means a permanent improvement affixed to the real property that meets at least one of the following criteria:

- Decreases energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, or allows for the reduction in demand, or reduces greenhouse gas emissions (“Energy Efficiency Improvement”);
- Supports the production of clean, renewable energy, as defined in the Clean Energy Transformation Act (RCW 19.405.020(34)), including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature (“Renewable Energy Improvement”);
- Decreases water consumption or demand and addresses safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking (“Water Conservation Improvement”); or
- Increases resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids (“Resiliency Improvement”).

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of

a Qualified Improvement permanently affixed to an Eligible Property.

- For Renewable Energy Improvements, “permanently affixed” includes Qualified Projects that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the renewable energy system, if the power purchase agreement or lease contains all of the following provisions:
  - a) The Renewable Energy Improvement relates to a Renewable Resource, defined in RCW 19.405.020(34) as follows: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests; or (i) biomass energy.
  - b) The term of the power purchase agreement or lease is at least as long as the term of the related Assessment Agreement.
  - c) The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Assessment Agreement.
  - d) Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the system prior to completion of the full repayment of the C-PACER Lien.
  - e) After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the C-PACER financing.
  - f) The power purchase agreement or lease specifies the holder of the C-PACER Lien is a third-party beneficiary of the power purchase agreement or lease until the C-PACER Lien has been fully repaid.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed.

Qualifying Capital Provider may be any of the following:

- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a C-PACER Capital Provider in two different states with C-PACE programs;
- a federal -chartered bank or credit union; or
- a state-chartered bank or credit union

Qualifying costs that can be C-PACER financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Lender’s fees;
- Program application and administrative fees;
- Project development and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance; and
- Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.

## 4. Application Process

The Planning and Development Services Department will review the Application for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed C-PACER transaction. All applicants are encouraged to review the Project Application and Checklist to ensure that the types of documentation and information required are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect a number of application and due diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties may agree to the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Property Owner and the Capital Provider prepare the Project Application, consisting of the Project Application, Checklist, and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that the County will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) The applicant submits the completed Project Application and Checklist with the corresponding application fee and additional information to Planning and Development Services. Applicants must submit a hard copy and an electronic copy of all application materials.
- (3) The Planning and Development Services Department will have 15 business days to review the Project Application and issue a determination (approve, conditionally approve, or deny). If the department has received an unusually high number of applications, or if review is delayed because of some force majeure event, the department may notify the applicant that the application review and determination will be delayed by no more than 15 additional business days.
- (4) The Planning and Development Services Department application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. *County approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.* The Planning and Development Services Department will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for the County to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and the Planning and Development Services Department will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (5) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent (see Exhibit 5) is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (6) Upon receipt of approval, the Capital Provider will draft the following “Closing Documents”: The Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment and Assessment Agreement. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (7) If the Project Application received conditional approval, the Closing Documents executed by the County may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (8) At closing, after program fees have been paid, the Planning and Development Services Department will release executed agreements to the applicant or capital provider, including the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment Interest and C-PACER Lien, to record via the Whatcom County Auditor.
- (9) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement, and the Property Owner completes the Qualified Improvements and submits a certificate of completion to the Planning and Development Services Department.
- (10) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement

## 5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached) (see Exhibit 1)
  - Lienholder(s) Consent (form attached) (see Exhibit 5)
  - Certificate of Qualified Improvements: (see Exhibit 6)
- (1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building:  
A certification stating that the proposed Qualified Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.

The certification must be performed by a licensed professional engineer or accredited individual or firm from the following list:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
  - Building Energy Assessment Professional (BEAP)
  - Building Energy Modeling Professional (BEMP)
  - Operations & Performance Management Professional Certification (OPMP)
  - High-Performance Building Design Professional Certification (HBDP)

- Association of Energy Engineers (AEE)
  - Certified Energy Manager (CEM)
  - Certified Measurement and Verification Professional (CMVP)
  - Certified Energy Auditor (CEA)
- Building Performance Institute
  - Energy Auditor
- Investor Confidence Project
  - ICP Quality Assurance Assessor

Other professional entities may be accepted by the Planning and Development Services Department at its discretion.

- (2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV design specialist certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional entities may be accepted by the Planning and Development Services Department at its discretion.
- (3) For lead reduction in water improvements, a Water Quality Association Professional Certification.
- (4) For Resilience Improvements on an existing building: Certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience, including but not limited to seismic improvements, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
- (5) For new construction:
  - (A) Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency, water efficiency, or renewable energy code requirements. If the building as a whole performs above code, all energy and water-related improvements are eligible for financing.
  - (B) Relating to resilience, certification by a licensed professional Civil Engineer that the proposed Qualified Improvements will result in improved resiliency. If the building as a whole performs above or exceeds code requirements for resiliency, all resiliency-related improvements that relate to that particular requirement are eligible for financing.
- (6) For all Qualified Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Qualified Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements and that the Qualified Improvements are permanently affixed, as described in this Guidebook.



## 6. Closing Documents

The following documents require the signature of the County Executive and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Property Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Assessment Agreement (see Exhibit 2)
- Notice of Assessment Interest and C-PACER Lien (see Exhibit 3)
- Assignment of Notice of Assessment Interest and C-PACER Lien and Assessment Agreement (see Exhibit 4)

## 7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. Whatcom County has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Property Owners and Capital Providers.

## 8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER financing installment payments, including foreclosure, remain the responsibility of the Capital Provider, and the terms are negotiated within the Financing Agreement.

## 9. Enforcement of C-PACER Lien

The C-PACER Lien may be enforced by the Capital Provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by Whatcom County, by prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider or assignee attesting to the assessment delinquency of at least one year will be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration has the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050. Under the C-PACER Act, such enforcement may not occur until at least one year after delinquency.

By accepting a C-PACER Lien, the Capital Provider or its assignee, as applicable, agrees to assume responsibility for prosecution of said action of foreclosure pursuant to RCW 84.64.040, independent of and without assistance or consent from the prosecuting attorney, in accordance with the terms of the Financing Agreement.

## 10. Program Fee

Whatcom County, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Ordinance, this Guidebook, the draft documents, as well as for reviewing

a Project Application for completeness and executing the Assessment Agreement, C-PACER Lien, and Assignment, is entitled to an application and program fee, which is specified in the Unified Fee Schedule. The Property Owner must pay this fee to the County as a condition precedent to releasing documents for recording.

### 11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

### 12. Form of Closing Documents

The Program has adopted form Closing Documents: Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessments Interest and Assessment Agreement. A Property Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms. By submitting the Closing Documents to the County, the applicant acknowledges there are no substantive changes to the forms. If any material or substantive terms are changed in the Closing Documents, the applicant must submit a summary of detailed changes formatted in a bulleted list with page references and descriptions of modifications.

The forms are attached as Exhibits 2, 3, and 4, and are incorporated herein as referenced.

### 13. Written Consent from Lienholder(s) Required

Before entering into an Assessment Agreement with the County, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a lien, mortgage, or security interest in the real property.

For qualifying multifamily projects (residential projects of 5 or more dwelling units), the Capital Provider must obtain written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements encumbering the real property as a condition precedent to the participation in the Program by the property.

If the consents are executed at closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Planning and Development Services Department, an amended Project Application with the consents attached must be sent to the Planning and Development Services Department. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

### 14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the Whatcom County website. Whatcom County may engage in events and/or provide written materials to increase awareness about the Whatcom County

C-PACER program. Whatcom County encourages other stakeholders to develop and share materials to promote the Whatcom County C-PACER program to serve the public benefit of health and safety.

### 15. County Has No Liability or Financial Responsibility

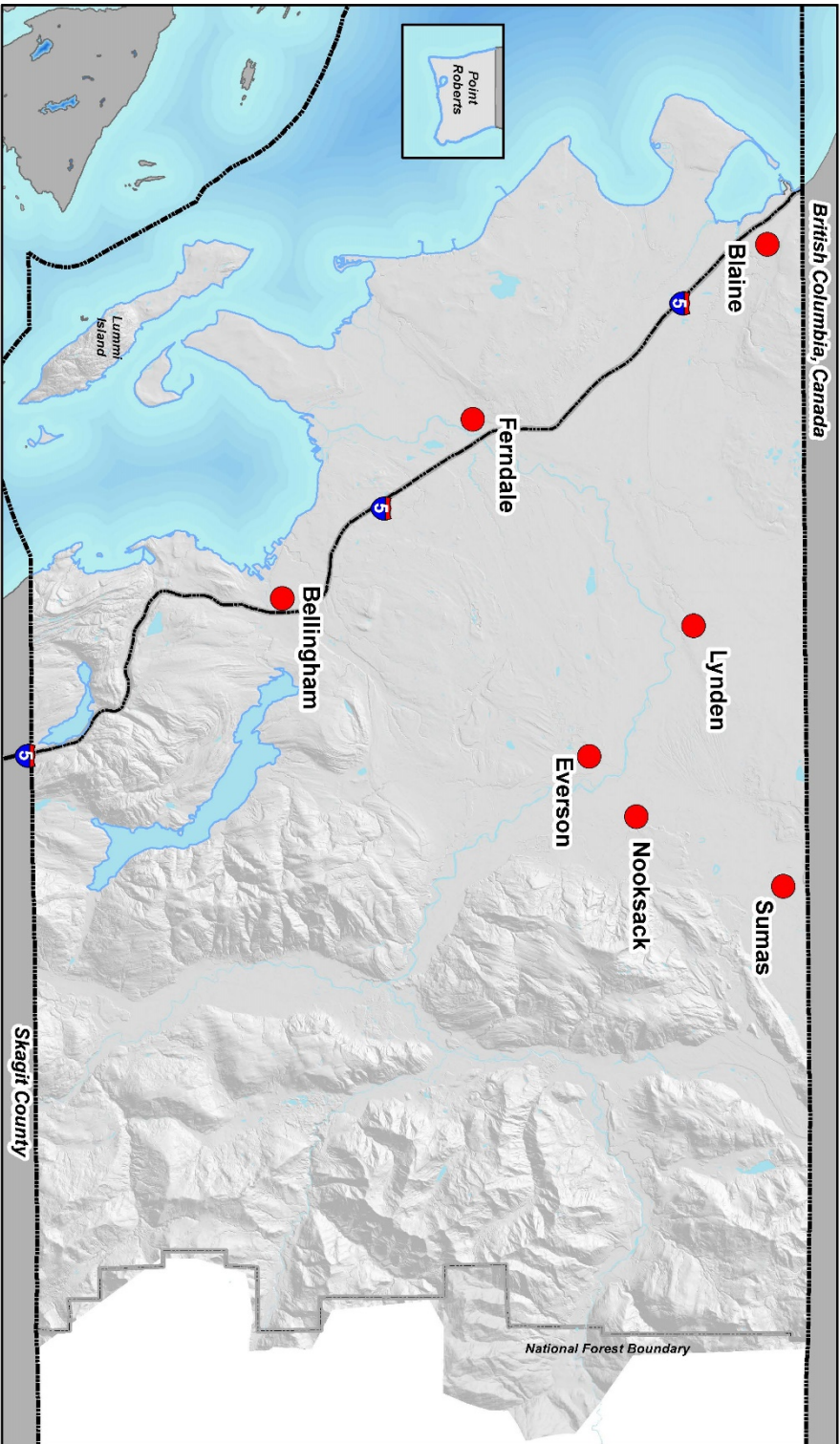
Neither Whatcom County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program.

The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

### 16. Limitation of Whatcom County's Authority

Whatcom County may not enforce any privately financed debt under this Program. Neither the State of Washington nor Whatcom County may use public funds to fund or repay any loan between a capital provider and property owner. No provisions of this Program shall be interpreted to pledge, offer, or encumber the full faith and credit of Whatcom County, nor shall Whatcom County pledge, offer, or encumber its full faith and credit for any lien amount through this Program.

MAP 1: Whatcom County C-PACER Boundary Map



# Whatcom County

- Legend**
- Incorporated City
  - Interstate 5
  - Whatcom County Boundary

**USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:**

Whatcom County declines any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, completeness, or reliability of the data. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damages, loss, or liability arising from any use of this map.



EXHIBIT 1: Project Application and Checklist



## **Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program**

Whatcom County administers a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") financing program under Section [36.165](#) of the Revised Code of Washington (RCW) (the "C-PACER Act"). The C-PACER Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified energy efficiency and resiliency improvements. The C-PACER program agreements create a property assessment and assign collection of the assessment to the capital provider or lender.

The Whatcom County C-PACER program was established in 2021 (Ordinance No. 2021- [041](#)) and is administered through the Planning & Development Services Department.

The following highlights the steps of the C-PACER application process:

1. Property Owner develops an energy generation, energy efficiency, water conservation, or resiliency project idea.
2. Property Owner identifies a registered C-PACER capital provider for their project.
3. Property owner and capital provider coordinate to complete application materials and submit to the Planning & Development Services Department (Program Administrator) with application fee.
4. Planning & Development Services Department reviews the application for completion.
5. Planning & Development Services Department issues a letter of approval, conditional approval, denial or request for additional information to the applicant (within 15 business days of receiving an application).
6. Capital provider drafts agreements and submits to the Planning & Development Services Department for review and signature of approval by County Executive.
7. Planning & Development Services Department issues a letter confirming agreements are ready for recordation and will be released upon payment of C-PACER program fees.
8. Applicant or Capital Provider submits payment for the C-PACER program fees to the Planning & Development Services Department.
9. Planning and Development Services releases the agreements to the applicant or capital provider for recordation with the County Auditor (standard [recordation fees](#) apply)
10. Applicant or lender provides recordation number to Planning and Development Services Department.
11. Capital provider funds the project.
12. After project completion, applicant provides a signed certification of completion form to the capital provider and the Planning & Development Services Department.
13. Loan payments are made by the property owner to the capital provider over the loan term.



## Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Project Application

### **Applicant/Agent:**

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Property Owner(s) Information (legal names):**     Same as Applicant above

Name(s): \_\_\_\_\_

Mailing address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

*\*If Applicant or Contact information changes please submit an updated Fee/Agent authorization form for each change.*

### **Property Information:**

#### **1. Property location and description:**

Address: \_\_\_\_\_

Tax Parcel Number(s) (APN): \_\_\_\_\_

Property description: \_\_\_\_\_

#### **2. Property type:**

Commercial     Agricultural     Industrial     Multi-family of 5+ units

Other \_\_\_\_\_

Building use(s): \_\_\_\_\_

#### **3. Qualifying Owner**

Limited liability company     General or limited partnership     Corporation

Individual/Sole proprietorship     Trust





**Proposed Qualified Improvements:**

**4. Qualifying Improvement Certification**

**A) FOR EXISTING BUILDINGS: (if new construction, skip to item B)**

The improvements sought are (check all that applies):

Energy Efficiency    Renewable Energy    Water Efficiency    Building Resiliency

i. If Energy Efficiency, improvement is:

HVAC system    Windows & Doors    Temperature Control System    Lighting  
 Siding/Insulation/Roofing    Appliances    other \_\_\_\_\_

ii. If Renewable Energy, improvement is:

Solar Panels    Thermal    other \_\_\_\_\_

*and is project:*

Direct Purchase    Power Purchase Agreement    N/A

iii. If Water Efficiency, improvement is:

Lead Reduction    Low-flow fixtures    Irrigation System    Control System  
 Water Collection & Reuse    other \_\_\_\_\_

iv. If Building Resiliency, improvement is:

Seismic retrofits    Flood mitigation    Stormwater Management  
 Fire suppression    Wildfire resistance    Wind resistance  
 Energy storage    Energy microgrids    other \_\_\_\_\_

**B) FOR NEW CONSTRUCTION:**

The improvements being sought are (check all that applies):

Energy Efficiency    Renewable Energy    Water Efficiency    Building Resiliency

Lead Reduction, water    Resiliency

i. If Energy Efficiency, improvement is:

HVAC system    Windows & Doors    Temperature Control System    Lighting  
 Siding/Insulation/Roofing    Appliances    other \_\_\_\_\_

ii. If Renewable Energy, improvement is:

Solar Panels    Thermal    other \_\_\_\_\_

*and is project:*

Direct Purchase    Power Purchase Agreement    N/A



iii. If Water Efficiency, improvement is:

- Lead Reduction    Low-flow fixtures    Irrigation System    Control System  
 Water Collection & Reuse    other \_\_\_\_\_

iv. If Building Resiliency, improvement is:

- Seismic retrofits    Flood mitigation    Stormwater Management  
 Fire suppression    Wildfire resistance    Wind resistance  
 Energy storage    Energy microgrids    other \_\_\_\_\_

**Capital Provider Information:**

**5. Capital Provider Information**

Legal Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

*Must answer 'Yes' to at least one of the following and provide required documentation as per Checklist:*

- a) Federal or state-chartered bank, or credit union    Yes    No  
b) Registered capital provider in more than 2 states:    Yes    No  
c) Qualified to do business in Washington state:    Yes    No

**6. Lienholder Consent Form (signed and notarized)**

- Attached    Delivered at close

IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.  
IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive.  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius AICP**  
Director

**Signature on Application:**

BY SIGNATURE BELOW, THE APPLICANTS (THE PROPERTY OWNER AND CAPITAL PROVIDER) AFFIRM THAT THE INFORMATION AND DOCUMENTATION ARE TRUE AND CORRECT TO THE BEST OF THEIR ABILITY AND THAT THE APPLICANTS HAVE READ THE DISCLOSURES AND DISCLAIMERS ATTACHED TO THIS APPLICATION AND UNDERSTAND THE RISKS OF PARTICIPATING IN THE C-PACER PROGRAM; FURTHER, THAT THE APPLICANTS AFFIRM THAT NEITHER THE COUNTY, ITS GOVERNING BODY, EXECUTIVES, NOR EMPLOYEES ARE PERSONALLY LIABLE AS A RESULT OF EXERCISING ANY RIGHTS OR RESPONSIBILITIES GRANTED UNDER THIS PROGRAM.

APPLICATION FORM SIGNED AND DATED ON: \_\_\_\_\_

ON BEHALF OF PROPERTY OWNER: \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_

ON BEHALF OF CAPITAL PROVIDER: \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_

---

**TO BE COMPLETED BY AUTHORIZED COUNTY OFFICIAL**

APPLICATION:  APPROVED       CONDITIONALLY APPROVED       DENIED

ON BEHALF OF COUNTY: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

CONDITIONS OF APPROVAL (IF APPLICABLE): \_\_\_\_\_

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



**C-PACER Project Checklist – Application (Step 1)**

Applicant Checklist	<i>Please include this checklist with your application submittal - Applications will not be accepted without all necessary information compiled with a completed submittal.</i>	PDS Checklist
<input type="checkbox"/>	1. C-PACER Application Form (see pages 2-5) completed	<input type="checkbox"/>
<input type="checkbox"/>  <input type="checkbox"/>	2. Property Address a) Documentation of Property Address (Deed, Title Report, Assessor/Treasurer Record) b) Address location is within Whatcom County	<input type="checkbox"/>  <input type="checkbox"/>
<input type="checkbox"/> <input type="checkbox"/>	3. Property Owner a) Documentation of Ownership (Deed, Title Report) b) Confirm property ownership names matches title report documentation If name(s) is different: provide one of the following: <input type="checkbox"/> Certified copy of personal/corporate name change <input type="checkbox"/> Certified power of attorney	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	4. Qualifying Property Documentation (Assessor/Treasurer official records, appraisal, zoning report, ground lease – if applicable)	<input type="checkbox"/>
<input type="checkbox"/>	5. Qualifying owner Documentation (Certificate of LLC or LP formation, Trust agreement or certificate, valid driver’s license, power of attorney or corporate resolution authorizing representation)  <i>If property is held by a limited liability company, general or limited partnership or a corporation, the applicant should include a copy of the certificate of formation, organization, incorporation or similar document and a good standing certificate/certificate of existence from the state or organization and, if not organized in Washington, a certificate of registration to conduct business in Washington as a foreign entity.</i>  <i>If a trust, include a copy of the trust agreement or a trustees’ certificate. If an individual, include a copy of a valid driver’s license. If the application is to be signed by a party other than the applicant, then, in addition to the foregoing, include a power of attorney or corporate resolution authorizing said party.</i>	<input type="checkbox"/>
<input type="checkbox"/>	6. Capital Provider documentation a) If a federal or state-chartered bank, or credit union, the certificate of organization or similar document; OR b) If not an entity in a), evidence of registration as a C-PACE capital provider in two states; OR c) If not an entity in a), evidence of financing for at least one previous C-PACE transaction in another jurisdiction.	<input type="checkbox"/>

**WHATCOM COUNTY**

Planning & Development Services  
 5280 Northwest Drive.  
 Bellingham, WA 98226-9097  
 360-778-5900, TTY 800-833-6384  
 360-778-5901 Fax



**Mark Personius AICP**  
 Director

<input type="checkbox"/>	Certificate of Capital Provider Qualifications (see Program Guide, Exhibit 7)	<input type="checkbox"/>
<input type="checkbox"/>	7. Qualifying Improvement Certification	<input type="checkbox"/>
<input type="checkbox"/>	a) Original and copy of Energy, Water & Resilience Compliance <u>Certificate</u> that is complete, signed, with accompanying documentation (see Program Guide, Exhibit 6)	<input type="checkbox"/>
<input type="checkbox"/>	b) Description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.	<input type="checkbox"/>
<input type="checkbox"/>	8. Lienholder Consent	<input type="checkbox"/>
<input type="checkbox"/>	a) Lienholder Consent Form (must be substantially the same as Model form) (see Program Guide, Exhibit 5)	<input type="checkbox"/>
<input type="checkbox"/>	b) Form signed and notarized in appropriate places	<input type="checkbox"/>
<input type="checkbox"/>	c) Cross-check list of Lienholders from Title Report with Written Consents provided by Capital Provider	<input type="checkbox"/>
<input type="checkbox"/>	Additional written consent from any and all holders of affordable housing covenants, restrictions, or regulatory agreements	<input type="checkbox"/>
	IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN. IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.	
<input type="checkbox"/>	9. C-PACER Application Fee – <i>See Unified Fee Schedule</i>	<input type="checkbox"/>
	<u>NOTE</u> : Fees will be assessed in accordance with the Whatcom County Unified Fee Schedule (UFS) in effect at the time of application submittal. Make checks payable to 'Whatcom County' or call Planning and Development Services to pay by credit card over the phone. Per UFS 2843 all permits and applications are subject to a Technology fee. The fee is calculated on the permit/application fees due.	



### C-PACER Project Checklist – Recordation (Step 2)

Applicant Checklist	<i>Please include this checklist with your application submittal - Applications will not be accepted without all necessary information compiled with a completed submittal.</i>	PDS Checklist
<input type="checkbox"/>	1. Assessment Agreement	<input type="checkbox"/>
<input type="checkbox"/>	2. Notice of Assessment Interest and C-PACER Lien	<input type="checkbox"/>
<input type="checkbox"/>	3. Assignment of the Notice of Assessment Interest and C-PACER Lien Assessment Agreement	<input type="checkbox"/>
<input type="checkbox"/>	4. Lienholder(s) Consent – if not already submitted with application	<input type="checkbox"/>
<input type="checkbox"/> N/A	5. Signatures a) All required applicant signatures b) All required County Executive signatures	<input type="checkbox"/> <input type="checkbox"/>
N/A	6. Letter to Applicant/Lender/Contact regarding documents ready to pick up for recordation	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	7. Provide recordation information to Planning & Development Services County Auditor, <b>Recordation #</b> _____	<input type="checkbox"/>
<input type="checkbox"/>	8. Project completion certification (see Program Guide, Exhibit 8) Date received: _____	<input type="checkbox"/>
<b>C-PACER application complete</b>		

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive.  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius AICP**  
Director

## Agent Authorization

If you are authorizing an agent to apply for permits on your behalf you must complete this form and have it notarized, which will provide authorization for a designated agent to apply for permits on your behalf.

I/we, \_\_\_\_\_, the owner(s) of the subject property, understand that by completing this form I hereby authorize \_\_\_\_\_ to act as my agent. I understand that said agent will be authorized to submit applications on my behalf, and that any fees associated with submitted applications are due to me and not to the said agent. I also understand that once an application has been submitted that all future correspondence will be directed to the agent.

\_\_\_\_\_  
Property Address

\_\_\_\_\_  
Parcel Number

\_\_\_\_\_  
Property Owner Printed Name

\_\_\_\_\_  
Property Owner Printed Name

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

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

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Printed Name

Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_/\_\_\_\_/\_\_\_\_

Application received by \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT 2: Assessment Agreement



# **Assessment Agreement for C-PACER Financing**

**COUNTY OF WHATCOM, WASHINGTON**

**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY**

**(C-PACER) PROGRAM**

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# Assessment Agreement for C-PACER Financing

[Name] County, Washington

This ASSESSMENT AGREEMENT for C-PACER FINANCING (this "**Agreement**") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, (the "**Effective Date**") by and between the County of Whatcom, Washington (the "**County**"), and \_\_\_\_\_, the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

## RECITALS

**WHEREAS**, the County has, on \_\_\_\_\_ July 13 \_\_\_\_\_, 2021 established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**") through the adoption of Ordinance No. 2021 - 041 ("**County Ordinance**") to allow the financing of certain renewable energy, energy and water efficiency, and resiliency improvements ("**Qualified Improvements**"), through the levy of contractual assessments pursuant to chapter 36.165 RCW (as may be amended from time to time, the "**C-PACER Act**"); and

**WHEREAS**, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidebook attached to the County Ordinance, as the same may have been amended from time to time prior to the Effective Date of this Agreement (the "**Program Guidebook**"); and

**WHEREAS**, the Property is located in the boundaries of the County and the County has consented to owners of eligible properties within its jurisdiction participating in the Program; and

**WHEREAS**, the Property Owner has submitted application materials including a description of the Qualified Improvements that will be acquired, constructed on and/or installed on the Property; and

**WHEREAS**, the County has reviewed such application materials to assess compliance with the C-PACER Act, the County Ordinance, and Program Guidebook, and the County has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the "**Approved Project**"); and

**WHEREAS**, the Approved Project is to be financed pursuant to a financing agreement between the Property Owner (the "**Financing Agreement**") and a capital provider (together with its designee or assigns, the "**Capital Provider**") and under which the Property Owner agrees to repay such Capital Provider; and

**WHEREAS**, pursuant to chapter 36.165 RCW, the County and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have an assessment levied and a lien placed on the qualifying property in exchange for receiving and repaying C-PACER financing; and

**WHEREAS**, it is a condition to closing of the Financing Agreement that the Property Owner and the County enter into this Agreement and that this Agreement be assigned to the Capital Provider; and

**WHEREAS**, the Property Owner voluntarily and willingly agrees to have an assessment levied on the Property and to enter into this Agreement in order to finance the installation on the Property of the Qualified Improvements contemplated as part of the Approved Project, all on the terms set forth in the Financing Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the County formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

### **AGREEMENT**

**Section 1. Purpose.** The Property Owner and the County are entering into this Agreement for the purpose of subjecting the Property to a C-PACER assessment to finance or refinance the purchase, installation, or construction of the Qualified Improvements identified on Exhibit B on the Property.

**Section 2. The Property.** This Agreement relates to the real property identified in Exhibit A. The Property Owner has supplied to the County current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

**Section 3. Assessment and Lien; Assignment.**

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the parties, the Property Owner voluntarily and willingly consents to the placement of an assessment levied against the Property by the County pursuant to this Agreement and applicable law in the principal amount of \$[REDACTED], together with all interest, penalties, and fees as described in the Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the County will execute and cause to be recorded in the office of the County Auditor for the County, together with a copy of this Agreement, pursuant to chapter 36.165 RCW, the Notice of Assessment Interest and C-PACER Lien (“**Notice of Assessment**”), substantially in the form of Exhibit C. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the County (the “**C-PACER Lien**”) and provide record notice to third parties of the existence of the C-PACER Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the levy of the Assessment by the County against the Property without any further action required by the parties.

(c) The Property Owner hereby promises to pay the Assessment for a period of [REDACTED] years on the due dates set forth in Exhibit D hereto (the “**Assessment Schedule**”). The Property Owner agrees, as provided in the Financing Agreement, to pay the amount due in installments according to the Assessment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the C-PACER Lien until paid in full. Failure to pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of the Financing Agreement. In addition, under those circumstances, the C-PACER Lien may be foreclosed in the manner specified in Section 4, below.

(e) The Assessment and the C-PACER Lien shall be assigned, pursuant to the Assignment of Assessment Agreement (the “**Assignment**”), to the Capital Provider, its designee or assigns as set forth in the Financing Agreement. The Assignment shall be executed and delivered contemporaneously with this Agreement and recorded immediately following the Notice of Assessment.

**Section 4.**      **Collection of Assessment; Foreclosure.**

(a)      The Assessment Installments shall be collected in the manner specified in the Financing Agreement.

(b)      The Property Owner acknowledges that if any Assessment Installment is not paid when due, the C-PACER lien may be enforced by the Capital Provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by the County. This enforcement may include prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider attesting to the assessment delinquency of at least one year shall be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration shall have the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050.

(c)      As permitted by RCW 84.64.040, Property Owner expressly consents to prosecution of said action of foreclosure by Capital Provider in accordance with the terms of the Financing Agreement. The County shall have no obligation to prosecute such foreclosure on behalf of the Capital Provider, or to otherwise participate in such foreclosure except to the extent that any action on the part of the County or any County official is required in order to allow the Capital Provider to prosecute or effectuate the foreclosure under chapter 84.64 RCW, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing, as contemplated in the County Ordinance.

(d)      [Because the Agreement covers multiple parcels, an action of foreclosure on a parcel or parcels pursuant to this section shall be brought in accordance with the terms specified in the Financing Agreement, to the extent consistent with the requirements of RCW 84.64.040.]

**Section 5.**      **Term; Agreement Runs with the Land.**

(a)      Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the final payment or prepayment of the Assessment. Following such termination, the County shall cause to be executed, delivered, and/or recorded such instruments as are necessary in order to release the C-PACER Lien. The C-PACER Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(b)      The balance of the C-PACER Lien that has not yet become due is not accelerated or eliminated by foreclosure of the C-PACER Lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the Property.

(c)      In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of [relative valuation], unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner.

**Section 6.**      **Recordation of Documents.** The County shall cause to be recorded in the office of the County Auditor the Notice of Assessment, which includes this Agreement as an attachment, and such other documents that are attached as Exhibits to this Agreement.

**Section 7.**      **Amendment.** (a) This Agreement may be modified only by the written agreement of the Capital Provider and the Property Owner.

(b)      The Property Owner agrees that it will, from time to time, execute,

acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

**Section 8.** Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the County, the Property Owner and their respective successors and assigns. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue foreclosure of the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. With exception of Section 9, any assignee shall be a party to this Agreement and shall have all of the rights and obligations of the County hereunder to the extent that such rights and obligations have been assigned by the County pursuant to the assignment documentation between the County and the assignee. The County may furnish any information concerning the Property Owner in its possession from time to time to prospective assignees.

**Section 9.** No Liability of the County. Pursuant to chapter 36.165 RCW, the County shall incur no liability as a result of any provision of this Agreement, nor shall any members of the governing body, employees, board members and executives of the County be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement. This provision shall inure only to the County, its governing body, employees, board members, and executives, and not to the benefit of the County's successors or assigns of this Agreement.

**Section 10.** Indemnification. Property Owner agrees to defend, indemnify and hold the County, its elected officials, employees, agents and contractors harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved Project, the Assessment and the C-PACER Lien. Property Owner's duty to indemnify the County shall not apply to liability for damages to the extent caused by or resulting from the sole or contributory negligence or willful misconduct of the County, its commissioners, employees, agents or contractors.

**Section 11.** Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of Washington. Any legal action brought under this Agreement must be instituted in a superior court of the County.

**Section 12.** Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**Section 13.** Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

*Signatures Appear on Following Page*

**IN WITNESS WHEREOF**, the County and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

**COUNTY:**

**Whatcom County, State of Washington**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PROPERTY OWNER:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

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

This record was acknowledged before me on \_\_\_\_\_, 20\_\_,

by \_\_\_\_\_[,

the \_\_\_\_\_,

of \_\_\_\_\_]

WITNESS my hand and official seal.

Signature : \_\_\_\_\_ (seal)

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

This record was acknowledged before me on \_\_\_\_\_,

by \_\_\_\_\_,

the \_\_\_\_\_, of \_\_\_\_\_ County, Washington.

WITNESS my hand and official seal.

Signature : \_\_\_\_\_ (seal)



**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

[To be inserted]

**EXHIBIT B**  
**QUALIFIED IMPROVEMENTS**

[To be inserted]

**EXHIBIT C**  
**FORM OF NOTICE OF ASSESSMENT**

[To be inserted]



**EXHIBIT 3: Notice of Assessment Interest and C-PACER Lien**

**RETURN NAME and ADDRESS**

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

Please Type or Print Neatly and Clearly All Information

**Document Title(s) NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN**

\_\_\_\_\_

**Reference Number(s) of Related Documents**

\_\_\_\_\_

**Grantor(s) [PROPERTY OWNER]**

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

**Grantee(s) WHATCOM COUNTY**

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

**Legal Description** (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

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

**Assessor's Tax Parcel ID Number**

\_\_\_\_\_

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

**Sign below only if your document is Non-Standard.**

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

\_\_\_\_\_  
Signature of Requesting Party

Instrument Prepared By  
And Recording Requested by:

Space Above for Recorder's Use

**NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN**

Washington RCW 36.165

Filed in Whatcom County

(GRANTEE) WHATCOM COUNTY

(GRANTOR) [PROPERTY OWNER]

Notice is hereby given that the person named below is placing a C-PACER Lien pursuant to chapter 36.165 RCW. In support of this lien the following information is submitted:

1. THE ASSESSMENT LIEN GRANTEE	WHATCOM COUNTY
2. DATE ON WHICH THE ASSESSMENT AGREEMENT WAS SIGNED GRANTING THE RIGHT TO PLACE AN ASSESSMENT AND C-PACER LIEN ON THE PROPERTY	[INSERT]
3. THE PROPERTY OWNER GRANTING THE PLACEMENT OF THE ASSESSMENT AND C-PACER LIEN	[INSERT]
4. THE PROPERTY AGAINST WHICH THE ASSESSMENT AND C-PACER LIEN IS PLACED IS LOCATED AT THE FOLLOWING MUNICIPAL ADDRESS:	[INSERT]
5. LEGAL DESCRIPTION OF THE PROPERTY IS AS FOLLOWS	SEE EXHIBIT A TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
6. ASSESSOR'S PARCEL NUMBER OF THE PROPERTY	[INSERT]
7. PRINCIPAL AMOUNT OF ASSESSMENT SECURED BY C-PACER LIEN	[INSERT]

8. TERMS AND LENGTH OF ASSESSMENT SECURED BY C-PACER LIEN	SEE EXHIBIT _ TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
9. COPY OF ASSESSMENT AGREEMENT (ATTACHED)	[INSERT]

**IN WITNESS WHEREOF**, Grantee and Grantor have caused this Notice of Assessment Interest and C-PACER Lien to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

**GRANTEE:**

**Whatcom County, State of Washington**

By: \_\_\_\_\_  
 Its: \_\_\_\_\_

**GRANTOR:**

**[PROPERTY OWNER]**

By: \_\_\_\_\_  
 Its: \_\_\_\_\_



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

This record was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_.

{the \_\_\_\_\_,

of \_\_\_\_\_}[Only if authorized party who is not the  
Property Owner]

WITNESS my hand and official seal.

Signature : \_\_\_\_\_ (seal)

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

This record was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_, of \_\_\_\_\_ County, Washington. the

WITNESS my hand and official seal.

Signature : \_\_\_\_\_ (seal)

**EXHIBIT 4: Assignment of Notice of Assessment Interested and C-Pacer Lien and Assessment Agreement**

**RETURN NAME and ADDRESS**

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

Please Type or Print Neatly and Clearly All Information

**Document Title(s) ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSESSMENT AGREEMENT**

\_\_\_\_\_

**Reference Number(s) of Related Documents**

\_\_\_\_\_

**Grantor(s)/Assignor** WHATCOM COUNTY

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

**Grantee(s)/Assignee** [CAPITAL PROVIDER OR DESIGNEE]

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

**Legal Description** (Abbreviated form is acceptable, i.e. Section/Township/Range/Section or Lot/Block/Subdivision)

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

**Assessor's Tax Parcel ID Number** \_\_\_\_\_

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

**Sign below only if your document is Non-Standard.**

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

\_\_\_\_\_  
Signature of Requesting Party

**ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN  
AND ASSIGNMENT OF ASSESSMENT AGREEMENT**

This ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSIGNMENT OF ASSESSMENT AGREEMENT (this "Assignment") is dated as of [MONTH] \_\_, 20\_\_ by Whatcom County, Washington ("Assignor"), to [CAPITAL PROVIDER] ("Assignee").

For value received, Assignor hereby grants, assigns and transfers to Assignee, without recourse or warranty of any kind, express or implied, all of Assignor's rights in, title to, and interest under, that certain Notice of Assessment Interest and C-PACER Lien, dated as of [\_\_\_\_], 20\_\_, by [\_\_\_\_] ("Property Owner") and Assignor, recorded on [\_\_\_\_], 20\_\_ as Instrument No. \_\_\_\_\_ in the office of the records of Whatcom County, State of Washington (the "Notice of Assessment Interest") and the Assessment Agreement dated as of [\_\_\_\_], 20\_\_, between Property Owner and Assignor and attached to such Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith. Assignee hereby accepts all of Assignor's rights in, title to, and interest under the Assessment Agreement and the Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith.

Consistent with RCW 84.64.040, by accepting this Assignment, Assignee agrees for the benefit of Assignor that Assignee shall be solely responsible for enforcing the obligation of Property Owner to pay the Assessment described in the Assessment Agreement, including pursuing a foreclosure of the C-PACER Lien in accordance with chapter 84.64 RCW. Assignor shall have no obligation to prosecute such foreclosure on behalf of Assignee, or to otherwise participate in such foreclosure, except to the extent that any action on the part of Assignor or any official of Assignor is required in order to allow Assignee to prosecute or effectuate the foreclosure under chapter 84.64 RCW, or to ratify or confirm any action of Assignee taken in furtherance of the foregoing, as contemplated in the County Ordinance (as defined in the Notice of Assessment Interest).

*Signatures appear on following page*

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

“ASSIGNOR”

WHATCOM COUNTY, WASHINGTON

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON )

: ss.

WHATCOM COUNTY )

This record was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_, the  
\_\_\_\_\_, of \_\_\_\_\_ County,  
Washington.

WITNESS my hand and official seal.

Signature : \_\_\_\_\_ (seal)

“ASSIGNEE”

[CAPITAL PROVIDER OR DESIGNEE]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

: ss.

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

On [MONTH] \_\_\_\_, 20\_\_ personally appeared before me, \_\_\_\_\_, who duly acknowledged to me that he/she executed the foregoing instrument on behalf of [CAPITAL PROVIDER OR DESIGNEE] in his/her capacity as \_\_\_\_\_ of [CAPITAL PROVIDER OR DESIGNEE]

\_\_\_\_\_  
NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

[INSERT]

EXHIBIT 5: Lienholder Consent



**Notice of Proposed C-PACER Assessment and  
Request for Consent of Lien or Other Obligation Holder to C-PACER Assessment and C-PACER  
Lien**

**Notice Date:**

**Lien or Other Obligation Holder:**

**Street:**

**City/State/Zip Code:**

**ATTN:**

**Property/Loan Information:**

**Address:** [ \_\_\_\_\_ ] (the “Property”)

**Loan Number:**

Why has the Financial Institution received this notice?

The Property Owner listed below owns the subject Property. Your Financial Institution holds a lien, mortgage or security interest or other secured encumbrance on the Property.

**[Property Owner]** (the “Property Owner”) wishes to install energy efficiency, water conservation, renewable energy, and/or resiliency improvements to the property using Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing, known as the “C-PACER” program. The Property Owner requests your consent for the property to participate in the program.

Background on C-PACER in Washington

Washington statute (chapter 36.165 RCW) (the “C-PACER Act”) authorizes Washington counties to establish a C-PACER program in their communities. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Act.

C-PACER financing helps stimulate local economies by allowing owners of agricultural, commercial, and industrial and multi-family properties with 5 or more dwelling units to obtain low-cost, long-term financing for energy efficiency, renewable energy, and water conservation and resiliency projects. Whatcom County, where the subject property is located, has established a C-PACER program within its jurisdiction for qualifying property owners.

Through the C-PACER program, the financing for qualifying projects is provided by a private Capital Provider, and the principal amount is recorded by Whatcom County as a voluntary assessment and lien (“the C-PACER lien”) on the Property. The annual assessment payments relating to that lien are repaid to, and collected by, the private Capital Provider, which has the responsibility of administering the Property Owner’s C-PACER obligation. Assessments have long been used to pay for improvements to real property that meet a public policy objectives, such as sidewalks, parks, lighting districts, and water and sewer projects. Like other assessments, the C-PACER obligations remain with a property upon its sale, until the financing is fully repaid, at which point the C-PACER lien and assessment are retired.

Under chapter 36.165 RCW, once consent from pre-existing lien holders and, if applicable, the holders of certain other obligations, on a property is given, an assessment can be imposed and a C-PACER lien can be filed. Once filed, that lien, like other government-imposed liens, moves into a superior position above other obligations, except for property taxes and other qualifying government obligations.

To qualify for C-PACER financing, the proposed project must meet the following basic criteria:

- The property is located in Whatcom County, Washington, a county that has passed an ordinance authorizing a C-PACER program;
- The property is an agricultural, commercial, or industrial property, or multi-family property of 5 or more dwelling units;
- The proposed measures reduce energy consumption, reduce water consumption, increase the production of on-site renewable energy, reduce lead in potable water, and/or increase the resiliency of the property, as defined in the C-PACER Act;
- The proposed measures are permanently affixed to the property; and
- The Property Owner receives consent of the current mortgage/lien holder(s).

Why should your Financial Institution consent to the C-PACER Assessment and C-PACER Lien?

1. Property improvements financed through the C-PACER program have public benefits. To qualify for C-PACER, a project must install improvements that either conserve energy or water resources; reduce greenhouse gas emissions; reduce lead levels in potable water; or improve safety and public health through certain resiliency enhancements (e.g., seismic stability). Under the C-PACER program eligibility requirements, a proposed project must include verification by a qualified and licensed professional certifying that the improvements will provide these public benefits. Qualifying improvements typically enhance property value and improve its collateral value for the mortgage or other obligatory interests that your Financial Institution holds in the Property.
2. C-PACER payments do not accelerate. In the event a mortgage holder or lien holder forecloses on the property for any reason, only the C-PACER payments currently due and in arrears would be payable, which is likely a relatively small proportion of the total amount financed. *In the case of a default, the entire outstanding principal, interest and penalties of your Financial Institution’s loan may be accelerated and come due; however, for the C-PACER financing, only the past due amounts may be collected in a default.* The remaining C-PACER financing balance runs with the land and regular installment payments would be paid by the new property owner.
3. Improvements financed through C-PACER often reduce a property’s operating costs and/or the potential for catastrophic damage, and they often improve health and comfort of occupants, all of which make a property more attractive to tenants and future owners.
4. Property improvements financed through the C-PACER program align with public Climate Action Plans and, potentially, with your institution’s sustainability plans and commitments, and to shareholder interests.

What should your Financial Institution know?

Property Owner has indicated its intention to apply for C-PACER financing for improvements outlined in on the Property. The C-PACER financing will be levied on the Property pursuant to an Assessment Agreement between the Property Owner and the County, and the amount of the C-PACER financing will be determined by a Financing Agreement between the Property Owner and the private Capital Provider. The C-PACER financing terms will consist of:

Total cost of improvements:	
Total C-PACER financing requested (+/- 5%):	
Annual interest rate not to exceed:	
Term of repayment:	
Total estimated annual C-PACER Payments:	

# Payments per year:	
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As required by the C-PACER Act, Property Owner is sending this Request for Consent of Lien or Other Obligation Holder to the creation of a C-PACER Assessment and Lien to:

- i. provide notice of Property Owner’s proposed participation of the Property in the program;
- ii. request confirmation from your Financial Institution (a current mortgage/lien or other obligation holder) that the levy of the C-PACER payments will not trigger a default nor the exercise of any remedies under your current lien or other encumbrance relating to the Property;
- iii. provide notice that, due to the requirements under the County’s Assessment Agreement with the Property Owner, the C-PACER private Capital Provider financing payments will be collected in installments that are subject to the same remedies and lien priorities as real property taxes; and
- iv. declare the Property Owner’s agreement to uphold and pay on a timely basis both the existing obligations to your Financial Institution which are secured by the Property and the proposed C-PACER installments.

Execution and Return of Consent. The Property Owner would appreciate your executing the attached Consent Form for the Whatcom County C-PACER program and returning it to the undersigned at your earliest convenience.

Sincerely,

BY: (signature): \_\_\_\_\_

**PROPERTY OWNER NAME:** [ \_\_\_\_\_ ]

**MAILING ADDRESS (if different than Property address):** [ \_\_\_\_\_ ]

## **Lien or Other Obligation Holder Consent to C-PACER Assessment and Lien**

**Date:**

### **Property/Loan Information Building**

**Address:**

**Tax key/Parcel:**

**Lien or Other Obligation Holder:**

**Loan Number:**

This Lien or Other Obligation Holder Consent Acknowledgement to C-PACER Assessment and Lien (this "Consent") is given by the undersigned entity (the "Holder") with respect to the above-referenced C-PACER Assessment and Lien and property ("Property") in relation to the Whatcom County C-PACER program (the "Program").

### **RECITALS**

**A.** The Holder is in receipt of written notice ("Notice") from the owner of the Property ("Property Owner") that it intends to finance the installation on the Property of certain Qualified Improvements according to chapter 36.165 RCW that will be permanently fixed to the Property and that will be financed by participating in the Program.

**B.** The Holder understands that, as a result of an Assessment Agreement between Whatcom County and the Property Owner, and a Financing Agreement between the Property Owner and [REDACTED] (the "C-PACER Capital Provider"), that the C-PACER Assessment and Lien against the Property, as described in the C-PACER Assessment Agreement between the County and Property Owner and in the C-PACER Financing Agreement between the private Capital Provider and the Property Owner (the "C-PACER Assessment"), will be levied on the Property, and that the C-PACER lien against the Property is a first and prior lien, second only to a lien for taxes imposed by the state, a local government, or a junior taxing district against the real property on which the C-PACER lien is imposed, from the date on which the notice of the C-PACER lien is recorded until the C-PACER Assessment, including any interest, penalties, and charges accrued or accruing under the terms of the Financing Agreement are paid in full.

**C.** The Property Owner has agreed in a manner acceptable to the Holder to uphold and pay on a timely basis both the existing obligations to the Holder which are secured by the Property and the proposed C-PACER Assessment payments.

**D.** The Holder consents to the Property's participation in the C-PACER program and that the C-PACER lien will take precedence over all other liens except for a lien for taxes as described in paragraph B.

*[Continued on next page]*

**ACKNOWLEDGEMENT**

The undersigned hereby represents that it is authorized to execute this Acknowledgement on behalf of the Holder. The Holder hereby:

- (i) confirms that it has received the Notice;
- (ii) acknowledges the levy by Whatcom County of the C-PACER Assessment pursuant to the terms of the Assessment Agreement and C-PACER Financing Agreement; and
- (iii) agrees that the levy and payment of the C-PACER Assessment will not constitute a default nor trigger the exercise of any remedies under the Holder’s Loan or other obligation documents.

The Holder hereby acknowledges that the Property Owner, the County, the C-PACER Capital Provider and the County’s designated C-PACER Program Administrator, will rely on the representation and acknowledgement of the Holder set forth in this Acknowledgement. The Recitals are integrated into and made a part of this Acknowledgment.

**Holder:**

By:

Signature:

Title:

Date:

In witness whereof, \_\_\_\_\_ has caused its name to be signed this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

**EXHIBIT 6: Certificate of Qualified Improvements  
(Energy, Water, Renewable Energy, Resilience Certificate of Compliance)**

**WHATCOM COUNTY C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Energy, Water, Renewable Energy, Resilience**

I, the undersigned, hereby certify the following facts and make the following certifications with respect to the project described in the attached Project Application (the "Project") under the Whatcom County Commercial C-PACER Program:

1. I am a licensed Professional Engineer in the State of Washington, whose registration number and stamp are shown below, OR
  
2. I am accredited by or belong to a firm with an accreditation from:
  - American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
    - Building Energy Assessment Professional (BEAP)
    - Building Energy Modeling Professional (BEMP)
    - Operations & Performance Management Professional Certification (OPMP)
    - High-Performance Building Design Professional Certification (HBDP)
  - Association of Energy Engineers (AEE)
    - Certified Energy Manager (CEM)
    - Certified Measurement and Verification Professional (CMVP)
    - Certified Energy Auditor (CEA)
  - Building Performance Institute
    - Energy Auditor
  - Investor Confidence Project
    - ICP Quality Assurance Assessor
  - Other: \_\_\_\_\_

Please provide verification of professional accreditation and recognition

3. The application is for:  
\_\_\_ an existing building  
\_\_\_ new construction
  
4. Please describe your relationship to the project:  
\_\_\_ I am employed by the project applicant in my professional capacity  
\_\_\_ I am a contracted independent third-party reviewer
  
5. I reviewed the following information regarding the project (e.g. equipment specifications OR design drawings/modeling OR permit applications OR an ASHRAE Level 1 assessment/energy assessment): Please Describe: \_\_\_\_\_
  
6. The project proposal includes the "Qualified Improvements", as defined in chapter 36.165 RCW and the Program Guidebook, and the estimated useful life of each Qualified Improvement, which are listed in an attachment to this certification. (Please attach)
  
7. The Qualified Improvements will be permanently affixed to the property.

**WHATCOM COUNTY C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Energy, Water, Renewable Energy, Resilience**

**IF FOR AN EXISTING BUILDING (check those that apply):**

**I CERTIFY:**

- The proposed Qualified Improvements will result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.
  
- The Qualified Improvements will result in improved resilience, which may include, without limitation, seismic resilience, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids. If other, specify: \_\_\_\_\_

**IF FOR NEW CONSTRUCTION (check those that apply):**

**I CERTIFY:**

- Each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency or water efficiency or renewable energy code requirements
  
- The building as a whole, as a result of the Qualified Improvements, performs above or exceeds applicable building energy and/or water codes
  
- The proposed resiliency Qualified Improvements will enable the subject property to exceed the resiliency code requirements.

Signature: \_\_\_\_\_

**NAME:**

Business name:



**WHATCOM COUNTY C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Energy, Water, Renewable Energy, Resilience**

Business address:

Business contact email:

Business contact phone:

**IF APPLICABLE**

License No. \_\_\_\_\_

Stamp: \_\_\_\_\_

ATTACHMENTS (Please attach to Certification)

EXHIBIT 7: Certificate of Capital Provider Qualifications

**CERTIFICATE OF CAPITAL PROVIDER QUALIFICATION**

Please check all of the following that apply to the qualifications of [ ] (“Capital Provider”), the capital provider that will supply the C-PACER financing for the project located at [ ]. *Note: Capital Providers must meet at least one of the following.*

\_\_\_\_\_ Capital Provider is registered to provide C-PACE financing in at least two other states.

State: \_\_\_\_\_

Program Name: \_\_\_\_\_

State: \_\_\_\_\_

Program Name: \_\_\_\_\_

Please provide documentation. Appropriate documentation includes a certification or verified copy of registration as a C-PACE provider by a C-PACE program.

\_\_\_\_\_ Capital Provider is registered to provide C-PACE financing and has financed at least one previous C-PACE transaction in another jurisdiction.

State: \_\_\_\_\_

Program Name: \_\_\_\_\_

Transaction: \_\_\_\_\_

Please provide documentation. Appropriate documentation includes a copy of a recorded transaction document (such as Notice of Assessment or Lien) specifying that it is part of a C-PACE transaction.

\_\_\_\_\_ Capital Provider is a federally chartered bank, thrift institution, or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable federal regulatory body.

\_\_\_\_\_ Capital Provider is a state-chartered bank, thrift institution or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable state regulatory body.

The undersigned certifies that the above is true and accurate as of the current date:

[Capital Provider]

By: \_\_\_\_\_

Name and Date:

Title:

EXHIBIT 8: Certificate of C-PACER Improvements Completion

**CERTIFICATE OF C-PACER IMPROVEMENTS COMPLETION**

Property Owner: \_\_\_\_\_

Property Address: \_\_\_\_\_

C-PACER application approval date: \_\_\_\_\_

C-PACER financing closing date: \_\_\_\_\_

The undersigned certifies that the work under the above approved C-PACER Application, attached as **Exhibit A** hereto, has been satisfactorily and properly completed and all improvements are operating as intended.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Exhibit A**

C-PACER Application

[See Attached]